

IN THE HIGH COURT OF ORISSA, CUTTACK

CRLREV No.625 of 2022

From the order dated 30.11.2022 passed by Special Judge (Vigilance), Berhampur in G.R. Case No.06 of 2016(V).

K. Rabindra Kumar Patra Petitioner

-Versus-

State of Odisha (Vig.) Opp. Party

For Petitioner:

-

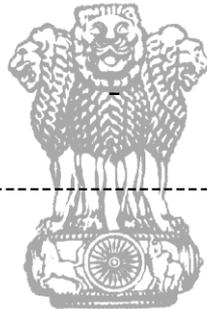
Mr. S.S. Rao
Senior Advocate

For Opp. Party:

-

Mr. Sangram Das
Standing Counsel (Vig.)

P R E S E N T:



THE HONOURABLE MR. JUSTICE S.K. SAHOO

Date of Hearing and Order: 01.12.2023

S.K. SAHOO, J. This revision petition has been filed by the petitioner K. Rabindra Kumar Patra challenging the order dated 30.11.2022 passed by the learned Special Judge (Vigilance), Berhampur in G.R. Case No.06 of 2016(V) in rejecting the petition under section 239 Cr.P.C. filed by the petitioner for his discharge.

2. The prosecution case, as per the first information report lodged by Suresh Kumar Tripathy, the Inspector in-charge of Badabazar police station on 16.02.2016 before the Superintendent of Police, Vigilance, Berhampur, is that he received information regarding illegal manufacturing and hoarding of Gutkha at Phulasundari Sahi under Badabazar police station and Haladiapadar under Gosani Nuagaon police station by the petitioner, the proprietor of Maa Biraja Products and accordingly, he along with the police staff conducted raids in the godowns on 16.02.2016 and during raid, the police team detected huge quantities of Gutkha and Zarda Gutkha along with manufacturing machines in both the places. Some documents were produced by the petitioner relating to the storage and production of such materials. However, in order to ascertain the genuineness of the documents and available materials, the informant made arrangement for guarding both the godowns by deploying P.S. staff and directed the petitioner to produce the original documents in support of his business. It is the further prosecution case that at 2.00 p.m., while the informant was present in his office chamber situated at Badabazar police station premises, the petitioner came to his room and offered him bribe of Rs.2,00,000/- (rupees two lakhs) with a request to release the

Gutkha and not to take any legal action either against him or his staff. The informant vehemently opposed to the same and warned the petitioner not to offer any bribe to him otherwise he would be constrained to take legal action against him (petitioner). In spite of repeated warning, the petitioner insisted the informant to receive the bribe money and thereafter, the petitioner left the place telling that he would come to the Badabazar police station at 10.00 p.m. to give bribe money. Apprehending that the petitioner would come again to the police station to offer bribe to him, the written report was presented before the Superintendent of Police, Vigilance, Berhampur by the informant and accordingly, the Superintendent of Police treated it as an F.I.R. and directed the O.I.C., Vigilance police station to register a case under section 12 of the Prevention of Corruption Act, 1988 (hereafter 'P.C. Act') and accordingly, the investigation of the case was handed over to one D.N. Das, Deputy Superintendent of Police, Vigilance, Berhampur.

During course of investigation, a trap team was formed and it is the prosecution case that the petitioner came to the Badabazar police station carrying a cotton bag in his hand and came to the chamber of the informant and requested the informant not to take any legal action either against him or his

staff and offered Rs.2,00,000/- (rupees two lakhs) to the informant. The informant denied receiving the same for which the petitioner brought out four bundles of G.C. notes, having five hundred rupees denominations and kept the same on the office table of the informant and again requested the informant to help him. One Dayasagar Sahu, who was the overhearing witness, after hearing the conversation between the petitioner and the informant passed the prearranged signal to the trap party members and accordingly, the trap party members rushed to the chamber of the informant and they found four bundles of G.C. notes on the office table of the informant. After the trap was made successful, the investigation carried out and ultimately finding prima facie case against the petitioner that he was offering forcibly bribe amount of Rs.2,00,000/- (rupees two lakhs) to the Inspector in-charge of Badabazar police station, Berhampur, who is the informant in the case in order to release the Gutkha and not to take any legal action either against him or his staff, charge sheet was placed against him under section 12 of the P.C. Act.

3. The petitioner filed a petition under section 239 Cr.P.C. before the learned trial Court for discharge and it is stated in the discharge petition that the petitioner is a licensed

dealer and holder of registration for dealers under the Value Added Tax under the name and style of M/s. Maa Biraja Products and he was dealing in manufacturing chewing tobacco, pan masala, mouth freshener and using the products such as betel nuts, lime, menthol, cardamom etc. and it is further stated that for the purpose of manufacturing and taking the products such as packing of pan masala, he was paying the excise duty. It is further stated that there was absolutely no reason as to why the petitioner would offer bribe to the informant a sum of Rs.2,00,000/- (rupees two lakhs) and there was no occasion for the petitioner to offer and pay the bribe as he needed no benefit from the I.I.C. and the story was created and concocted and the same is not to be accepted.

4. The learned trial Court vide impugned order dated 30.11.2022 has been pleased to hold that from the allegation levelled against the petitioner, there is strong suspicion of his involvement in the alleged crime and therefore, the Court rejected the petition being devoid of merit.

5. Mr. S.S. Rao, learned Senior Advocate appearing for the petitioner reiterated the averments taken in the 239 Cr.P.C. petition and submitted that there is absolutely no clinching evidence on record to substantiate the accusation levelled

against the petitioner and to file charge sheet against him under section 12 of the P.C. Act and therefore, the learned trial Court has committed illegality in rejecting the petition filed under section 239 Cr.P.C.

6. Mr. Sangram Das, learned Standing Counsel for the Vigilance Department, on the other hand, submitted that the learned trial Court has rightly held that even on the basis of strong suspicion, the charge can be framed and when the materials are available on record, particularly, the statement of Dayasagar Sahu, the overhearing witness and the seizure of cash of Rs.2,00,000/- (rupees two lakhs) from the office table of the informant, it is apparent that the petitioner had tried to offer bribe to the informant and therefore, prima facie the ingredients of the offences are made out and there is no illegality or impropriety of the impugned order and therefore, the revision petition is dismissed.

7. Section 239 Cr.P.C. deals with the discharge of an accused. It is stated that if, upon considering the police report and the documents sent with it under section 173 Cr.P.C. and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate

considers the charge against the accused to be groundless, he shall discharge the accused and record his reasons for so doing.

Law is well settled that no detailed evaluation of the materials or meticulous consideration of possible defence need be undertaken at the stage of consideration of the discharge petition. The exercise of weighing the materials in golden scales is certainly to be avoided at the stage and it is to be postponed to a later date. 'Groundless' the word which is appearing under section 239 Cr.P.C. means without basis or foundation. Even very strong suspicion founded on materials before Magistrate is sufficient for framing of charge. Where there is a prima facie material to frame charge against the accused, charge cannot be said to be groundless and the accused cannot be discharged under section 239 Cr.P.C. This is not the stage for weighing the pros and cons of all the implications of the materials, not for sifting the materials presented by the prosecution. The exercise at the stage should be confined to considering the police report and the documents to decide whether the allegations against the accused are 'groundless' or whether there is ground for presuming that the accused has committed the offence.

After going through the materials available on record, particularly, the statement of the overhearing witness Dayasagar

Sahu and the seizure of cash of Rs.2,00,000/- (rupees two lakhs), which is stated to have been produced by the petitioner before the informant, I am of the view that there is prima facie material on record against the petitioner for the commission of offence under section 12 of the P.C. Act. Therefore, the learned trial Court is quite justified in rejecting the petition under section 239 Cr.P.C.

In view of the foregoing discussions, the CRLREV being devoid of merits stands dismissed.

Before parting, I would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for discharge made by the petitioner. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the trial Court at the appropriate stage of the trial.

A copy of the order be communicated to the learned trial Court.

.....
S.K. Sahoo, J.