



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.4220 of 2025

Ajaya Kumar Choudhury *Petitioner(s)*

*Mr. Bhabani Sankar Das, R. Biswal,
G.R. Nayak, Adv.*

-versus-

State of Odisha (Vig.) *Opposite Party(s)*

Mr. N. Moharana, Addl. Standing Counsel (Vig.)

CORAM:

HON'BLE DR.JUSTICE SANJEEB K PANIGRAHI

Order No.

04.

ORDER

27.02.2026

1. This matter is taken up through hybrid arrangement.
2. The Petitioner has filed the present CRLMC under Section 482 of Cr.P.C. seeking quashing of the entire criminal proceeding in V.G.R. Case No.29 of 2003 pending before the learned Special Judge (Vigilance), Baripada, arising out of Balasore Vigilance P.S. Case No.29 of 2003, as well as the order dated 20.09.2025 rejecting his prayer for discharge.
3. Heard learned counsel for the Petitioner and learned Addl. Standing Counsel for the Vigilance Department and perused the materials available on record.
4. The prosecution case, in brief, is that irregularities were allegedly committed in execution of the tender work "Jambhira Earth Dam from RD 4200 Mtr. to 4500 Mtr.



(Reach-IV) with stepped Spillway.” The Petitioner, being the executant contractor, along with certain public servants, was alleged to have entered into a criminal conspiracy resulting in excess payment and thereby causing loss to the Government.

5. After investigation, the Vigilance Department submitted the Final Report on 08.08.2006. The learned trial Court, after granting several adjournments for filing of protest petition, eventually took cognizance on 02.09.2017 for the offences punishable under Section 13(2) read with Section 13(1)(d) of the P.C. Act and Section 420/120-B of the I.P.C.

6. Learned counsel for the Petitioner submits that:

- i. The criminal proceedings against the co-accused public servants have already been quashed by this Court in separate criminal revisions.
- ii. The exoneration of the accused public servants from the charges of offence as alleged render the entire prosecution in the above noted case vulnerable in the logic, if the public servant’s role in the conspiracy is taken out of the scenario, the non-public servant (the Petitioner) cannot be slapped with charges of Section 120-B much less Section 420 of the I.P.C.
- iii. Pre requisite condition of conspiracy that is meeting of mind not made out as because the charges



against the non-public servant-Petitioner is dependent on the acts or role attributed to public servants who have been discharged from the charges. Besides, it is trite in law the offence under Section 120-B does not stand alone, therefore, the consequences of discharge of public servant in the present case entails discharge of the petitioner, in logical corollary. To sum up the prosecution ought not to be allowed against the petitioner alone. So far as offence under Section 420 is concerned, it is well evident from the charge sheet that the investigating agency did not find any material pertaining to syphoning of fund for wrongful gain, on the contrary the investigating agency recommended for appropriate action to be taken by the department for recovery of payment made in excess.

iv. There is inordinate and unexplained delay of about fourteen years in taking cognizance, violating the Petitioner's right to speedy trial under Article 21 of the Constitution of India.

v. He places reliance on the judgment in the case of *Ashok Kumar Das v. State of Odisha*¹ passed by a coordinate Bench of this Court and draws the attention of this Court to paragraph no.33, wherein it

¹ CRLREV No.647 of 2024 decided on 05.05.2025



is observed that in the present case no inference can be drawn regarding the loss to the exchequer, since as per the condition of the agreement of the contract, there is specific condition for recovery of excess payment, if made. Thus, the condition of the agreement and the observation of this court in the aforesaid CRLREV sufficiently hinges for in case where excess payment is made and, in the agreement, there is a condition for recovery, such excess payment cannot be construed to be loss to the employer so as to be brought to home under section 420 of the I.P.C.

7. Per contra, learned counsel for the Vigilance Department has filed the written notes of submissions, wherein he contended that:-

- i. The order of cognizance dated 02.09.2017 and rejection order of discharge dated 20.09.2025 clearly make out a prima facie case against the Petitioner for commission of offences under Section 420/120-B of the I.P.C. by availing pecuniary advantages of taking extra payment in connivance with the other co-accused public servants with deceitful intention, thereby caused loss to the Government.
- ii. The delay in completion of trial is not attributed to the prosecution as F.I.R. was registered in 10.07.2003



and FRT was submitted after completion of investigation on 08.08.2006.

iii. The law is well settled that the trial Court is not bound to accept the FRT filed by the prosecution. The trial Court on the basis of the materials collected during investigation, if prima facie satisfied, can proceed against the accused persons and take cognizance of the offences by passing a reasoned order, and proceed further in the trial. In the instant case, the same principles have been scrupulously followed by the learned trial Court and took cognizance of the offences against the Petitioner. Hence, there is no illegality in continuance of the proceeding to bring it to a logical end in the interest of justice.

iv. Law is well settled that at the stage of framing of charge on the basis of record, if the trial Court is of opinion that there is sufficient ground for presuming that the accused has committed the offence, it shall frame the charge for such offence. The Judge is not required to record detailed reasons as to while the charge is framed. At the stage of discharge and/or while exercising the powers under Section 482 Cr.P.C., the Court has a very limited jurisdiction and is required to consider "whether any sufficient



material is available to proceed further against the accused for which the accused is required to be tried or not.

v. The pleas taken by the Petitioner are subject matter of trial. Hence, the prayer made by the Petitioner at this stage be dismissed in the interest of justice.

8. It is not in dispute that the co-accused public servants, against whom conspiracy is alleged, have already been discharged/quashed from prosecution by orders of this Court. The prosecution case against the present Petitioner is intrinsically connected with the alleged acts of those public servants.

9. The essential ingredient of an offence under Section 120-B of the I.P.C. is the existence of an agreement between two or more persons to commit an illegal act. When the alleged co-conspirators are no longer before the Court and the substratum of the prosecution case stands removed, continuation of prosecution against the Petitioner alone for conspiracy would be legally unsustainable in the facts of the present case.

10. So far as the offence under Section 420 of the I.P.C is concerned, a perusal of the charge sheet reveals absence of material to establish dishonest intention at the inception of the transaction. The allegation essentially relates to excess payment in execution of a contractual work, for which the



agreement itself contains a recovery mechanism. In absence of prima facie material showing fraudulent or dishonest inducement, the dispute appears to be predominantly civil/contractual in nature.

11. It further appears that though the Final Report was submitted in the year 2006, cognizance was taken only in the year 2017 after grant of fifty-four adjournments for filing of protest petition. No protest petition was ultimately filed. The delay of approximately fourteen years in progressing the matter remains unexplained.

12. The Supreme Court in the case of *A.R. Antulay v. R.S. Nayak*,² while interpreting the scope of Article 21 of the Constitution of India, has held that every citizen has right to speedy trial of the case pending against him. The speedy trial was considered also in the public interest as it serves the social interest as well. It is in the case of all concerned that guilt or innocence of the accused is determined as quickly as possible in the circumstances, the right to speedy trial encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. While determining the alleged delay the Court has to decide each case on its facts having regard to all the attending circumstances including the nature of the offence, number of accused and witnesses.

² (1992) 1 SCC 225



13. In view of the foregoing discussions and considering quashing of proceedings against co-accused public servants, absence of prima facie material satisfying essential ingredients of Sections 120-B/420 of the I.P.C. and inordinate and unexplained delay in taking cognizance, this Court is the considered view that continuation of the criminal proceeding against the Petitioner would amount to abuse of the process of Court.

14. Accordingly, the CRLMC is allowed. The impugned order dated 20.09.2025 passed by the learned Special Judge (Vigilance), Baripada in V.G.R. Case No.29 of 2003 arising out of Balasore Vigilance P.S. Case No.29 of 2003 is hereby set aside. Consequently, the entire criminal proceedings in V.G.R. Case No.29 of 2003, insofar as it relates to the present Petitioner, stands quashed.

15. Pending application (s), if any, shall stand disposed of.

16. Interim order, if any, stands vacated.

17. Issue urgent certified copy of this order as per Rules.

(Dr. Sanjeeb K Panigrahi)
Judge