



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No. 835 of 2025

An application under Section 442 read with Section 438 of the Bharatiya
Nagarik Suraksha Sanhita, 2023.

Pawan Kumar Agrawala ***Petitioner***

-versus-

State of Odisha (Vigilance) ***Opp. Party***

Advocates appeared in this case:

For Petitioner : Ms. Agnisikha Ray, Advocate

For Opp. Party : Mr. Sangram Das, Standing Counsel
(for Vigilance Department)

CORAM:

HONOURABLE MISS JUSTICE SAVITRI RATHO

JUDGMENT

Date of hearing: 23.02.2026 : Date of Judgment: 29.04.2026

Savitri Ratho, J

The Petitioner has challenged the order dated 26.07.2025 passed by the learned Special Judge, Vigilance, Sambalpur rejecting the application filed by him for discharge from the offences under Section 12 of the Prevention of Corruption Act, 1988 (in short “P.C. Act”) and Sections 181 and 182 of the Indian Penal Code (in short “I.P.C.”).



PROSECUTION CASE

2. On 26.12.2011, the Petitioner submitted a written complaint before the S.P. Vigilance, Sambalpur against Sri Santosh Kumar Das, SDO Electrical Commerce, Bargarh and Sri Sambit Ku. Rout, working as J.E. O/o. S.D.O. Electrical (Commerce), Bargarh, alleging demand of illegal gratification of Rs.5,500/- for deciding a case of penalty towards electrical dues amounting to Rs.43,000/- On his report Sambalpur Vigilance P.S. Case No. 17 dated 24.04.2003, under Sections 13(2) read with Section 13(1)(d)/7 of the P.C. Act and under Section 34 of the I.P.C. was registered against the two accused persons. They faced trial in CTR No. 44 of 2003 in the Court of the learned Special Judge (Vigilance), Sambalpur for commission of offences punishable under Section 7 and Section -13 (1) (d) read with Section 13 (2) of the P.C. Act. During trial, the petitioner was examined by the prosecution as P.W.4, but as he did not support the prosecution case, he was declared hostile and cross examined by the prosecution. As he did not support the prosecution case, the accused persons were acquitted of the charges under Section – 248



(1) of the Cr.P.C. by judgment dated 08.09.2011 by the learned Special Judge, Vigilance, Sambalpur.

3. On 26.12.2011, an FIR was filed by Sri P.K. Tripathy, Inspector Vigilance, Rourkela Unit Sambalpur Division alleging that the Petitioner turned hostile in order to defend the accused persons against whom he had lodged FIR. As he did not support the prosecution case in the trial the accused persons were acquitted. As he had given bribe of Rs. 4,500/- to Sri S.K. Rout on 24.04.2003 and Rs.5,000/- to Sri Santosh Kumar Das, to decide his case of penalty towards electrical dues and had lodged FIR alleging demand of bribe and requested for investigation knowing it to be false with intention to initiate malicious criminal proceeding against the accused, he was liable for offence under Section 12 of the PC Act and Sections 181 and 182 of the I.P.C. On basis of his complaint, Sambalpur Vigilance P.S. case No 94 of 2011 was registered against the petitioner for commission of offences under Sections 12 of the P.C. Act and Sections 181 and 182 of the IPC.

4. After filing of chargesheet dated 26.03.2013, cognizance of the offences under Section 12 of the P.C. Act and Sections 181 and 182 of the I.P.C. was taken against the petitioner on 16.12.2013. When the case was posted for trial, the petitioner filed



an application under Section 239 of the Cr.P.C. for discharge, relying upon the decision of this Court in ***Kamal Kumar Nanda vs State of Orissa (Vig) : (2017) 67 OCR 81***, which was dismissed on 26.07.2025.

IMPUGNED ORDER

5. The learned Special Judge, Vigilance by order dated 26.07.2025, referred to the decision of of this Court in ***Shiv Dutt Sharma vs State of Orissa : (2015) 60 OCR 646*** and the decision of the Supreme Court in the case of ***State of M.P. vs Mohanlal Soni: (2000) 6 SCC 338***, holding that mini trial was not required to be held at the time of framing of charge and the plea of the accused can be dealt with at the time of trial , and rejected the application for discharge. The learned trial Court also held that cognizance of offences under Section 12 of the P.C. Act had been taken against the petitioner which relates to punishment for abetting offence under Section 7 or 11, but in case of ***Kamal Kumar Nanda*** (supra), the accused was not charged for committing an offence under Section 7 or 11 of the P.C. Act.



SUBMISSION ON BEHALF OF THE PETITIONER

6. Ms. Agnisikha Ray, learned counsel for the Petitioner submitted that the Petitioner should be discharged from the above offences on the following grounds:-

(i) Section 12 of the P.C. Act deals with punishment for abetment of offences. In the present case, the ingredients necessary to attract Section 12 are wholly absent.

(ii) Section 195 (1)(a)(i) of the Code of Criminal Procedure, 1973 (in short "Cr.P.C.") mandates that cognizance of certain offences, which includes the offences under Sections 181 and 182 of the I.P.C. can be taken only upon a complaint in writing of the public servant concerned or of some public servant to whom he is administratively subordinate, which is not the case here.

(iii) In view of the procedure of Section 132 of the Evidence Act, the evidence of the statement of the Petitioner cannot subject him to prosecution on the allegation of giving false evidence.

(iv) Relying on paragraph 87 of the judgment of this Court in ***Kamal Kumar Nanda vs. State of Orissa (vigilance) : (2017) 67 OCR 81***, she submitted that in similar circumstances the accused therein was discharged and charges framed against him were



quashed. She further submitted that it is wrongly interpreted / observed by the learned trial court, that the accused in that case had not been charged under Section 7 or 11 of the P.C. Act, which is indicative of complete non-application of judicial mind.

SUBMISSIONS ON BEHALF OF STATE (VIGILANCE DEPARTMENT)

7. Mr. Sangram Das, learned Standing Counsel (Vigilance), relying upon the decision of the Supreme Court in the case of *Asian Resurfacing of Road Agency Pvt. Ltd vs. CBI : 2018 (16) SCC 299*, submitted that the revision is not maintainable, as appreciation of evidence is not permissible in a revision and a revision challenging an order rejecting discharge should be entertained only in rarest of rare case only to correct a patent error of jurisdiction and not to reappreciate the evidence.

(ii) The contentions of the Petitioner are in the nature of a defence plea which cannot be considered at the time of framing of charge by holding a mini trial. The plea of the accused can be dealt with by the learned trial Court during the trial.



(iii) The impugned order is neither perverse nor erroneous so as to warrant interference by this Court in exercise of revisional powers.

(iv) Relying on the decisions of the Supreme Court in the case of *Narinder Singh vs. State of Himachal Pradesh* ; (2014) 13 SCC 30, he submitted that when any non-public servant attempts to bribe a public servant, he comes within the ambit of Section 7 of the P.C Act, for which Section 12 comes into play.

(v) Apart from other submissions he also submitted that the P.C. Act has undergone a number of amendments in the year 2018, which may be relevant for deciding this CRLREV.

STATUTORY PROVISIONS

8. Section 12 of the P.C. Act has been amended in 2018. The unamended Section and Sections 181 and 182 of the I.P.C., and Section 195 of the Cr.P.C., which are relevant for deciding this case are extracted below:-

Prevention of Corruption Act-

Section 12. Punishment for abetment of offences defined in Section 7 or 11,- Whoever abets any offence punishable under Section 7 or 11, whether or not that offence is committed in consequence of that abetment, shall be punishable with



imprisonment for a term which shall not be less than three years, but which may extend to seven years and shall also be liable to fine.

Indian Penal Code-

Section 181. False statement on oath or affirmation to public servant or person authorised to administer an oath or affirmation.

- Whoever, being legally bound by an oath [or affirmation] to state the truth on any subject to any public servant or other person authorized by law to administer such oath [or affirmation], makes, to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Section 182. False information, with intent to cause public servant to use his lawful power to the injury of another person.—*Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—*

(a) to do or omit anything which such public servant ought not to do or omit if the true state of



facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations

(a) A informs a Magistrate that Z, a police-officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(b) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

(c) A falsely informs a policeman that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assailants, but knows it to be likely that in consequence of this



information the police will make enquiries and institute searches in the village to the annoyance of the villagers or some of them. A has committed an offence under this section.

Code of Criminal Procedure

Section-195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence-

(1) No Court shall take cognizance –

(a)(i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

ii) of any abetment of, or attempt to commit, such offence, or (iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or other public servant to whom he is administratively subordinate;

(b)(i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476 of the said Code, when such offence is



alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

[except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.] [Substituted by Act 2 of 2006, Section 3 for "except on the complaint in writing of that Court, of of some other Court to which that Court is subordinate" (w.e.f. 16-4-2006).]

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint :

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court and includes a Tribunal constituted by or



under a Central, Provincial or State Act, if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinarily original civil jurisdiction within whose local jurisdiction such Civil Court is situate : Provided that –

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.”

JUDICIAL PRONOUNCEMENTS

9. In the case of *Asian Resurfacing of Road Agency Pvt.*

Ltd (supra), this Court has held as follows:



“36. Thus, we declare the law to be that order framing charge is not purely an interlocutory order nor a final order. Jurisdiction of the High Court is not barred irrespective of the label of a petition, be it under Sections 397 or 482 Cr.P.C. or Article 227 of the Constitution. However, the said jurisdiction is to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial without the same being in any manner hampered. Thus considered, the challenge to an order of charge should be entertained in a rarest of rare case only to correct a patent error of jurisdiction and not to reappreciate the matter....”

In the case of **Narinder Singh** (supra), the Appellant had been acquitted by the learned trial court, but the High Court set aside the acquittal and convicted the Appellant for commission of the offence under Section 12 of the P.C. Act. The judgment of the High Court was challenged in the Supreme Court on the ground that the police officer who conducted the investigation was not an authorised officer in terms of Section 17 of the Act for which the entire investigation was vitiated in law. The other ground for challenge was that the High Court erroneously drew presumption under Section 20 of the Act, when the demand or offer for



gratification had not been proved. The Supreme Court dismissed the appeal holding as follows:-

“11. While taking note of the finding recorded by the High Court, we are fully in agreement that the prosecution has proved charges made against the appellant. The provisions of law considered by the High Court ought to have been followed by the trial court. The trial court decided the matter as if the offence has been committed by the appellant under the provisions of the Penal Code, 1860. The trial court has not considered the gravity of the offence as contemplated under the Prevention of Corruption Act, 1988.

12. In the facts and circumstances of the case and seriousness of the offence, we fully agree with the view taken by the High Court. The impugned judgment, therefore, needs no interference. Hence this appeal has no merit and the same is dismissed.”

In the case of **Kamal Kumar Nanda** (supra), this Court has held as follows :

“Law is well settled that statement of a witness recorded under Section 161 of Cr.P.C. during the investigation is not a substantive piece of evidence and in view of the proviso to Sub-section (1) of Section 162 of Cr. PC., such statement can be



used only for the limited purpose of contradicting the maker thereof in the manner laid down in the said proviso. Similarly statement recorded under Section 164 Cr.P.C. can never be used as substantive evidence of truth of the facts but may be used for contradiction and corroboration of a witness who made it. The statement made under Section 164 Cr.P.C. can be used to cross examine the maker of it and the result may be to show that the evidence of the witness is; false. It can be used to impeach the credibility of the prosecution witness. When a witness gives a statement to the Magistrate under Section 164 Cr.P.C. and later during the trial disowns it and gives a different version, either the statement given by him before the learned Magistrate may be true or his deposition before the learned Trial Court may be true, but both may not be true. The statement of a witness under Section 164 of Cr.P.C. is recorded being sponsored by the investigating agency. If on compulsion by the investigating officer, a witness implicates an accused in the crime in his 164 Cr.P.C statement but during trial, he states differently and exonerates the accused and further states that on compulsion, he gave the 164 Cr.P.C. statement, it would be travesty of justice to prosecute such witness for giving false evidence. Similarly a



witness cannot be prosecuted for perjury for resiling from his statement recorded by police under Section 161 of Cr.P.C.

If a witness deposing during trial deviates from his previous statements recorded either under Section 161 or Section 164 of Cr.P.C., it cannot be said that he has abetted the accused who is facing trial for the commission of an offence. Therefore, on the face of the accusation, I am of the view that framing of charge under Section 12 of the 1988 Act suffers from non-application of mind and cannot be sustained in the eye of law.

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Section 195(1)(a)(i) of the Code of Criminal Procedure states that no Court shall take cognizance of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. Obviously offences under Sections 181 and 182 of the Indian Penal Code come within the purview of Section 195(1)(a)(i) of Cr.P.C.) This section is one of the sections which prohibit a Court from taking cognizance of certain offences unless and until a complaint has been made by some particular



authority or person. As the section creates an absolute bar against the Court taking cognizance of the offence except in the manner provided by the section, if the Court takes cognizance against the provision, the cognizance should be illegal and without jurisdiction. Once the order of taking cognizance is held to be illegal, the subsequent order of framing charge is also illegal and liable to be quashed.

In the present case, when no complaint as described under Section 2(d) of Cr.P.C. has been made either by the public servant concerned i.e. Junior Engineer Subanath Majhi or by any other public servant to whom Subhanath Majhi was administratively subordinate, the prosecution against the petitioner for the offences punishable under Sections 181 and 182 of the Indian Penal Code on the basis of the first information report lodged by Sabitarani Panda, Inspector of Police, Vigilance, Sambalpur Division, Samablpur cannot be sustained in the eye of law and therefore, I am of the view that the submission of charge sheet against the petitioner under Sections 181 and 182 of the Indian Panel Code and consequential order of framing of charge by the learned Trial Court under such offences is not proper and justified.

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In the present case, even though it is accepted for the sake of argument that the petitioner deposed before the learned Trial Court voluntarily and not on compulsion but in absence of any incriminating statements and the fact that the previous statements given by the petitioner before the investigating officer and the Magistrate are not the substantive piece of evidence, the learned Trial Court erred in framing the charges.

Even though strong suspicion is sufficient to frame charge but when the materials available on record taken on its face value do not disclose the ingredients of the offences under which the charge has been framed and the mandates under Section 195(1)(a)(i) of Cr.P.C. have not been followed, I am of the view that the impugned order cannot be sustained in the eye of law.”

(emphasis supplied)

ANALYSIS AND CONCLUSION

10. It is well-settled that while deciding an application for discharge, the Court is not to hold a mini trial and that a strong suspicion is enough for framing charge. It is also well settled that at the time of framing of charge, the Court is not to act as a mere post office for the prosecution but should consider whether the allegation and materials give rise to a prima facie case.



11. In the instant case, the prosecution has relied on Section 12 of the P.C. Act, 1988, which deals with abetment of offences under Section 7 and 11 of the PC Act. It is undisputed that in the earlier vigilance case, allegations under Sections 7 and 13 of the P.C. Act were against the two accused who were subsequently acquitted. Merely because he did not stick to his earlier allegation, it cannot be said that he abetted the accused who faced trial. As, there is no material to indicate that the petitioner had abetted commission of those offences, he cannot be proceeded under Section 12 of the PC Act and is liable to be discharged from the said offence.

12. As regards the charge of commission of offence punishable under Section 181 of the I.P.C., it is evident from a reading of Section 195(1)(a)(i) of Cr.P.C. that no Court is empowered to take cognizance of such offence other than on a written complaint filed by the public servant concerned or his superior officer. In the instant case, the requirement has not been fulfilled as the Petitioner has not stated anything on oath or affidavit before the Inspector Vigilance who lodged FIR. Hence, the trial cannot proceed against him in view of the provision under Section 195(1)(a)(i) of the Cr.P.C.



13. As regards the offence under section 182 of the I.P.C, the Inspector of Vigilance who lodged FIR is neither the public servant concerned nor senior to the S.P, Vigilance before whom FIR was lodged by the petitioner leading to registration of Sambalpur Vigilance PS Case No. 17 of 2003. The Inspector, Vigilance (Informant) is also not the person who was accused of committing offence under Section 7 or 11 of the P.C. Act. Therefore, in view of the bar under Section 195(1) (a)(ii) of the Cr.P.C., the trial cannot proceed against the petitioner under Section 182 of the IPC.

14. The decision of this Court in *Kamal Kumar Nanda* (supra) is squarely applicable to this case. As the learned counsel for the Vigilance has not brought to my notice any contrary decision or submitted that the decision has been set aside by the Supreme Court, there is no reason as to why, I should not follow the said decision.

15. That apart, more than twenty three years have elapsed since the petitioner lodged FIR resulting in registration of Sambalpur Vigilance P.S. Case No. 17 of 2003. More than fifteen years have elapsed since the petitioner deposed in CTR no. 44 of 2003 and FIR in Sambalpur Vigilance P.S. case No 94 of 2011 was registered against him. Nothing has been brought to my notice that



the petitioner was responsible for the delay in completion of investigation in Sambalpur Vigilance P.S. case No 94 of 2011 or commencement of trial. So compelling the petitioner to face trial in a case where the cognizance is barred for two of the offences for which he may be charged, after fifteen years, in my opinion would not be in the interest of justice.

16. In view of the above discussion, I am satisfied that the impugned order rejecting the application of the petitioner for discharge is liable for interference.

17. The impugned order is accordingly set aside. The petitioner is discharged from the offences under Section 12 of the P.C. Act and Sections 181 and 182 of the I.P.C.

18. The Criminal Revision is allowed.

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(Savitri Ratho)
Judge

Orissa High Court, Cuttack.
The 29th April, 2026.
Subhalaxmi, Junior Stenographer.

Signature Not Verified

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