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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.326 of 2025

**Ashok Kumar Das and
Others**

Petitioners

Mr. D. P. Dhal, Sr. Advocate

-versus-

State of Odisha (Vig.)

Opp. Party

Mr. Sangram Das, Standing Counsel
Vigilance Department

CRLREV No.366 of 2025

**Ramesh Chandra Tripathy
and another**

Petitioners

Mr. D. P. Dhal, Sr. Advocate

-versus-

State of Odisha (Vig.)

Opp. Party

Mr. Sangram Das, Standing Counsel
Vigilance Department

CRLREV No. 371 of 2025

Gajendra Mishra

Petitioner

Mr. D. P. Dhal, Sr. Advocate

-versus-

State of Odisha (Vig.)

Opp. Party

Mr. Sangram Das, Standing Counsel
Vigilance Department

CRLREV No.372 of 2025

G. Vishnu Vardhan Rao

Petitioner



Mr. D. P. Dhal, Sr. Advocate

-versus-

State of Odisha (Vig.)

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Opp. Party

Mr. Sangram Das, Standing Counsel
Vigilance Department

CRLREV No.373 of 2025

*Ramesh Chandra Tripathy
and Another*

Petitioners

Mr. D. P. Dhal, Sr. Advocate

-versus-

State of Odisha (Vig.)

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Opp. Party

Mr. Sangram Das, Standing Counsel
Vigilance Department

CRLREV No.670 of 2024

*Prabhat Kumar Mishra and
another*

Petitioners

Mr. D. P. Dhal, Sr. Advocate

-versus-

State of Odisha (Vig.)

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Opp. Party

Mr. Sangram Das, Standing Counsel
Vigilance Department

CORAM:

THE HON'BLE MR. JUSTICE CHITTARANJAN DASH

Date of Judgment: 20.08.2025

Chittaranjan Dash, J.

1. The legality, propriety and correctness of the orders dated 02.04.2025 and 04.09.2024 passed by the learned Special Judge,



Vigilance, Baripada in the above referred cases. This batch of Criminal Revisions i.e. CRLREV No. 326 of 2025 (Ashok Kumar Das & Pravat Kumar Mishra; VGR 40/2003; impugned order 02.04.2025), CRLREV No. 366 of 2025 (Ramesh Chandra Tripathy & Pravat Kumar Mishra; arising out of VGR No. 30/2003; impugned order 02.04.2025), CRLREV No. 371 of 2025 (Gajendra Mishra; VGR 40/2003; impugned order 02.04.2025), CRLREV No. 372 of 2025 (G. Vishnu Vardhan Rao; VGR 32/2003; impugned order 02.04.2025), CRLREV No. 373 of 2025 (Ramesh Chandra Tripathy & Pravat Kumar Mishra; VGR 32/2003; impugned order 02.04.2025) , and CRLREV No. 670 of 2024 (Ramesh Chandra Tripathy & Pravat Kumar Mishra; VGR 29/2003; impugned order 04.09.2024). In the impugned orders, the learned Special Judge, Vigilance, Baripada was pleased to reject the Petitioners' applications for discharge after cognizance in the respective VGR cases was taken. Since all these revisions arise out of cognizance orders passed in different vigilance cases relating to the works under the Subarnarekha Irrigation Project, involving substantially similar factual background and common issue, they were heard analogously and are being disposed of by this common judgment.

2. The factual matrix of the cases, in brief, is as follows. Allegations of corruption and procedural irregularities arose in the execution of different works under the *Subarnarekha Irrigation Project, Mayurbhanj*, particularly in relation to various reaches of the Jambhira Earth Dam. Pursuant to such allegations, separate vigilance enquiries were initiated, during which project documents were seized and scrutinized. The Vigilance Technical Wing



conducted inspections between 2000 and 2001 and submitted Technical Inspection Reports pointing out irregularities such as execution of excess quantities beyond the agreement, adoption of higher rates for extra items without prior approval of the competent authority, and release of excess payments. On the basis of these reports, different Balasore Vigilance P.S. Cases were registered between July and September, 2003, namely, VGR No. 29 of 2003; 30 of 2004; 32 of 2003; and 40 of 2003. In each of these cases, the Investigating Officer, upon completion of investigation, submitted a Final Report between 2006 and 2007 recommending departmental action and recovery of excess payments rather than prosecution of the accused persons.

3. In CRLREV No. 326 of 2025 – VGR No. 40 of 2003, the Petitioners Ashok Kumar Das and Pravat Kumar Mishra faced enquiry in respect of the work *“Construction of Jambhira Earth Dam from RD 2320 mtr. to 2860 mtr. (extended to RD 3350 mtr.), Reach-III, Agreement No. 2/LCB of 1988-89”* under the Subarnarekha Irrigation Project. Allegations were of excess execution and payments beyond the sanctioned scope. The Vigilance submitted a Final Report recommending departmental action and recovery, but by order dated 03.09.2016, the learned Special Judge, Vigilance, Baripada rejected the Final Report and took cognizance under Section 13(2) r/w 13(1)(d) of the P.C. Act and Section 120-B IPC. The Petitioners’ application for discharge under Section 239 Cr.P.C. was rejected on 02.04.2025.

In CRLREV No. 366 of 2025 – VGR No. 30 of 2003, the Petitioners Ramesh Chandra Tripathy and Pravat Kumar Mishra



were implicated in relation to another segment of the Subarnarekha Irrigation Project. Vigilance alleged irregularities in execution and excess payments. A Final Report was submitted recommending only departmental recovery, but the learned Court, after a long pendency, rejected the Final Report and took cognizance on 03.09.2016 for offences under the P.C. Act and IPC. The Petitioners' discharge plea was rejected by order dated 02.04.2025.

In CRLREV No. 371 of 2025, the Petitioner Gajendra Mishra was also arrayed as an accused in VGR No. 40 of 2003 arising out of the same Balasore Vigilance P.S. Case No. 40 of 2003. The allegations were of procedural irregularities and excess payments in execution of dam works. The Final Report submitted by Vigilance recommended departmental proceedings. Nevertheless, the learned Court rejected the Final Report and took cognizance. The Petitioner's discharge application was rejected on 02.04.2025.

In CRLREV No. 372 of 2025 – VGR No. 32 of 2003, the Petitioner G. Vishnu Vardhan Rao, a contractor, was implicated in connection with *VGR No. 32 of 2003 (Balasore Vigilance P.S. Case No. 32 dated 19.07.2003)* relating to “Construction of Jambhira Earth Dam from RD 3990 mtr. to 4200 mtr. (Reach-IV) with stepped spillway.” On enquiry, Vigilance alleged irregularities in recommending higher rates and executing excess quantities without sanction. The IO submitted a Final Report dated 25.08.2006 recommending departmental action and adjustment of excess amounts in final bills. The learned Court, however, rejected the Final Report and took cognizance under Section 13(2) r/w 13(1)(d)



P.C. Act and Section 120-B IPC, and the Petitioner's discharge application was rejected on 02.04.2025.

In CRLREV No. 373 of 2025 – VGR No. 32 of 2003, the Petitioners Ramesh Chandra Tripathy and Pravat Kumar Mishra are co-accused in the same *VGR No. 32 of 2003*. The facts mirror those noted above in CRLREV No. 372 of 2025. The Final Report dated 25.08.2006 recommended only departmental recovery, but cognizance was nevertheless taken and their discharge application was rejected by order dated 02.04.2025.

In CRLREV No. 670 of 2024 – VGR No. 29 of 2003, the Petitioners Ramesh Chandra Tripathy and Pravat Kumar Mishra assail the order passed in *VGR No. 29 of 2003 (Balasore Vigilance P.S. Case No. 29 dated 10.07.2003)* concerning another stretch of the Jambhira Earth Dam (RD 4200 mtr. to 4500 mtr., Reach-IV). Allegations were of awarding tender at higher rates, rescinding contract, and irregular excess payments. The I.O. submitted a Final Report dated 08.08.2006 recommending only departmental action. The learned Court, however, took cognizance of offences under the P.C. Act and IPC and subsequently, their application for discharge was rejected on 04.09.2024.

4. However, as seen from the record, in all these matters, the learned Special Judge, Vigilance, Baripada, instead of accepting the Final Reports, kept the cases pending for years together, granting repeated adjournments on the ground of awaiting protest petition or sanction. Ultimately, cognizance of offences under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act,



1988 and Section 120-B IPC, and in some cases Section 420 IPC, was taken between 2016 and 2017, nearly a decade long after the submission of the Final Reports and after retirement of the Petitioner–Public Servants. Thereafter, the Petitioners moved for discharge under Section 239 Cr.P.C., which came to be rejected by the learned Court vide orders dated 02.04.2025 and 04.09.2024, now impugned herein.

5. Mr. D. P. Dhal, learned Senior Advocate, appearing for the Petitioners across all the revisions, submitted that although the Investigating Agency had submitted the Final Reports between 2006 and 2007 recommending only departmental action and recovery of alleged excess payments, the learned Court neither accepted the said reports nor took cognizance for nearly a decade. During this period, the Vigilance Department failed to file any protest petition despite being granted more than 75 (seventy-five) adjournments. Ultimately, cognizance was taken between 2016 and 2017, long after the retirement of the Petitioners, and in the admitted absence of any valid sanction under Section 19 of the Prevention of Corruption Act. He argued that the prosecution, having failed to obtain sanction during the service tenure of the Petitioners, sanction was unnecessary post-retirement, which amounts to a circumvention of the statutory requirement. The Petitioners, who are now well above 80 years of age, have been gravely prejudiced by such inordinate delay and prosecutorial inaction.

It was further contended by Mr. Dhal that the Investigating Officers themselves, in the Final Reports, had ruled out criminal



culpability and had recommended only departmental action. Indeed, in VGR No. 40 of 2003, arising out of a parallel project under the same Subarnarekha Irrigation Scheme, the Court accepted such a Final Report, thereby highlighting discriminatory treatment in the present cases. The Petitioners, who were merely administrative officers, had acted in the course of their official duties in accordance with the directions of superior officers, and there is no independent material on record to suggest dishonest intent, quid pro quo, or personal gain. Even assuming that excess or irregular payments were made, such amounts were liable to be adjusted against the final bills of the contractors, many of which remain unsettled to this day. In the case of Petitioner Gajendra Mishra, it was pointed out those departmental proceedings had culminated in his exoneration, while in the case of Petitioner G. Vishnu Vardhan Rao, who was a contractor and not a public servant, the alleged excess payments were already adjusted in the final bill, ruling out any wrongful loss to the Government.

It was also submitted that a coordinate Bench of this Court, in CRLREV No. 647 of 2024, arising out of VGR Case No. 29 of 2003 against co-accused Ashok Kumar Das, had already quashed the order of cognizance by judgment dated 05.05.2025, relying on the decisions of the Hon'ble Supreme Court in *State of Punjab Vs. Labh Singh*, reported in (2014) 16 SCC 807 and *A.R. Antulay Vs. R.S. Nayak*, reported in (1992) 1 SCC 225. The Petitioners, being similarly situated, are entitled to the same relief on grounds of parity. It was lastly contended that to penalise the Petitioners for delays and omissions attributable solely to the Court and the



prosecuting agency would be arbitrary and violative of Article 14 of the Constitution, and in view of the same, the cognizance order must be quashed.

6. Mr. S. Das, learned Standing Counsel for the Vigilance, while supporting the impugned orders, submitted that the allegations against the Petitioners relate to serious irregularities in the execution of public works under the Subarnarekha Irrigation Project, involving release of excess payments and adoption of higher rates without sanction of the competent authority. It was argued that such acts caused wrongful loss to the State exchequer and requires adjudication in a full-fledged trial. Mr. Das submitted that the learned Special Judge, Vigilance, having perused the materials collected during investigation and the Technical Inspection Reports, was satisfied to take cognizance of the offences under the Prevention of Corruption Act and the Indian Penal Code, and the scope of interference in revision against such orders is limited. He further contended that mere delay in the matter or the Petitioners' retirement from service cannot, by itself, absolve them of liability for acts amounting to criminal misconduct.

7. Having considered the rival submissions and upon perusal of the records of the respective vigilance cases, certain features emerge with striking uniformity. The Investigating Agency, after completing its enquiry in each of the cases, came to the conclusion that while there may have been procedural irregularities in the execution of the contracts under the Subarnarekha Irrigation Project, no criminal culpability was made out against the accused persons. Accordingly, Final Reports were submitted between 2006



and 2007 recommending departmental action and recovery of alleged excess payments. These reports were not accepted by the learned Special Judge, Vigilance, Baripada, who instead chose to keep the matters pending for nearly a decade, granting repeated adjournments ostensibly to enable the prosecution to file protest petitions. Ultimately, cognizance of offences under the Prevention of Corruption Act and the Indian Penal Code was taken only in 2016–2017, long after the retirement of the Petitioners from service, and admittedly without any sanction under Section 19 of the Prevention of Corruption Act.

8. It cannot go unnoticed that the approach adopted by the learned court below has resulted in serious prejudice to the Petitioners. It is a settled principle that sanction for prosecution under Section 19 of the P.C. Act is not an empty formality but a mandatory safeguard designed to protect honest officers from vexatious proceedings. In the present cases, the prosecution, having failed to obtain sanction for nearly a decade, took advantage of the Petitioners' retirement to argue that sanction was unnecessary. Such a course, in the considered view of this Court, is impermissible. To hold otherwise would amount to allowing the prosecuting agency to circumvent a substantive statutory requirement by its own inaction.

9. The Co-ordinate Bench of this Court, while relying upon the decisions of the Hon'ble Supreme Court in *State of Punjab Vs. Labh Singh*, reported in (2014) 16 SCC 807 and *A.R. Antulay Vs. R.S. Nayak*, reported in (1992) 1 SCC 225, set aside the impugned order dated 04.09.2024 concerning the Petitioner No.1, namely, Mr.



Ashok Kumar Das, vide judgment dated **05.05.2025** passed in **CRLREV No. 647 of 2024**, and held as follows –

“32. The record reveals in the instant case that the investigating agency took three years to complete the investigation and filed the closure report. But the cognizance taking Court has taken 11 years to take the cognizance. 54 adjournments have been given to the prosecution/informant to file the protest petition. Eventually, no protest petition was filed. After 11 years, the Court below has taken the cognizance for the offence punishable under Section 13(2) r/w 13(1)(d) of the P.C. Act and Section 420/120-B of the IPC on the police report.

33. It is no more *res integra* that the sanction under Section 197 of the Cr. P.C. is mandatory for taking the cognizance of the penal offence against a public servant even after retirement from the service. The learned Court below has taken the cognizance by not following the required procedural safeguard. The Court below has also not taken into consideration that the closure report filed in the connected case has also been accepted, and the case is put to a quietus. It has also escaped from the notice of the Court that this is a case whereby no inference could be drawn regarding the loss to the exchequer, as there exists sufficient cause for recovery of the alleged excess payment, which has been allegedly claimed to be the loss to the exchequer.

34. In view of the foregoing discussions, I am inclined to allow the present petition and set aside the impugned order dated 04.09.2024 passed by the learned Special Judge (Vigilance), Baripada in VGR Case No.29 of 2003 arising out of Balasore Vigilance P.S. Case No.29 of 2003.”

10. The ratio of the above decision applies squarely to the present batch of cases. Not only was there an inordinate and unexplained delay in taking cognizance after submission of the Final Reports, but there was also failure to adhere to mandatory statutory safeguards concerning sanction.



11. The position of law on the necessity of sanction has also been clarified by the Hon'ble Supreme Court. The Hon'ble Apex Court in the matter of *State of Punjab Vs. Labh Singh* reported in [2014] 11 S.C.R. 312, has held as follows –

“7. In the present case the public servants in question had retired on 13.12.1999 and 30.04.2000. The sanction to prosecute them was rejected subsequent to their retirement i.e. first on 13.09.2000 and later on 24.09.2003. The public servants having retired from service there was no occasion to consider grant of sanction under section 19 of the POC Act. The law on the point is quite clear that sanction to prosecute the public servant for the offences under the POC Act is not required if the public servant had already retired on the date of cognizance by the court. In *S.A. Venkataraman v. State*¹ while construing section 6(1) of the Prevention of Corruption Act, 1947 which provision is in *pari materia* with section 19(1) of the POC Act, this court held that no sanction was necessary in the case of a person who had ceased to be the public servant at the time the court was asked to take cognizance. The view taken in *S. A. Venkataraman* (supra) was adopted by this court in *C.R. Bansi v. State of Maharashtra*² and in *Kalicharan Mahapatra v. State of Orissa*³ and by the Constitution Bench of this court in *K. Veeraswamy v. Union of India*⁴. The High Court was not therefore justified in setting aside the order passed by the Special Judge insofar as charge under the POC Act was concerned.

8. However as regards charges for the offences punishable under the IPC concerned the High Court was absolutely right in setting aside the order of the Special Judge. Unlike section 19 of the POC Act, the protection under section 197 of Cr.P.C. is available to the concerned public servant even after retirement. Therefore, if the matter was considered by the sanctioning authority and the sanction to prosecute was rejected first on 13.09.2000 and secondly on 24.09.2003,

¹ 1958 SCR 1040

² (1970) 3 SCC 537

³ (1998) 6 SCC 411

⁴ (1977) 3 SCC 440



the court could not have taken cognizance insofar as the offences punishable under the Indian Penal Code are concerned. As laid down by this Court in *State of Himachal Pradesh v. Nishant Sareen*⁵, the recourse in such cases is either to challenge the order of the Sanctioning Authority or to approach it again if there is any fresh material.

9. In the circumstances, in our view the order under appeal passed by the High Court is correct insofar as charges under IPC are concerned but must be set aside as regards charge under POC Act is concerned.

10. Before we part, we must record that we do not approve the stand taken by the appellant in the petition. The prosecution cannot keep waiting till a public servant retires and then choose to file charge-sheet against him after his retirement, thereby setting at naught the protection available to him under Section 19 of the POC Act. The appeal thus stands allowed partly. No order as to costs.”

12. In the case at hand, there has indeed been considerable delay in taking cognizance, despite no protest petition having been filed against the Final Reports. The doctrine of *actus curiae neminem gravabit*, that an act of the Court shall prejudice none, would, in principle, apply to every case, for it is one of the foremost duties of all Courts to ensure that no litigant suffers on account of an act of the Court. Once it is recognised that it is not within the domain of the complainant or the prosecuting agency to take cognizance of an offence or to issue process, and that their role is confined to initiating proceedings or filing a complaint within the prescribed limitation, any subsequent delay occasioned by the Court or the Magistrate in issuing process or taking cognizance cannot be attributed to the complainant. To penalise the Petitioners for the omission, default, or inaction on the part of the Court would,

⁵ (2010) 14 SCC 527



therefore, be unjust, and such a situation would necessarily fall to be tested on the touchstone of Article 14 of the Constitution.

13. Here, however, the background facts stand on an even firmer footing in favour of the Petitioners. The Investigating Agency, upon due enquiry in each of the vigilance cases, found no material in support of the allegations and accordingly submitted Final Reports recommending only departmental action and recovery of alleged excess payments. The Court, despite awaiting a protest petition from the Vigilance Department for nearly a decade and granting as many as 75 (seventy-five) adjournments, did not receive any such protest petition. Ultimately, cognizance was taken in 2016-2017, admittedly in the absence of a valid sanction, and long after most of the Petitioners had retired. It also deserves emphasis that departmental proceedings initiated against some Petitioners, such as Gajendra Mishra, culminated in their exoneration, while in the case of the Contractor-Petitioner, G. V. V. Rao, the alleged excess payments were adjusted against the final bill, thereby negating any loss to the State exchequer. If it was indeed the intention of the Court to take cognizance notwithstanding the absence of a protest petition or sanction, such cognizance could well have been taken much earlier, thereby enabling the Petitioners, Ashok Kumar Das, Pravat Kumar Mishra, Ramesh Chandra Tripathy, Pravat Kumar Mishra, Gajendra Mishra and G. V. V. Rao to either challenge the same at the appropriate time or face trial on merits. Now, more than two decades later, these Petitioners are in the twilight of their lives, having crossed eighty years of age, and to subject them to further criminal proceedings would be oppressive.



14. Following the principles enunciated by the Hon'ble Supreme Court in *State of Punjab Vs. Labh Singh* (supra), and keeping in view similar views expressed by this Court in earlier decisions, this Court is persuaded to remark on the long delay in taking cognizance, the admitted absence of sanction, the discriminatory treatment in relation to acceptance of Final Reports in other connected cases, and the lack of material to establish dishonest intent or corrupt motive, all cumulatively demonstrate that the continuation of these proceedings would amount to an abuse of the process of law. This Court is mindful that corruption in public administration is a serious menace, yet it is equally bound to ensure that the criminal law is not stretched to cover mere technical or procedural deviations unaccompanied by corrupt motive. Even if excess release of running bills is assumed, such amounts could have been adjusted against the unsettled final bills of the contractors, and cannot by themselves establish criminal misconduct. To drag the Petitioners into protracted trials in these circumstances, without sanction, without protest petition, and without credible evidence of corruption, would not advance the cause of justice but rather penalise them for the omissions of the prosecuting agency and the trial court itself.

15. Having regard to the settled legal principles and the circumstances at hand, this Court concludes that the further continuation of the proceedings pursuant to the impugned orders of cognizance would serve no useful purpose. The impugned orders dated 02.04.2025 and 04.09.2024, passed by learned Special Judge,



Vigilance, Baripada rejecting the applications for discharge, stand quashed.

16. In the result, the CRLREVs are allowed.

(Chittaranjan Dash)
Judge

AKPradhan

Signature Not Verified

Digitally Signed
Signed by: ANANTA KUMAR PRADHAN
Designation: Sr. Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA
Date: 04-Sep-2025 20:07:38

