



THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No. 695 of 2023

(In the matter of an application under Section 397 read with Section 401 of the Criminal Procedure Code, 1973)

Nanda Kishore Sahoo and another Petitioners

-Versus-

State of Odisha (Vigilance) Opposite Party

For the Petitioners : Mr.Prasant Kishore Ray,Advocate

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

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 09.04.2025 :: Date of Judgment:18.07.2025

S.S. Mishra, J. The present Criminal Revision Petition has been filed by the petitioners under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973, assailing the order dated 17.11.2023 passed by the learned Special Judge (Vigilance), Keonjhar in VGR Case No. 01 of 2019, arising out of Balasore Vigilance P.S. Case No. 59 of 2018. By the impugned order, the



learned Special Judge (Vigilance) rejected the application filed by the petitioners under Section 227 Cr.P.C. (now Section 250 of the B.N.S.S., 2023), seeking discharge from the offence punishable under Section 13(2) read with Section 13(1)(b) of the Prevention of Corruption (Amendment) Act, 2018 and Section 109 of the Indian Penal Code, 1860.

2. Heard Mr. Prasant Kishore Ray, learned counsel appearing for the petitioner and Mr. Sangram Das, learned Standing Counsel for the Vigilance Department.

3. The petitioner No.1 is a government employee serving as an Assistant Engineer in the Anandpur Barrage Division, Keonjhar. He entered government service on 05.10.1993 as a Junior Engineer and was promoted to the position of Assistant Engineer on 11.09.2013. During his tenure, a vigilance case bearing VGR Case No. 1 of 2019, arising out of Balasore Vigilance P.S. Case No. 59 of 2018, was registered against the petitioner alleging possession of Disproportionate Assets (D.A.) to the known source of his earning. The case was initiated under



Section 109 of the I.P.C. read with Sections 13(2) and 13(1)(b) of the Prevention of Corruption (Amendment) Act, 2018.

4. On 19.12.2018, the Vigilance Department conducted a search at the residence of the petitioner No.1 based on the allegations of possessing DA. The F.I.R was registered on 31.12.2018, alleging that the petitioner No.1 was found in possession of assets disproportionate to his known sources of income to the extent of 139.39%. The investigation was conducted for the check period from 05.10.1993 to 19.12.2018, during which the following calculations were made as per the FIR:

- Total Assets: ₹81,11,683/-
- Total Expenditure: ₹29,70,682/-
- Known Income: ₹46,29,289/-
- DA as per FIR: ₹64,53,076/- (139.39%)

5. The petitioners filed a discharge petition on 12.09.2023 under Section 227 Cr.P.C., asserting multiple discrepancies in the



computation of assets, expenditure, and income by the investigating agency. The petitioners contended that:

- Several assets, such as an old Hyundai Santro car and a Hero Honda motorcycle, were wrongly attributed to him despite being owned by his brother.
- The cost of the residential building was inflated by considering a value of ₹23,31,572/-, while the actual construction cost was ₹7,50,000/- after accounting for a bank loan and self-contribution.
- Gold ornaments given to the petitioner's wife by her father as dowry in 1995 were incorrectly valued as assets acquired during the check period.
- Income from a LIC policy and land acquisition compensation, amounting to ₹1,15,164/- and ₹1,95,476/- respectively, were excluded from the income calculations despite being supported by documentary evidence.



- The petitioner's actual DA percentage, after correcting the erroneous calculations and including the omitted income, was -6.77%, which is well below the permissible threshold of 10% as per the precedent laid down in ***B.C. Chaturvedi vrs. Union of India (1995) 6 SCC 749***.

6. On 17.11.2023, the learned Special Judge (Vigilance), Keonjhar, rejected the discharge petition, holding that the stage was not appropriate for examining the defence contentions and that the alleged discrepancies could be raised during the trial. The learned Special Judge observed that although the petitioners had a prima facie case for discharge, the stage of framing of charges was not appropriate for such determinations.

7. Aggrieved by the rejection of the discharge petition, the petitioners filed the present Criminal Revision challenging the order dated 17.11.2023. The grounds for revision are as follows:

- Misapplication of judicial mind in rejecting the discharge petition despite prima facie evidence of computation errors apparent on record.



- Non-application of the principle laid down in *State of Haryana v. Bhajan Lal* (1992) SCC 335, wherein the Hon'ble Supreme Court held that when the allegations and evidence on record do not constitute any offence, the proceedings should be quashed.
 - Violation of the High Court's order dated 01.09.2021 passed in CRLMC No. 687 of 2021, directing the Vigilance Department to complete the investigation within two months. The charge sheet was filed 11 months after the stipulated period without any valid explanation for the delay.
 - Miscalculation of the percentage of DA due to inclusion of assets not belonging to the petitioner No.1 and exclusion of income received from legitimate sources, leading to erroneous computation of 38.59% as against the actual - 6.77%, which is much below the threshold of 10%.
8. Mr. P.K. Ray, learned counsel for the petitioners, submitted that the entire investigation has been conducted in a manner that is



arbitrary and in gross violation of established judicial norms, resulting in a protracted and vexatious prosecution.

9. It was contended that the learned Special Judge (Vigilance), Keonjhar committed a grave error in refusing to consider the calculations provided by the petitioners demonstrating that the Disproportionate Assets were in fact negative, at -6.77%, thereby not exceeding the permissible limit of 10% as laid down by the Hon'ble Apex Court in *B.C. Chaturvedi vs. Union of India* [(1995) 6 SCC 749].

10. The petitioners have pointed out specific discrepancies in the ChargeSheet, including:

- Excessive valuation of the building constructed with a bank loan, showing inflated value of Rs.23,31,572/- instead of the actual cost of Rs.7,50,000/-.
- Inclusion of a Hyundai Santro car valued at Rs.3,57,129/- , which is owned by the petitioner's brother.



- Unwarranted inclusion of gold ornaments gifted to the petitioner's wife during marriage as part of Disproportionate Assets.

11. Learned counsel further submitted that the Vigilance Department failed to account for legitimate income sources, such as LIC policy maturity benefits of Rs.1,15,164/- and land acquisition compensation of Rs.1,95,476/-, thereby presenting a distorted picture of the petitioner's assets and income.

12. It was further submitted that the impugned order amounts to an abdication of judicial function, as the Special Judge, after acknowledging the merit of the petitioner's discharge application, nonetheless dismissed it as premature.

13. Mr. Sangram Das, learned counsel for the State, submitted that the petitioner's contentions are entirely based on defence documents and materials which were not part of the prosecution record and cannot be considered at the stage of discharge under Section 227 Cr.P.C.



14. Reliance was placed on *State of Orissa vs. Debendra Nath Padhi* [(2005) 1 SCC 568], wherein the Hon'ble Supreme Court held that at the stage of discharge, the trial Court is not empowered to look into defence documents or submissions that are not part of the prosecution's chargesheet.

15. It was further contended that the calculation provided by the petitioners were self-serving and could not override the official valuation conducted by the Vigilance Department.

16. The learned counsel argued that the presence of grave suspicion against the petitioner is sufficient to proceed to trial, as per the dictum of the Hon'ble Supreme Court in the case of *State of M.P. vs. Awadh Kishore Gupta* reported in (2004) 1 SCC 691].

17. It was further submitted that the plea of malafide prosecution cannot be entertained at this stage in view of the law laid down in *Asian Resurfacing of Road Agency Pvt. Ltd. and another vs. CBI* reported in (2018) 16 SCC 299.

18. The present revision petition calls upon this Court to examine the scope and limitations of its revisional jurisdiction



under Sections 397 and 401 of the Code of Criminal Procedure, 1973, particularly in the context of disputed factual calculations relating to alleged disproportionate assets under the Prevention of Corruption Act.

19. At the outset, it is well settled that the revisional jurisdiction of the High Court is a discretionary and limited jurisdiction. Its primary function is to ensure the correctness, legality, or propriety of any finding, sentence, or order passed by a subordinate court, and to examine the irregularity of proceedings. This is not an appellate jurisdiction, and the revisional court is not meant to act as a second court of appeal or to reappreciate evidence in detail.

20. The Hon'ble Supreme Court in *Bindeshwari Prasad Singh v. State of Bihar* reported in, (2002) 6 SCC 650 has clearly held that the High Court, in exercise of its revisional powers, cannot reappreciate evidence or come to a different factual conclusion. The revisional jurisdiction is circumscribed by the prohibition that it cannot convert a finding of acquittal into one of conviction,



which itself is indicative of the limited nature and extent of the power conferred by Section 401 Cr.P.C. The revisional court may interfere only in cases of glaring legal error, jurisdictional defect, or manifest miscarriage of justice, such as when material evidence has been wrongly excluded or inadmissible evidence wrongly relied upon. Relevant part of the said judgment reads as under:-

“We have carefully considered the material on record and we are satisfied that the High Court was not justified in re-appreciating the evidence on record and coming to a different conclusion in a revision preferred by the informant under Section 401 of the Code of Criminal Procedure.

.....We cannot say that the judgment of the trial Court in the instant case was perverse. No defect of procedure has been pointed out. There was also no improper acceptance or rejection of evidence nor was there any defect of procedure or illegality in the conduct of the trial vitiating the trial itself.”

21. In the present case, the petitioner’s challenge is fundamentally factual in nature. He disputes the inclusion and valuation of certain assets, the exclusion of legitimate income, and the calculation of the percentage of disproportionate assets. These



are issues that require a detailed factual inquiry, examination of evidence, and possibly expert testimony. The petitioner's plea essentially invites the revisional court to undertake a fresh computation of assets and income, a task akin to that of a Chartered Accountant. The court is not expected to reach a conclusive finding on whether the petitioner's DA percentage is 139.39% or -6.77%, nor can it substitute its assessment for that of the vigilance authority merely based on calculations presented by the defence without trial.

22. However, this Court, in its revisional jurisdiction, cannot undertake such a detailed factual analysis or forensic audit at this stage. The function of the revisional court is not to weigh evidence or to resolve disputed questions of fact, but to ensure that the trial court has acted within its jurisdiction and in accordance with law. Where the dispute turns on complex factual determinations, particularly those involving technical or financial calculations, these matters are best left for adjudication at trial,



where both sides have the opportunity to present evidence and cross-examine witnesses.

23. This position is further supported by the Hon'ble Supreme Court's observations in *State of Orissa v. Debendra Nath Padhi [(2005) 1 SCC 568]*, which held that at the stage of framing of charge or considering discharge, the Court is confined to the material produced by the prosecution and cannot consider defence materials or explanations that require evidentiary proof.

24. In view of the above legal principles, this Court finds that the petitioner's grievances regarding the computation of assets and income, and the resultant percentage of disproportionate assets, are matters that must be established by evidence at trial. The revisional jurisdiction cannot be invoked to conduct a fresh factual determination or to substitute the court's own calculations for those of the investigating agency at this preliminary stage.

25. Accordingly, this Court holds that the High Court, in its revisional jurisdiction, cannot act as a Chartered Accountant to recalculate assets and income, especially when these are disputed



and require evidence to be led by both sides. The petitioners are at liberty to raise all such factual contentions before the trial court, which shall adjudicate them on the basis of evidence adduced by the parties.

26. In *State of T.N. v. Mariya Anton Vijay*, (2015) 9 SCC 294, the Hon'ble Supreme Court held that the High Court in its revisional powers could not have interfered with the findings of facts recorded by the lower court only because the High Court could have arrived at a different or another conclusion. Revisional jurisdiction should normally be exercised on a question of law, and factual appreciation is only permitted if the findings are perverse. Relevant part of the said judgment reads as under:-

“In other words, none of the aforementioned questions were capable of being answered without the aid of evidence to be adduced by the parties, by mere reading of FIR, Final report, charge sheet, for the first time by the High Court in exercise of its inherent jurisdiction. Similarly, the High Court had no jurisdiction to appreciate the materials produced like an appellate court while hearing the petition under Section 482 of the Code or/and Revision Petition under Section 397.”



27. It is further noted that the learned Special Judge has not committed any jurisdictional error or perversity in refusing to discharge the petitioners. The petitioners are not remediless; all their contentions and documentary evidence can be raised and proved during the trial. Further, reliance placed on *State of Haryana v. BhajanLal*, 1992 Supp (1) SCC 335, is of no assistance to the petitioners at this stage. That case was decided in the context of Section 482 Cr.P.C. quashment jurisdiction, not a discharge under Section 227 Cr.P.C., which has a narrower ambit and more limited function. So, the reliance placed by the petitioners on *B.C. Chaturvedi* (supra) and *State of Haryana v. Bhajan Lal* (supra) are misplaced, as those decisions pertain to the merits of the case and the threshold for quashing proceedings, not the limited scope of discharge.

28. In view of the foregoing, this Court finds no illegality, perversity or jurisdictional error in the impugned order dated 17.11.2023 passed by the learned Special Judge (Vigilance), Keonjhar, warranting interference in revisional jurisdiction. The



trial court has correctly declined to consider defence material at this stage and has rightly held that the petitioners may raise all their contentions in the course of trial, where evidence can be adduced and tested.

29. Having regard to the overall conspectus of the matter and the fitness of the situation, I deem it appropriate to direct the learned trial Court for expeditious trial to ensure the ends of justice. Therefore, the trial Court should do well to see that the trial of the case stands concluded within nine months hence.

30. Accordingly, the Criminal Revision Petition stands disposed of with the observation as above.

S.S. Mishra
(Judge)

The High Court of Orissa, Cuttack
Dated the 18th July, 2025/Swarna

Signature Not Verified

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