

INDRAJIT MAHANTY, J.

CRLMC. NO. 3624 OF 2010 (Decided on 20.01.2011)

ANANTA CHARAN PRASAD

..... Petitioner.

. Vrs.

**STATE OF ORISSA
(VIGILANCE DEPARTMENT)**

..... Opp.Parties.

(A) P.C ACT, 1988 (ACT No. 49 OF 1988) – S.19.

(B)) P.C ACT, 1988 (ACT NO.49 OF 1988) – S.13.

For Petitioner - M/s. Trilochan Nanda & S.N.Mishra.

For Opp.Party - Mr. K.K.Mishra (Addl.Govt. Advocate)

I.MAHANTY, J. In the present application under Section 482 Cr.P.C. the petitioner-Ananta Charan Prasad has sought for quashing of the order dated 03.11.2010 passed by the learned Special Judge (Vigilance), Bolangir in C.T.R. No.19/113 of 2007, whereby, the learned Special Judge (Vigilance) has framed charges against the petitioner under Section 13(2) read with Section 13(1)(c)(d) of the Prevention of Corruption Act, 1988 and Section 477-A/409 of the Indian Penal Code.

2. Learned counsel for the petitioner challenged the said order, inter alia, on the ground that prior “sanction” as required under Section 19 of the Prevention of Corruption Act, has not been obtained and further, the petitioner had deposited the alleged misappropriated amount of Rs.2 lakhs and due to mistake, the same had not been properly reflected in the cash book.

In this respect, learned counsel for the petitioner placed reliance on the judgments of the Hon’ble Supreme Court in the case of **Rakesh Kumar Mishra v. State of Bihar and others**, 2006(1)SCC 557 and **State of Orissa v. Ganesh Chandra Jew**, (2004)8 SCC 40.

3. Learned Additional Government Advocate on behalf of the State submitted that the petitioner had retired from Government service and, therefore, there is no requirement for “sanction” as laid down by the Hon’ble Supreme Court in the case of **Kalicharan Mahapatra v. State of Orissa**, (1998) 6 SCC 411. Apart from this, learned counsel for the State submitted that the charge-sheet would reveal that the Departmental Proceeding has been initiated against the accused-petitioner and the same had concluded in conviction and the accused-petitioner had deposited the misappropriated amount after the misappropriation has been detected. Therefore, the deposit of the misappropriated amount by the accused-petitioner is of no consequence at the present stage.

4. In the case of **Ganesh Chandra Jew** (supra), the Hon’ble Supreme Court has dealt with the scope and ambit of Section 197 of Cr.P.C. but in the said case, the accused was not a retired government servant and the question as to whether sanction

under Section 19 of the P.C. Act, 1988 was required or not, was not the subject matter of the consideration therein. In the case of **Rakesh Kumar Mishra** (supra), similarly, the accused therein was not a retired government servant and, therefore, the said case as well is of no assistance to the petitioner herein.

On the other hand, the judgment of the Hon'ble Supreme Court in the case of **Kalicharan Mahapatra** (supra) is clear and unambiguous and Paragraph-14 thereof is quoted here in below:

"14. The result of the above discussion is thus: A public servant who committed an offence mentioned in the Act, while he was a public servant, can be prosecuted with the sanction contemplated in Section 19 of the Act if he continues to be a public servant when the court takes cognizance of the offence. But if he ceases to be a public servant by that time, the court can take cognizance of the offence without any such sanction. In other words, the public servant who committed the offence while he was a public servant, is liable to be prosecuted whether he continues in office or not at the time of trial or during the pendency of the prosecution."

In the facts of the present case, the petitioner is admittedly a retired government servant and since he has ceased to be a public servant, the court can take cognizance of offence without any such sanction as mandated under Section 19 of the P.C. Act and, therefore, the first contention on behalf of the petitioner is of no further consideration.

5. Insofar as the second contention of the petitioner is concerned, that he has deposited the alleged misappropriated amount in the bank, the same is also of no consequence at the present juncture, inasmuch as, it was found during investigation that, the petitioner while working as Senior Clerk-cum-cashier in the office of the C.S.O.-Cum-D.M., OSCSC Ltd., Bolangir, on scrutiny of the cash book maintained by the accused-petitioner, it was found that on 13.4.1997 instead of the closing balance of Rs.5,45,127.85/-, the petitioner has mentioned the closing balance as Rs.3,45,127.85/- and thereby, he had reduced the closing balance of Rs.2,00,000/- and had misappropriated the said amount. Thereafter, the deposit was made by the accused-petitioner on 3.5.1997 of Rs.2,00,000/- in the bank account of the C.S.O.-Cum-D.M., OSCSC Ltd., Bolangir. Therefore, the deposit of Rs.2,00,000/- on a later date, cannot absolve the petitioner of the accusation of the misappropriation of Rs.2,00,000/- on 13.4.1997.

6. In the light of the aforesaid finding, I find no justification in the present petition under Section 482 Cr.P.C. against the order of framing charges against the petitioner. Accordingly, the CRLMC is dismissed and impugned order dated 3.11.2010 is affirmed.

Application dismissed.