IN THE HIGH COURT OF ORISSA, CUTTACK

CRLREV NO.381 of 2016

An application under section 401 read with section 397 of the Code of Criminal Procedure, 1973 in connection with T.R. Case No.43 of 2013 pending on the file of Special Judge (Vigilance), Balesore.

Smt. Pratima Behera …… Petitioner

-Versus-

State of Orissa (Vig.) …… Opp. party

For Petitioner: - Mr. Manas Mohapatra
(Senior Advocate)
Sidheswar Mohanty
Shishir Routray
L. Mohapatra, S. Pattnaik
A. Dash

For Opp. Party: - Mr. Sangram Das
Standing Counsel
(Vig. Department)

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

Date of Hearing: 19.10.2016 Date of Judgment: 31.01.2017

S. K. Sahoo, J. This revision petition has been filed by the petitioner Smt. Pratima Behera to set aside the impugned order dated 05.03.2016 passed by the learned Special Judge (Vigilance), Balasore in T.R. Case No.43 of 2013 in rejecting the application

under section 239 of Cr.P.C. filed by the petitioner for discharge and framing charge under section 109 of the Indian Penal Code read with section 13(1)(e) punishable under section 13(2) of the Prevention of Corruption Act, 1988. The said case arises out of Balasore Vigilance P.S. Case No.56 of 2009.

2. On 25.11.2009 on the First Information Report submitted by S.K. Samal, Inspector, Vigilance, Balasore Division, Balasore before the Superintendent of Police, Vigilance, Balasore Division, Balasore, the aforesaid Balasore Vigilance P.S. Case No.56 of 2009 was registered under section 13(2) read with section 13(1)(e) of the Prevention of Corruption Act, 1988 against Sri Anil Kumar Sethi, husband of the petitioner.

It is stated in the First Information Report that during course of inquiry, it was found that the husband of the petitioner who was serving as an Asst. Engineer, Rural Works Sub-Division, Kakatpur, Dist-Puri being a public servant was in possession of assets disproportionate to his known source of income to the tune of Rs.40,54,561/- (rupees forty lakhs fifty four thousand five hundred sixty one only) which he could not explain for which he is liable under section 13(2) read with section 13(1)(e) of the Prevention of Corruption Act, 1988.

During course of investigation, it was found that Sri Anil Kumar Sethi entered into service as Stipendiary Engineer in the year 1993 in Orissa State Housing Board Corporation and worked there till March 1997. Then he joined as Stipendiary Engineer in R.D. Department in March 1997. He became regular Asst. Engineer from January 1999 and after working at different places, he worked as Asst. Engineer in R.W. Division-I, Cuttack. He got married to the petitioner in the year 1996 and the couple were blessed with one daughter and twin sons. The petitioner as well as her husband Sri Anil Kumar Sethi was filing income tax returns and copies of I.T. returns submitted by Sri Sethi were taken into consideration but the I.T. returns of the petitioner could not be found in the I.T. Department. The total income of the petitioner and her husband during the check period i.e. from 03.09.1993 to 26.08.2009 was found to be Rs.25,81,494.00 paisa (rupees twenty five lakhs eighty one thousand four hundred ninety four only), the expenditure during the said period was found to be Rs.15,62,353.77 paisa and the total value of the immovable assets and movable assets was found to be Rs.50,15,998.00 paisa. Accordingly, the disproportionate assets was found to be Rs.39,96,857.77 paisa which was calculated to be 155% of the total income. As sufficient prima facie evidence

was found against the petitioner and her husband Sri Anil Kumar Sethi, on 31.07.2013 Sri Madhusudan Behera, Dy. S.P., Vigilance, Balasore Division, Balasore submitted charge sheet under sections 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988 read with section 109 of the Indian Penal Code.

3. Mr. Manas Mohapatra, learned Senior Advocate appearing for the petitioner challenging the impugned order contended that the petitioner who is the wife of a public servant cannot be prosecuted for the charge of abetment of alleged acquisition of disproportionate assets by the public servant. It is further contended that though F.I.R. was lodged only against the husband of the petitioner but while submitting charge sheet, the Vigilance Police added the petitioner as an accused along with her husband on the ground that she abetted her husband in acquiring disproportionate assets. It is contended that the petitioner was an Income Tax Assessee since 2000-2001 and filing income tax returns regularly. In the year 2000, while she was staying in Talcher, she was doing dairy farming and also earning money by tuition. She had passed M.A. in Physiology from Utkal University, Vani Vihar and she completed data entry course and started data entry business since 2003-04. She had

borrowed Rs.2.5 lakhs from her father to purchase land at Bhubaneswar but during course of investigation, the Investigating Officer had not taken the independent source of income of the petitioner as well as income tax returns filed by her. It is further contended that the Investigating Officer has acted autocratically and his action is vitiated by bias and intentionally avoided disclosing the source of income of the petitioner from the income tax returns while filing charge sheet. The learned counsel for the petitioner filed the income tax documents which the petitioner stated to have obtained under R.T.I. Act from the Income Tax Authority. It is contended that if the income tax returns of the petitioner will be taken into consideration then there will be no case against the petitioner and there is no iota of evidence that the petitioner abetted her husband or made any conspiracy or instigated in the alleged acquisition of disproportionate assets by her husband. The learned counsel for the petitioner placed reliance in cases of **State of Madhya Pradesh -Vrs.- Mohanlal Soni reported in AIR 2000 SC 2583**, **Dilawar Babu Kurane -Vrs.- State of Maharashtra reported in AIR 2002 SC 564**, **Central Bureau of Investigation, Hyderabad -Vrs.- K. Narayana Rao reported in 2013 (I) Orissa Law Reviews (SC) 74** and **A.R.**

Saravanan -Vrs.- State reported in 2003 Criminal Law Journal 1140.

Mr. Sangram Das, learned Standing Counsel for the Vigilance Department on the other hand contended that the petitioner failed to produce the copies of her income tax returns before the investigating agency during course of investigation and an attempt was made by the investigating agency to collect such copies of the returns stated to have been filed by her before the Income Tax Authorities, from the Commissioner of Income Tax, Odisha, Bhubaneswar. The Director, Vigilance vide letter no. 1737 dated 17.03.2010 requested the Commissioner of Income Tax, Odisha, Bhubaneswar to supply the copies of income tax returns filed by the petitioner as well as her husband namely Sri Anil Kumar Sethi. In response to such request put forth by the Vigilance Director, the Income Tax Authorities furnished the income tax return copies of Sri Anil Kumar Sethi, the husband of the petitioner but the copies of returns stated to have been filed by the petitioner could not be obtained. In a bid to obtain such copies of the returns filed by the petitioner, a fresh attempt was made particularly by the then Investigating Officer, Mr. Nirmal Chandra Mohanty who personally visited the Income Tax Office at Bhubaneswar to obtain the copies of the petitioner’s income tax

returns but the same could not be traced out. It is contended that the allegations of the petitioner regarding non-consideration of her income as reflected in her I.T. returns by the investigating agency, are grossly incorrect and misleading. Since the petitioner neither supplied the copies of her income tax returns during course of investigation to the vigilance authorities nor could the copies of her returns be traced out from the office of the Income Tax Authorities, the same has not been considered. It is further contended that the impugned order of framing charge against the petitioner is based on the cogent materials on record and neither there has been any illegality, irrationality nor procedural impropriety in framing charges against the petitioner who had abetted her husband, a public servant, in amassing huge amount of ill-gotten money/properties inasmuch as the prosecution has taken into account the source of income of the petitioner and the impugned order framing charge against the petitioner cannot be faulted with. It is submitted that the revision petition being devoid of merits, liable to be rejected. The learned Standing Counsel for the Vigilance Department placed reliance in the cases of **State of M.P. -Vrs.- Awadh Kishore Gupta reported in (2004) 1 Supreme Court Cases 691**, **Amit Kapoor -Vrs.- Ramesh Chander reported in (2012) 9 Supreme Court**

Cases 460, **State of Delhi -Vrs.- Gyan Devi reported in (2000) 8 Supreme Court Cases 239**, **P. Nallammal -Vrs.- State reported in (1999) 6 Supreme Court Cases 559** and **State of Tamilnadu -Vrs.- N. Suresh Ranjan reported in (2014) 57 Orissa Criminal Reports (SC) 503.**

4. Adverting to the contention of the learned counsel for the petitioner that the petitioner being the wife of a public servant cannot be prosecuted on the charge of abetment of alleged acquisition of disproportionate assets by the public servant, I find that the said question has been answered by the Hon'ble Supreme Court in case of **P. Nallammal -Vrs.- State reported in (1999) 6 Supreme Court Cases 559**. A question was raised in that case as to whether the kith and kin of the public servants are liable to be prosecuted along with public servants for the offence under Section 109 of the Indian Penal Code read with Section 13(1)(e) of the P.C. Act. The Hon'ble Supreme Court considering the clause (b) of sub-section (1) of section (3) of the Prevention of Corruption Act, 1988 held as follows:-

> "10. Thus, Clause (b) of the sub-section encompasses the offences committed in conspiracy with others or by abetment of "any of the offences" punishable under the P.C. Act. If

> such conspiracy or abetment of "any of the offences" punishable under the P.C. Act can be tried "only" by the Special Judge, it is inconceivable that the abettor or the conspirator can be delinked from the delinquent public servant for the purpose of trial of the offence. If a non-public servant is also a member of the criminal conspiracy for a public servant to commit any offence under the P.C. Act, or if such non-public servant has abetted any of the offences which the public servant commits, such non-public servant is also liable to be tried along with the public servant before the Court of a Special Judge having jurisdiction in the matter.
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> 26. Such illustrations are apt examples of how the offence under Section 13(1)(e) of the P.C. Act can be abetted by non-public servants. The only mode of prosecuting such offender is through the trial envisaged in the P.C. Act."

Merely because some of the disproportionate assets stand in the name of the non-public servants, without any element of abetment, they cannot be asked to face the trial along with the public servants on the ground that they are the kith and kin of the public servants. For example, if the son of the public servant asks his father to purchase a motor cycle for him to attend his college and accordingly the motor cycle is

purchased in the name of the son, if the public servant is found to have acquired disproportionate assets to his known source of income, the son cannot be compelled to face trial as an accused along with his father. Therefore, if there are specific materials that the petitioner being the wife of the public servant has abetted her husband in the acquisition of disproportionate assets, she can be prosecuted along with her husband in the disproportionate assets case.

5. Now coming to the materials to be considered by the Trial Court for framing of charge or the grounds of discharge of an accused or scope of interference of this Court when the order of rejection of discharge petition or order of framing of charge is challenged either in exercise of its revisional jurisdiction or in its inherent power, the citations placed by the learned counsels for both the parties are required to be discussed.

In case of **State of Madhya Pradesh -Vrs.- Mohanlal Soni reported in A.I.R. 2000 S.C. 2583**, it is held that at the stage of framing charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence to conclude whether the materials produced are sufficient or not for convicting the accused. If the evidence which

the prosecution proposes to produce to prove the guilt of the accused, even if fully accepted before it is challenged by the cross-examination or rebutted by the defence evidence, if any, cannot show that accused committed the particular offence then the charge can be quashed.

In case of **Dilawar Babu Kurane -Vrs.- State of Maharashtra reported in AIR 2002 SC 564**, it is held that In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceed with the trial. By and large, if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a

mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

In case of **Central Bureau of Investigation, Hyderabad -Vrs.- K. Narayana Rao reported in 2013 (I) Orissa Law Reviews (SC) 74**, it is held that at the initial stage, if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence, in that event, it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. A judicial magistrate enquiring into a case under Section 209 of the Code is not to act as a mere post office and has to arrive at a conclusion whether the case before him is fit for commitment of the accused to the Court of Session. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. On the other hand, if the Magistrate finds that there is no prima facie evidence or the evidence placed is totally unworthy of credit, it is his duty to discharge the accused at once.

In case of **A.R. Saravanan -Vrs.- State reported in 2003 Criminal Law Journal 1140**, it is held as follows:-

> ”7. Under Section 239 of Cr.P.C., it is the duty of the trial court to look into whether there is ground for presuming commission of offence or whether the charge is groundless. The trial court is required to see whether a prima facie case pertaining to the commission of offence is made out or not. At the stage of 239 of Cr.P.C., the trial court has to examine the evidence only to satisfy that prima facie case is made out or not. The Magistrate has to consider the report of the prosecution, documents of both sides, hear the arguments of the accused and prosecution and arrive at a conclusion that the materials placed, on their face value would furnish a reasonable basis or foundation for accusation.
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> 8. The words "groundless" employed in Section 239 means there is no ground for presuming that the accused is guilty. When there is no ground for presuming that the accused has committed an offence, the charge must be considered as groundless.”

In case of **State of M.P. -Vrs.- Awadh Kishore Gupta reported in (2004) 1 Supreme Court Cases 691**, it is held that when charge is framed, at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground

for proceeding against the accused. For that limited purpose, the Court can evaluate materials and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. The Court should not act on annexures to the petitions under Section 482 of the Code, which cannot be termed as evidence without being tested and proved. The expression *known sources of income* used in Section 13 (1) (e) of the Prevention of Corruption Act, 1988 has reference to sources known to the prosecution after thorough investigation of the case. It is not, and cannot be contended that known source of income means sources known to the accused. The prosecution cannot, in the very nature of things, be expected to know the affairs of an accused person. Those will be matters specially within the knowledge of the accused, within the meaning of Section 106 of the Indian Evidence Act, 1872. Qua the public servant, whatever return he gets of his service, will be primary item of his income. Other incomes which can conceivably are income qua the public servant, will be in the regular receipt from (a) his property, or (b) his investment. A receipt from windfall, or gains of graft, crime, or immoral

secretions by persons prima facie would not be receipt from the known sources of income of a public servant.

In case of **State of Delhi -Vrs.- Gyan Devi reported in (2000) 8 Supreme Court Cases 239**, it is held as follows:-

> "7……..The legal position is well settled that at the stage of framing of charge, the Trial Court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the Court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. At the stage of charge, the Court is to examine the materials only with a view to be satisfied that a prima facie case of commission of offence alleged has been made out against the accused persons. It is also well settled that when the petition is filed by the accused under Section 482 Cr.P.C. seeking for the quashing of charge framed against them, the Court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court, a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in mind that once the Trial Court has framed a charge against an

> accused, the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases."

In case of **Amit Kapoor -Vrs.- Ramesh Chander reported in (2012) 9 Supreme Court Cases 460**, it is held as follows:-

> "19. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

1) Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

2) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith *prima facie* establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

4) Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loathe to interfere, at the

threshold, to throttle the prosecution in exercise of its inherent powers.

5) Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

6) The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

7) The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

8) Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the Court may be justified in quashing the charge. Even in such cases, the Court would not embark upon the critical analysis of the evidence.

9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on

the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

10) It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

11) Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

12) In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed with by the prosecution.

13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that

initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

14) Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

15) Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae, i.e. to do real and substantial justice for administration of which alone, the courts exist.

{Ref:- ***State of West Bengal and Ors.*** **v.** ***Swapan Kumar Guha and Ors.*** **: AIR 1982 SC 949;** ***Madhavrao Jiwaji Rao Scindia and Anr.*** **v.** ***Sambhajirao Chandrojirao Angre and Ors.*** **: AIR 1988 SC 709;** ***Janata Dal*** **v.** ***H.S. Chowdhary and Ors.*** **: AIR 1993 SC 892; Mrs.** ***Rupan Deol Bajaj and Anr.*** **v.** ***Kanwar Pal Singh Gill and Ors.*** **: AIR 1996 SC 309;** ***G. Sagar Suri and Anr.*** **v.** ***State of U.P. and Ors.*** **: AIR 2000 SC 754;** ***Ajay Mitra*** **v.** ***State of M.P.:*** **AIR 2003 SC 1069;** ***M/s. Pepsi Foods Limited and Anr.*** **v.** ***Special Judicial Magistrate and Ors.*** **: AIR 1988 SC 128;** ***State of U.P.*** **v.** ***O.P. Sharma*** **: (1996) 7 SCC 705;** ***Ganesh Narayan Hegde*** **v.** ***S. Bangarappa and Ors.*** **: (1995) 4 SCC 41;** ***Zundu Pharmaceutical Works Limited*** **v.** ***Mohd. Sharaful Haque and Ors.*** **: AIR 2005 SC 9;** ***M/s. Medchl***

***Chemicals and Pharma (P) Limited* v. *Biological E. Limited and Ors.* : AIR 2000 SC 1869; *Shakson Belthissor* v. *State of Kerala and Anr.* (2009) 14 SCC 466; *V.V.S. Rama Sharma and Ors.* v. *State of U.P. and Ors.* : (2009) 7 SCC 234; *Chunduru Siva Ram Krishna and Anr.* v. *Peddi Ravindra Babu and Anr.* : (2009) 11 SCC 203; *Sheo Nandan Paswan* v. *State of Bihar and Ors.* : AIR 1987 SC 877; *State of Bihar and Anr.* v. *P.P. Sharma and Anr.* : AIR 1991 SC 1260; *Lalmuni Devi (Smt.)* v. *State of Bihar and Ors.* : (2001) 2 SCC 17; *M. Krishnan* v. *Vijay Singh and Anr.* : (2001) 8 SCC 645; *Savita* v. *State of Rajasthan* : (2005) 12 SCC 338; and *S.M. Datta* v. *State of Gujarat and Anr.* : (2001) 7 SCC 659**}**.

6. It is the case of the petitioner that she was an income tax assessee since 2000-2001 and filing her income tax returns. In the chargesheet, it is mentioned that the petitioner and her husband are filing income tax returns however it is further mentioned that copies of the I.T. returns in respect of the petitioner could not be found in the I.T. department. No such correspondence from I.T. department regarding non-availability of the copies of the I.T. returns submitted by the petitioner was placed by the learned Standing Counsel for the Vigilance Department. The contentions raised by the learned Standing Counsel for the Vigilance Department that the petitioner did not supply the copies of her income tax returns during course of

investigation to the vigilance authorities cannot be accepted in absence of any correspondence to the petitioner in that respect. On the other hand, the learned counsel for the petitioner filed the income tax documents which the petitioner stated to have obtained under R.T.I. Act from the Income Tax Authority which lends support to the contentions raised by the learned counsel for the petitioner that she was an income tax assessee since 2000-2001. The date of seals of the Income Tax Department on the income tax returns, the taxpayers' counterfoils and the dates mentioned therein and the dates of the bank seals, all lend support to the case of the petitioner. The learned counsel for the petitioner further filed the certified copies of income tax returns of the petitioner from the Assessment Year 2008-09 to 2016-17 which were supplied to her by Income Tax Officer, Ward-2(2), Bhubaneswar.

In case of **D.S.P., Chennai -Vrs.- K. Inbasgaran reported in (2006) 33 Orissa Criminal Reports (SC) 300**, it is held as follows:-

> "16……It is true that when there is joint possession between the wife and husband, or father and son and if some of the members of the family are involved in amassing illegal wealth, then unless there is categorical evidence to believe, that this can be read in the hands of

> the husband or as the case may be, it cannot be fastened on the husband or the head of the family. It is true that the prosecution in the present case has tried its best to lead the evidence to show that all these moneys belonged to the accused but when the wife has fully owned the entire money and the other wealth earned by her by showing in the income tax return and she has accepted the whole responsibilities, in that case, it is very difficult to hold the accused guilty of the charge….."

The learned Standing Counsel for the Vigilance Department placed reliance in the case of **State of Tamilnadu -Vrs.- N. Suresh Ranjan reported in (2014) 57 Orissa Criminal Reports (SC) 503**, it is held as follows:-

> "23. Bearing in mind the principles aforesaid, we proceed to consider the facts of the present case. Here the allegation against the accused Minister (Respondent No. 1), K. Ponmudi is that while he was a Member of the Tamil Nadu Legislative Assembly and a State Minister, he had acquired and was in possession of the properties in the name of his wife as also his mother-in-law, who along with his other friends, were of Siga Educational Trust, Villupuram. According to the prosecution, the properties of Siga Educational Trust, Villupuram were held by other accused on behalf of the accused Minister.

These properties, according to the prosecution, in fact, were the properties of K. Ponumudi. Similarly, accused N. Suresh Rajan has acquired properties disproportionate to his known sources of income in the names of his father and mother. *While passing the order of discharge, the fact that the accused other than the two Ministers have been assessed to income tax and paid income tax cannot be relied upon to discharge the accused persons particularly in view of the allegation made by the prosecution that there was no separate income to amass such huge properties. The property in the name of an income tax Assessee itself cannot be a ground to hold that it actually belongs to such an Assessee.* In case this proposition is accepted, in our opinion, it will lead to disastrous consequences. It will give opportunity to the corrupt public servants to amass property in the name of known persons, pay income tax on their behalf and then be out from the mischief of law. While passing the impugned orders, the Court has not sifted the materials for the purpose of finding out whether or not there is sufficient ground for proceeding against the accused but whether that would warrant a conviction. We are of the opinion that this was not the stage where the Court should have appraised the evidence and discharged the accused as if it was passing an order of acquittal. Further, defect in

> investigation itself cannot be a ground for discharge. In our opinion, the order impugned suffers from grave error and calls for rectification."

In the case of **N. Suresh Ranjan** (supra), the investigating officer came to the conclusion that the Minister's father and mother never had any independent source of income commensurate with the property and pecuniary resources found acquired in their names and that was the main reason for the Court to hold that the property in the name of an income tax Assessee itself cannot be a ground to hold that it actually belongs to such an Assessee.

In the present case, the investigating officer has not come to any such conclusion in respect of the petitioner. It is the established principle of criminal jurisprudence that the burden always lies on the prosecution to prove all the ingredients of the offence charged, and that the burden never shifts on to the accused to disprove the charge framed against him. Therefore, the initial burden is on the prosecution to establish whether the accused has acquired the property disproportionate to his known source of income or not. The relevant documents relating to the income-tax returns pertain to the period 2000-01 onwards. The case against the husband of the petitioner was instituted in the

year 2009. In the normal course, the documents could not have been prepared in anticipation that she would have to face charges under disproportionate assets case on a future date. The returns filed with the income-tax authorities on their face value support the case of the petitioner. Had the relevancy of those documents been considered by the investigating agency, the matter would have been different but when it is mentioned in the chargesheet the petitioner is filing income tax returns but it could not be found in Income tax Department in spite of several efforts, in absence of any correspondence from I.T. department regarding non-availability of the copies of the I.T. returns of the petitioner with them and in absence of any correspondence to the petitioner to produce her I.T. returns, it can be inferred that the investigating agency deliberately withheld the material documents like I.T. returns of the petitioner and mechanically submitted chargesheet against her. The contentions raised by the learned Standing Counsel for the Vigilance Department that the petitioner might have filed the income tax returns showing false/inflated income with ulterior motive to whitewash the ill-gotten earnings of her husband is nothing but based on surmises and speculation without any concrete materials. The investigating officer is required to act fairly, impartially and

reasonably and conduct a thorough investigation without bias or prejudice. There is no clinching material that the petitioner abetted her husband or made any conspiracy or instigated in the alleged acquisition of disproportionate assets by her husband.

In view of the above discussions, I am of the humble view that the impugned order passed by the learned Trial Court in rejecting the petition filed by the petitioner under section 239 of Cr.P.C. and framing of charge under section 109 of the Indian Penal Code read with section 13(1))(e) punishable under section 13(2) of the Prevention of Corruption Act, 1988 is not sustainable in the eye of law and the same is hereby set aside. Anything said or any observation made in this judgment shall not influence the mind of the learned Trial Court to adjudicate the Trial in respect of co-accused Anil Kumar Sethi in accordance with law.

Accordingly, the CRLREV petition is allowed.

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S.K. Sahoo, J.

Orissa High Court, Cuttack
The 31st January, 2017/Sukanta