

IN THE HIGH COURT OF ORISSA, CUTTACK

**CRLREV No. 635 Of 2008**

From the order dated 27.02.2008 of the Special Judge (Vigilance), Jeypore passed in G.R. Case No. 28 of 2002.

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Baishnab Charan Barik ..... Petitioner

-Versus-

State of Orissa ..... Opp. party

For Petitioner: - Mr. Asok Mohanty  
(Senior Advocate)

For Opp. party: - Mr. Sangram Das  
Stand. Counsel (Vig.)

**CRLREV No. 454 Of 2008**

D.K. Singh  
& another ..... Petitioners

-Versus-

State of Orissa ..... Opp. party

For Petitioners: - Miss Soma Patnaik

For Opp. party: - Mr. Sangram Das  
Stand. Counsel (Vig.)

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P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

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Date of Hearing: 08.02.2018      Date of Judgment: 22.02.2018  
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**S. K. Sahoo, J.** The petitioner in Criminal Revision No.635 of 2008 namely Baishnab Charan Barik and petitioners in Criminal Revision No.454 of 2008 namely D.K. Singh @ Dusmanta Kumar Singh and K.C. Mohapatra @ Kishore Chandra Mohapatra have challenged the impugned order dated 27.02.2008 passed by learned Special Judge (Vigilance), Jeypore in G.R. Case No. 28 of 2002 in framing charges under sections 420, 477-A and 120-B of the Indian Penal Code against all of them and the petitioner Baishnab Charan Barik has also challenged the framing of additional charge under section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereafter '1988 Act') against him after rejecting the petition under section 239 of Cr.P.C. filed by the petitioners D.K. Singh @ Dusmanta Kumar Singh and K.C. Mohapatra @ Kishore Chandra Mohapatra for discharge. The said case arises out Berhampur Vigilance P.S. Case No. 28 of 2002.

Since both the criminal revisions arise out of a common order, with the consent of the parties, those were heard analogously and disposed of by this common judgment.

2. The prosecution case, as per the First Information Report dated 13.06.2002 lodged by Sri U. Rama Rao, D.S.P., Vigilance, Rayagada Unit before the Superintendent of Police,

Vigilance, Berhampur Division, Berhampur is that during enquiry into the allegation of bungling in purchase of cement by the officers of O.T.D.P., Kashipur during the year 1997, it came to light that for execution of project civil works, it was decided to purchase OPC 43 grade of IDCOL cement through authorised stockists of IDCOL cement and to supply it to the contractors. The cost per bag of OPC 43 grade cement was fixed to Rs.134.00 inclusive of all taxes, loading and unloading charges and transportation charges from Rayagada to Kashipur. One J.E. was entrusted to remain in charge of the store to receive the stock of cement from the authorised dealer in good condition, maintain the stock and store register and issue the same to the contractors as per the orders of competent authority. He was also to certify on the credit bills of suppliers of cement in respect of receipt of the stock in good condition and to account it for in the stock register. On the basis of the certificate of the store keeper (J.E.), the bills were being passed for payment by the Project Manager. During the period from 14.11.1997 to 31.12.1997, the petitioner Baishnab Charan Barik, J.E. was in charge of stores of O.T.D.P., Kashipur after taking charge from J.E. Sri S.S. Nayak.

It is further stated in the F.I.R. that scrutiny of stock register of cement and correspondence file revealed that during the period 14.11.1997 to 31.12.1997 M/s. Sriram Enterprisers, Rayagada supplied 10,000 bags of OPC 43 grade of IDCOL brand cement to O.T.D.P., Kashipur @ Rs.133.60 per bag and received Rs.13,36,000.00 paisa which was received by the petitioner Baishnab Charan Barik as evident from the certificate given by him on the credit bills.

During enquiry at IDCOL godown at Khaliguda, Rayagada, it was ascertained that during the above period, M/s. Sriram Enterprisers had not lifted a single bag of OPC 43 grade of IDCOL cement from the godown. The supplier also could not produce any documents pertaining to purchase of OPC 43 grade of IDCOL cement either from the IDCOL dealer or from any other firm during the period and therefore, it was construed that the petitioner D.K. Singh @ Dusmanta Kumar Singh, Proprietor, M/s. Sriram Enterprisers, Rayagada supplied 10,000 bags of slag cement to O.T.D.P., Kashipur instead of OPC 43 grade cement and managed to get certificate from the petitioner Baishnab Charan Barik who was the store in charge on the bills to have delivered 10,000 bags of OPC 43 grade cement.

It is further stated in the F.I.R. that the petitioner Kishore Chandra Mohapatra, Proprietor, M/s. Kishore Kirana Store, Kashipur supplied 40,000 bags of OPC 43 grade of IDCOL cement during the above period @ Rs.133.60 per bag and received Rs.53,44,000.00 paisa being passed for payment by Project Manager, O.T.D.P., Kashipur on the basis of the certificate of the petitioner Baishnaba Charan Barik on the bills. The inquiry revealed that the petitioner Kishore Chandra Mohapatra lifted 5430 bags of OPC 43 grade of IDCOL brand cement from IDCOL godown at Khaliguda, Rayagada valued at Rs.7,25,448.00 during the above period and he could not produce any documents towards the purchase of 40,000 bags of OPC 43 grade of IDCOL cement during the relevant period. Therefore, it was construed that the said petitioner supplied 34570 of slag cement (IDCOL) to O.T.D.P., Kashipur and managed to get certificate from the petitioner Baishnaba Charan Barik to have supplied OPC 43 grade IDCOL cement. During the said period, the cost of IDCOL slag cement was Rs.5.00 less than OPC 43 grade IDCOL cement and other charges remaining the same, the slag cement per bag was Rs.128.60 and accordingly, the cost of 34570 bags of slag cement of IDCOL Brand came to Rs.44,45,702.00. It is mentioned in the first information report

that the petitioner Kishore Chandra Mohapatra derived pecuniary benefits of Rs.1,72,850.00 paisa by submitting false bills in connivance with petitioner Baishnaba Charan Barik.

It is further mentioned in the F.I.R. that during the period from 14.11.1997 to 31.12.1997, the petitioner Baishnaba Charan Barik, being a Government servant connived with the cement suppliers petitioners Sri D.K. Singh and Kishore Chandra Mohapatra, falsified the official records and allowed pecuniary benefits of Rs.2,22,850/- to the cement suppliers causing loss to the project with ulterior motive.

3. During course of investigation, it was found out that the two firms namely M/s. Sriram Enterprisers, Rayagada and M/s. Kishore Kirana Store, Kashipur gave their willingness in writing to the Project Manager, O.T.D.P., Kashipur to supply 43 grade IDCOL cement @ Rs.133.60 paisa per bag which was lesser than the rate of Rs.134/- per bag fixed by the O.T.D.P. authorities. As both the firms were authorised IDCOL cement dealers, the Project Manager placed orders with them to supply OPC 43 Grade of IDCOL cement. Several notices were issued to the cement suppliers i.e. petitioners Kishore Chandra Mohapatra as well as D.K. Singh to produce the stock book, records relating to supply of cement (IDCOL) to O.T.D.P., Kashipur but they

failed to produce any documents. It was ascertained that during the period from 14.11.1997 to 31.12.1997, the two agencies like M/s. Sriram Enterprises and M/s. Kishore Kirana Store had not purchased any cement from other cement suppliers of Rayagada. During the period in question, the cost of slag cement was Rs.5/- less than the cost of OPC 43 grade IDCOL cement per bag and thus it was presumed by the Investigating Officer that due to supply of slag cement by the cement suppliers, the Department sustained loss of Rs.2,28,400/-. The Investigating Officer obtained sanction order from the Engineer-in-Chief, Water Resources, Orissa to proceed against the petitioner Baishnaba Charan Barik. As the Investigating Officer found sufficient evidence against the petitioner Baishnab Charan Barik to have entered into criminal conspiracy with petitioners Dusmanta Kumar Singh and Kishore Chandra Mohapatra and manipulated records and documents of O.T.D.P., Kashipur showing receipt of OPC 43 grade IDCOL cement and accepted the delivery challan and credit bills submitted by the two firms as genuine and thereby obtained pecuniary advantage of Rs.2,28,400/- for himself and for the two firms, charge sheet was accordingly placed on 30.12.2003 against the three petitioners under

sections 420, 477-A and 120-B of the Indian Penal Code and under section 13(2) read with section 13(1)(d) of the 1988 Act.

4. Mr. Asok Mohanty, learned Senior Advocate appearing for the petitioner Baishnab Charan Barik being ably assisted by Miss Soma Patnaik appearing for the petitioners D.K. Singh @ Dusmanta Kumar Singh and K.C. Mohapatra @ Kishore Chandra Mohapatra while challenging the impugned order contended that prima facie there are no clinching materials available on record to constitute the ingredients of the offences under which charges were framed against the petitioners and on scrutiny of the statements and documents filed by Vigilance police, there are no circumstances which would at least create strong suspicion that slag cement had been supplied by the two suppliers. It is contended that the prosecution has not tendered any evidence that OPC 43 grade IDCOL cement is a restricted commodity and it cannot be made available from any other source excepting Rayagada depot or that the authorised agents who were examined by Vigilance police were the only dealers of IDCOL cement. It is contended that O.T.D.P., Kashipur, Rayagada in their supply order stipulated three conditions:-

- i) He should supply OPC 43 Grade weighing 50 Kg. net on each bag in good condition @ Rs.133.60 per bag.



- ii) The payment will be made soon after delivery of cement.
- iii) The undersigned reserves the right to cancel the order at any time without assigning any reasons thereof.

It is further contended that at no point of time, Junior Engineer, Asst. Engineer, Executive Engineer, Project Manager or the Contractors complained that cements used were not OPC 43 grade IDCOL cement. Moreover, during investigation of this case, in the 161 Cr.P.C. statements, the witnesses have stated that the contractors have used OPC 43 grade IDCOL cement in the execution of the civil work.

It is strenuously contended that after a long gap five years since the execution of work, the case has been foisted against the petitioners just to harass them and merely because after five years, the suppliers were not able to produce any documents relating to lifting/purchase of OPC 43 grade IDCOL cement before the Investigating Agency, it could not have been assumed that there was no supply of OPC 43 grade IDCOL cement.

It is contended that basing on assumption that the petitioners have got pecuniary benefits by supplying slag cement which was Rs.5/- less than OPC 43 grade IDCOL cement per bag,

charge sheet has been submitted which is not sustainable in the eye of law. The learned counsel placed reliance on the statement of witness N. Gumpa Swami, Junior Engineer under whose supervision, the construction works had been done. As per his statement, he had lifted 43 grade IDCOL cement after signing on the stock register and in all the works he had supervised, only OPC 43 grade of IDCOL cement were used. It is contended that the said statement of J.E. is also supported by the other contractors who have been examined as witnesses by the Investigating Agency. It is also contended that the civil work done by O.T.D.P. was time bound project and within a short time period, various types of civil works are to be performed and it is not possible on the part of the suppliers to purchase huge quantity of IDCOL cement from a particular godown. It is contended that framing of charges suffers from non-application of mind and therefore, it should be quashed.

5. Mr. Sangram Das, learned Standing Counsel for the Vigilance department on the other hand contended that for civil construction work, the project authorities of O.T.D.P. decided to purchase OPC 43 grade of IDCOL cement from authorised IDCOL cement dealers and the purchase committee fixed the price per bag of OPC 43 grade IDCOL cement at Rs.134/- inclusive of all

taxes, loading and unloading and transportation charges from Rayagada from Kashipur. Two firms namely M/s. Sriram Enterprises, Rayagada and M/s. Kishore Kirana Store, Kashipur expressed their willingness to supply the cement and since both the firms were authorised dealers of IDCOL cement and their quoted rates were lesser than the approved rate, the Project Manager placed orders with them to supply OPC 43 grade IDCOL cement. It is contended that the investigation revealed that there was only one IDCOL godown at Rayagada and during the period from November to December 1997, a total of 1532.350 MT of OPC 43 grade cement was received at the godown for distribution to its dealers from the head office. M/s. Kishore Kirana Store lifted 316 MT of OPC 43 grade cement (6320 bags) from the godown whereas M/s. Sriram Enterprises, Rayagada had not lifted any quantity of OPC 43 grade cement during the period i.e. from 14.11.1997 to 31.12.1997 from the said godown. The local cement dealers dealing with OPC 43 grade cement were examined and they stated that they had not supplied any quantity of 43 grade IDCOL cement to those two suppliers during the year 1997. It is contended that as against lifting of only 316 MT (6320 bags) of 43 grade IDCOL cement, M/s. Kishore Kirana Store had supplied 2100 MT (42000 bags)

and against no lifting of IDCOL cement, M/s. Sriram Enterprises, Rayagada had shown supply of 500 MT (10000 bags) to OTDP, Kashipur. Therefore, the aforesaid two firms supplied slag cements and managed to get certificates on their delivery challans and credit bills showing supply of OPC 43 grade IDCOL cement to O.T.D.P., Kashipur in connivance with the petitioner Baishnaba Charan Barik who was the J.E. -cum- Store in charge of O.T.D.P. It is contended that the two firms failed to produce any documents relating to purchase and supply of OPC 43 grade IDCOL cement to O.T.D.P., Kashipur during the relevant period and thus by supplying slag cement whose cost was Rs.5/- lesser than the cost of OPC 43 grade IDCOL cement per bag, the department had sustained a total loss of Rs.2,28,400/- and both the firms i.e. M/s. Sriram Enterprises, Rayagada and M/s. Kishore Kirana Store had gained pecuniary advantage to the tune of Rs.2,28,400/- in connivance with petitioner Baishnaba Charan Barik. The learned counsel placing reliance in the cases of **State of Delhi -Vrs.- Gyan Devi reported in (2000) 8 Supreme Court Cases 239, Amit Kapoor -Vrs.- Ramesh Chander reported in (2012) 9 Supreme Court Cases 460** contended that the revision petitions should be dismissed.

6. Section 239 of Cr.P.C., inter alia, provides that if upon considering the police report and the documents sent with it under section 173 of Cr.P.C. and making such examination, if any, of the accused and after giving prosecution and accused an opportunity being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused and record his reasons for so doing.

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

“12. Section 397 of the Code vests the Court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the

provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

9. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex-facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much advanced stage in the proceedings under the Code of Criminal Procedure.

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17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is

required to consider the 'record of the case' and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the Section exists, then the Court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code...."

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

"19. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage.

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20. The jurisdiction of the Court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression 'prevent abuse of process of any court or otherwise to secure the ends of justice', the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily....."



The object of discharge under section 239 of Cr.P.C. is to save the accused from unnecessary and prolonged harassment. When the allegations are baseless or without foundation and no prima facie case is made out, it is just and proper to discharge the accused to prevent abuse of process of the Court. If there is no ground for presuming that accused has committed an offence, the charges must be considered to be groundless. The ground may be any valid ground including the insufficiency of evidence to prove the charge. When the materials at the time of consideration for framing the charge are of such a nature that if unrebutted, it would make out no case whatsoever, the accused should be discharged.

7. In the light of above principles, if the materials available on record is analyzed, it appears that during the period from 14.11.1997 to 31.12.1997, while the petitioner Baishnaba Charan Barik as Junior Engineer was in charge of the stores of O.T.D.P., Kashipur, stock register of cement and correspondence file revealed that M/s. Sriram Enterprises, Rayagada supplied 10,000 bags of OPC 43 grade of IDCOL brand cement to O.T.D.P., Kashipur @ Rs.133.60 paisa per bag and M/s. Kishore Kirana Store, Kashipur also supplied 40,000 bags of OPC 43 grade of IDCOL brand cement to O.T.D.P., Kashipur at the same

rate. Certificates on the credit bills in that respect were given by the petitioner Baishnaba Charan Barik, J.E. The first information report was lodged on 13.06.2002 and charge sheet was submitted on 30.12.2003.

The charges framed against the petitioner Baishnaba Charan Barik read as follows:-

**Firstly:-** That during the period from 14.11.1997 to 31.12.1997 you being the public servant employed as Junior Engineer, O.T.D.P., Kshipur and in charge of stores of O.T.D.P., Kshipur, by corrupt or illegal means and/or by otherwise abusing your position as such public servant, obtained pecuniary advantage of Rs.2,28,400/- for yourself and for the two firm owners namely Shri D.K. Singh, Proprietor, M/s. Sriram Enterprisers, Rayagada and Shri K. Ch. Mohapatra, Proprietor, Kishore Kirana Store, Kshipur by manipulating records and documents of O.T.D.P., Kshipur showing receipt of 43 grade IDCOL cement and accepted the delivery challans and credit bills as genuine submitted by the above two firm owners causing loss to the Government and thereby committed an offence of criminal misconduct punishable under section 13(2) read with section 13(1)(d)(ii) of the Prevention of Corruption Act, 1988 and within my cognizance.

**Secondly:-** That during the aforesaid period you cheated the O.T.D.P., Kshipur by dishonestly inducing it by manipulating records and documents of

O.T.D.P., Kashipur showing receipt of OPC 43 grade cement and accepted delivery challans and credit bills from M/s. Sriram Enterprisers, Rayagada and Kishore Kirana Store, Kashipur as genuine causing loss to the Government to the tune of Rs.2,28,400/- due to such pecuniary gain to you and thereby committed an offence punishable under section 420 of the Indian Penal Code and within my cognizance.

**Thirdly:-** That during the aforesaid period, you being the Junior Engineer and store in charge of O.T.D.P., Kashipur willfully with intention to defraud the O.T.D.P., Kashipur falsified the records and documents of the said O.T.D.P., Kashipur showing receipt of 43 grade IDCOL cements from the aforesaid two firms, M/s. Sriram Enterprisers, Rayagada and Kishore Kirana Store, Kashipur causing loss to the Government to the tune of Rs.2,28,400/- and thereby committed an offence punishable under section 477-A of the Indian Penal Code and within my cognizance.

**Fourthly:-** That during the aforesaid period you agreed with the two authorised cement suppliers, M/s. Sriram Enterprisers, Rayagada and Kishore Kirana Store, Kashipur to do an illegal act namely received slag cement bags instead of OPC 43 grade of IDCOL cement from the aforesaid two cement suppliers by manipulating records and documents of O.T.D.P., Kashipur and by accepting the delivery challans and credit bills submitted by the aforesaid two suppliers causing loss to the Government to the

tune of Rs.,2,28,400/- and thereby committed an offence punishable under section 120-B of the Indian Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charges.

Dated, this the 27<sup>th</sup> day of February, 2008.

The charges framed against the petitioners Kishore Chandra Mohapatra and Dushmant Kumar Singh read as follows:-

**Firstly:-** That during the period from 14.11.1997 to 31.12.1997, you dishonestly cheated O.T.D.P., Kashipur by supplying 42,000 bags of slag cement and 10,000 bags of slag cement respectively to O.T.D.P., Kashipur instead of OPC 43 grade of IDCOL cement with connivance of the Junior Engineer, Shri B.K. Barik, who was in charge of the store of O.T.D.P. at the relevant time by delivering challans and credit bills causing wrongful loss to the Government to the tune of Rs.2,28,400/- and thereby committed an offence punishable under section 420 of the Indian Penal Code and within my cognizance.

**Secondly:-** That during the aforesaid period you being the Proprietors of Kishore Kirana Store, Kashipur and M/s. Sriram Enterprisers, Rayagada respectively willfully with intention to defraud the O.T.D.P., Kashipur falsified the records and documents with the connivance of the Junior

Engineer, Shri B.K. Barik with regard to supply of cement to O.T.D.P., Kashipur causing loss to the Government to the tune of Rs.2,28,400/- and thereby committed an offence punishable under section 477-A of the Indian Penal Code and within my cognizance.

**Thirdly:-** That during the aforesaid period you both agreed with the Junior Engineer Shri B.K. Barik to do an illegal act namely to supply of slag cement instead of OPC 43 grade of IDCOL cement to him (B.K. Barik) and to supply delivery challans and credit bills to him for manipulation of records and documents of O.T.D.P., Kashipur and thereby committed an offence punishable under section 120-B of the Indian Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charges.

Dated this the 27<sup>th</sup> day of February, 2008.

The statement of the informant Sri U. Rama Rao recorded under section 161 of Cr.P.C., inter alia, indicates that during the relevant period, M/s. Sriram Enterprises has not lifted a single bag of OPC 43 grade cement from the IDCOL godown situated at Khaliguda, Rayagada and M/s. Kishore Kirana Store, Kashipur has lifted only 5430 bags of OPC 43 grade cement but the suppliers have supplied 10,000 bags and 40,000 bags cement respectively to O.T.D.P., Kashipur and the

petitioner Baishnab Charan Behera, J.E. had mentioned the receipt of such quantity of cement bags of 43 grade in his stock register. He further stated that the suppliers might have supplied slag cement which was Rs.5/- less than OPC 43 grade cement to get pecuniary benefits.

Therefore, it is apparent that the statement of the informant relating to supply of slag cement in place of OPC 43 grade IDCOL cement by the two suppliers is based on assumption. The supply orders stipulated only three conditions and it was not stipulated as to where from the suppliers would procure OPC 43 grade cement. Merely because it was not lifted from the IDCOL godown situated at Khaliguda, Rayagada in case of M/s Sriram Enterprises and only 5430 bags out of 40,000 supplied bags were lifted in case of M/s. Kishore Kirana Store, it cannot be assumed that the suppliers might have supplied slag cement. Even if the Investigating Officer has examined some other suppliers who used to deal with IDCOL cement and obtained in writing from them that the two suppliers M/s. Sriram Enterprises and M/s. Kishore Kirana Store have not lifted OPC 43 grade IDCOL cement from them but that would not be sufficient to draw an assumption that the suppliers had supplied slag cement. The logic behind drawing such assumption is fallacious.

Such an assumption could have been drawn after examining all the suppliers dealing with OPC 43 grade cement and not few of them. Most of the witnesses who have been examined by the Investigating Officer were the competitors of the two suppliers who had also submitted tender papers to supply 43 grade of IDCOL cement to O.T.D.P., Kashipur and they were unsuccessful and they have stated that they had not sold any 43 grade IDCOL cement to either M/s. Sriram Enterprises or M/s. Kishore Kirana Store, Kashipur. The contractors like Sarat Ch. Gouda, Bihari Naik, Mangulu Charan Mandal, Sanjib Kumar Patra have stated that they received 43 grade IDCOL cement for different project works on different dates from the petitioner Baishnaba Charan Barik and put their signatures on the stock register in token of receipt. N. Gumpa Swami, J.E. who was supervising the works has also stated that all the cements which were received by him from the office of O.T.D.P. were of 43 grade IDCOL cement and accordingly he had put his signatures in the stock register and only 43 grade IDCOL cements were used in the works supervised by him.

The two petitioners Kishore Chandra Mohapatra and Dusmanta Kumar Singh were examined on 04.07.2003 by the Inspector of Vigilance and their statements were recorded. The

petitioner Dusmanta Kumar Singh has stated that since cements were to be supplied to O.T.D.P. on credit basis and he had no sufficient cash to purchase from IDCOL cement depot, therefore, he purchased 43 grade cement from outside and supplied to O.T.D.P. and he further stated that since the purchases were made in the year 1997, he was not in a position to tell from which agency, he had purchased the cement. He further stated that since he got back the entire dues relating to the supply of cement to O.T.D.P., there was no purpose in keeping the related documents with him. The petitioner Kishore Chandra Mohapatra has also stated almost in a similar manner. The petitioner Baishnaba Charan Barik was examined by the Inspector of Vigilance Department and he has stated in detail how he was receiving OPC 43 grade IDCOL cement from the suppliers, making entries in the stock register and how he was supplying the same to different contractors as per the orders of the Executive Engineer or Project Manager after making necessary entries in the stock register. He specifically stated that except 43 grade of IDCOL cement, he had not received the cement of any other brand and further stated to have received the cement with the challan copies. The original delivery challans of the suppliers have been seized by the investigating agency.



8. Therefore, when the documentary evidence like stock register, delivery challans indicate about receipt of OPC 43 grade of IDCOL cement in the O.T.D.P. store of Kashipur during the relevant period when the petitioner Baishnaba Charan Barik, J.E. was in charge from the two suppliers M/s. Sriram Enterprises and M/s. Kishore Kirana Store, Kashipur and the contractors have also received cements of 43 grade of IDCOL brand from the store after signing the stock register and all of them including N. Gumpa Swami, J.E. who was supervising the works have stated about the utilization of 43 grade IDCOL cement in the construction works, merely basing on the fact that such cements were not lifted from the IDCOL godown at Khaliguda, Raygada or were not purchased from some of the dealers of IDCOL cement of Rayagada district, the assumption drawn by the informant as well as by the investigating officer that the two suppliers had supplied slag cements cannot be accepted particularly in absence of any stipulation in the supply orders to purchase OPC 43 grade cement from a particular party or from IDCOL godown at Khaliguda. Drawing of assumption suffers from non-application of mind which is also not justified in the facts and circumstances of the case.

For general construction applications, there are three types of Ordinary Portland Cement (OPC) available namely, 33, 43 and 53 grade and it is graded according to its strength. Specifications for these different grades of cement shall conform to IS 269:2013, IS 8112:2013, IS 12269:2013 respectively. The grade indicates the compression strength (MPa) of the concrete that will attain after 28 days of setting. Thus OPC 43 grade cement shall conform to IS:8112-1989 and the designed strength of 28 days shall be minimum 43 MPa or 430 kg/sqcm. Compressive strength of cement is determined by compressive strength test on mortar cubes compacted by means of a standard vibration machine. OPC is manufactured by grinding together OPC Clinker (95 – 97%) along with gypsum (3-5%).

PSC or Portland Slag cement on the other hand is a kind of blended cement manufactured by either grinding the Portland clinker with gypsum and granulated slag or blending the ground granulated blast furnace slag (GGBS) with Ordinary Portland cement. Normal composition of Portland slag cement is 40 % clinker, 5 % gypsum and 60 % blast furnace granulated slag. As per IS:455, the quantity of GGBS can be in the range to 25 % to 70%. The minimum compressive strength requirement is 33 MPa at 28 days for PSC Cement. PSC cement has less heat

of hydration as compared to OPC cement. Slag cement is most widely used in concrete, either as a separate cementitious component or as part of blended cement. It works synergistically with Portland cement to increase strength, reduce permeability, improve resistance to chemical attack and inhibit rebar corrosion.

No field testing report or laboratory testing report has been obtained by the investigating agency to substantiate the accusation that it was not OPC 43 grade cement but it was slag cement.

In case of **State of Bihar and Anr. -Vrs.- P.P. Sharma reported in A.I.R. 1991 S.C. 1260**, it is held as follows:-

“47. The investigating officer is the arm of the law and plays pivotal role in the dispensation of criminal justice and maintenance of law and order. The police investigation is, therefore, the foundation stone on which the whole edifice of criminal trial rests an error in its chain of investigation may result in miscarriage of justice and the prosecution entails with acquittal. The duty of the investigating officer, therefore, is to ascertain facts, to extract truth from half-truth or garbled version, connecting the chain of events. Investigation is a tardy and tedious

process. Enough power, therefore, has been given to the police officer in the area of investigatory process, granting him or her great latitude to exercise his discretionary power to make a successful investigation. It is by his action that law becomes an actual positive force. Often crimes are committed in secrecy with dexterity and at high places. The investigating officer may have to obtain information from sources disclosed or undisclosed and there is no set procedure to conduct investigation to connect every step in the chain of prosecution case by collecting the evidence except to the extent expressly prohibited by the Code or the Evidence Act or the Constitution. In view of the arduous task involved in the investigation he has been given free liberty to collect the necessary evidence in any manner he feels expedient, on the facts and in given circumstances. His/her primary focus is on the solution of the crime by intensive investigation. It is his duty to ferret out the truth. Laborious hardwork and attention to the details, ability to sort out through mountainous information, recognized behavioural patterns and above all, to coordinate the efforts of different people associated with various elements of the crime and the case are essential. Diverse methods are, therefore, involved in making a successful completion of the investigation."

In case of **Jamuna Chaudhary -Vrs.- State of Bihar reported in 1974 Criminal Law Journal 890**, it is held by the Hon'ble Supreme Court as follows:

"11. The duty of the Investigating Officers is not merely to bolster up a prosecution case with such evidence as may enable the court to record a conviction but to bring out the real unvarnished truth."

Therefore, I am of the view that the Investigating Officer has failed to collect any clinching materials to proceed against the petitioners and acted in a mechanical manner. On the available materials on record, there is no prima facie case for commission of the offences alleged against the petitioners. There is no ground for presuming that the petitioners have committed the offences alleged. There is no strong suspicion against the petitioners. Submission of charge sheet is based totally on unfounded assumptions and it has resulted in causing miscarriage of justice. The learned trial Judge has mechanically dealt with the discharge petition filed by the petitioners and after quoting the prosecution allegation, he jumped to the conclusion that there are sufficient grounds for proceeding against the petitioners and rejected the petition. Therefore, without meticulous examination of the materials on record, I am of the

humble view that the learned trial Court has committed palpable error in framing charges against the petitioners after rejecting the discharge petition and as such, in the interest of justice, the impugned order cannot be sustained in the eye of law.

9. Accordingly, both the criminal revision petitions are hereby allowed. The impugned order dated 27.02.2008 passed by the learned Special Judge (Vigilance), Jeypore in G.R. Case No. 28 of 2002 in rejecting the petition under section 239 of Cr.P.C. praying for discharge and framing charges stands quashed and set aside and the petitioners are hereby discharged from the offences charged.

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**S.K. Sahoo, J.**

Orissa High Court, Cuttack  
The 22<sup>nd</sup> February, 2018/Sisir/Sukanta