

IN THE HIGH COURT OF ORISSA, CUTTACK

CRLREV No. 677 Of 2008

From the order dated 27.02.2008 of the Special Judge (Vigilance), Jeypore passed in G.R. Case No. 29 of 2002.

Sudhansu Sekhar Nayak

Petitioner

-Versus-

State of Orissa

Opp. party

For Petitioner:

Mr. Asok Mohanty
(Senior Advocate)
Bikram Kishore Nayak

For Opp. party:

Mr. Sangram Das
Stand Counsel (Vig.)

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

Date of Hearing: 08.02.2018

Date of Judgment: 23.02.2018

S. K. Sahoo, J. The petitioner Sudhansu Sekhar Nayak has challenged the impugned order dated 27.02.2008 passed by learned Special Judge (Vigilance), Jeypore in G.R. Case No. 29 of 2002 in framing charges under section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereafter '1988 Act') and sections 420, 477-A and 120-B of the Indian

Penal Code. The said case arises out Berhampur Vigilance P.S. Case No. 29 of 2002.

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 01.04.1997 to 14.11.1997, the petitioner as J.E. was in charge of cement stores and he made over complete charge of the stock of the store on 27.11.1997.

It is further stated in the F.I.R. that scrutiny of stock register and from correspondence, it revealed that during the period from 01.04.1997 to 14.11.1997 Sri D.K. Singh, Proprietor, M/s. Sriram Enterprisers, Rayagada supplied 49600 bags of OPC 43 grade cement to O.T.D.P., Kashipur @ Rs.133.70 paisa per bag and received Rs.66,31,520.00 paisa being passed for payment by Project Manager, O.T.D.P., Kashipur on the basis of receipt certificate on the credit bills by the petitioner, the store in charge. Enquiry at IDCOL godown at Khaliguda, Rayagada revealed that M/s. Sriram Enterprisers had only lifted 6820 bags of OPC 43 grade of IDCOL cement from the godown during the above period valued at Rs.9,11,834.00 paisa. Sri D.K. Singh could not produce any documents towards purchase of 49600 bags of OPC 43 grade cement for supply to the O.T.D.P., Kasipur. Thus it was assumed that Sri D.K. Singh supplied 42780 bags of IDCOL slag cement to O.T.D.P., Kashipur and managed to get certificate from the petitioner who was the store in charge to have supplied 43 grade of IDCOL cement. During the period, the cost of IDCOL slag cement bag was Rs.5.00 less than OPC 43

grade cement and all other things remaining the same, the total cost of slag cement per bag came to Rs.128.70 and cost of 42780 bags cement computed to Rs.55,05786.00. Thus, as per the F.I.R., Sri D.K. Singh, Proprietor, M/s. Sriram Enterprises gained Rs.2,13,900.00 by submitting false bills in connivance with the petitioner.

It is further stated in the F.I.R. that the accused Kishore Chandra Mohapatra, Proprietor, M/s. Kishore Kirana Store, Kashipur said to have supplied 7,000 bags of OPC 43 grade of IDCOL cement to O.T.D.P., Kashipur during the period from 01.04.1997 to 14.11.1997 @ Rs.133.60 paisa per bag and received payment of Rs.9,35,200.00 paisa being passed for payment by Project Manager, O.T.D.P., Kashipur on the basis of receipt certificate given by the petitioner on the credit bills. The enquiry at IDCOL godown, Khaliguda, Rayagada revealed that the accused Kishore Chandra Mohapatra had not lifted any OPC 43 grade of IDCOL brand cement from IDCOL godown and he could not produce any documents towards the purchase of OPC 43 grade of IDCOL cement during the relevant period. Thus, it was assumed that accused Kishore Chandra Mohapatra supplied 7000 bags of slag cement (IDCOL) instead of OPC 43 grade and managed to get receipt certificate of cement from the petitioner and obtained pecuniary benefit of Rs.35,000/- being the

differential amount of Rs.5.00 towards the cost of the cement for each bag.

It is further mentioned in the F.I.R. that during the period from 01.04.1997 to 14.11.1997, the petitioner who was the store in charge being a Government servant connived with the cement suppliers Sri D.K. Singh and Kishore Chandra Mohapatra, falsified the official records and allowed pecuniary benefits of Rs.2,48,900/- to the cement suppliers causing loss to the project with ulterior motive.

On the basis of such first information report, Berhampur Vigilance P.S. Case No. 29 of 2002 was registered on 13.06.2002 under section 13(2) read with section 13(1)(d)(ii) of 1988 Act and sections 420, 468, 471, 477-A read with section 120-B of the Indian Penal Code against the petitioner and accused persons Sri D.K. Singh and Kishore Chandra Mohapatra.

3. During course of investigation, it was found out that during the period from 01.04.1997 to 14.11.1997 Sri Dusmanta Kumar Singh, Proprietor, M/s. Sriram Enterprises, Rayagada had supplied 49,800 bags of OPC 43 grade cement to O.T.D.P, Kashipur @ Rs.133.70 paisa per bag and received payment of Rs.66,98,260/-. The petitioner who was in charge of Store had given certificates on the credit bills of the supplier that he received 43 grade IDCOL cement and accordingly made entries

in the Stock Register. During investigation at IDCOL godown, Khaliguda at Rayagada, it revealed that the firm had 6896 bags of 43 grade cement during the period 01.04.1997 to 14.11.1997. The suppliers also could not produce any documents in support of purchase of 49,800 bags of IDCOL 43 grade cement which was shown in stock register O.T.D.P., Kashipur. Thus it was assumed that Sri Dusmanta Kumar Singh had supplied the rest 42,904 bags of slag cement to O.T.D.P. and managed to get certificate from the petitioner to have supplied 43 grade cement and received full payment and also made profit of Rs.2,14,520/- by submitting false bills in connivance with the petitioner. The value of 43 grade IDCOL cement per bag was Rs.133.70. Hence the cost of 6896 bags of IDCOL 43 grade cement was Rs.9,21,995.00 and the cost of 49,800 bags of IDCOL cement was Rs.66,58,260/-. During that period, the cost of OPC grade cement was less than Rs.5/-and Rs.128.70 net. The cost of OPC 42904 bags of cement was Rs.55,21,744.80. Thus, Sri D.K. Singh, Proprietor, M/s. Sriram Enterprises derived a pecuniary benefit of Rs.2,14,520.00.

Similarly during investigation, it came to light that Sri Kishore Chandra Mohapatra had supplied 5000 bags of 43 grade cement to O.T.D.P. office, Kashipur @ Rs.133.60 per bag during the said period i.e., 01.04.1997 to 14.11.1997 and had received

payment of Rs.6,68,000/-. The petitioner had given certificates on the credit bills of the supplier to have received the prescribed 43 grade IDCOL cement. Enquiry at IDCOL godown at Khaliguda, Rayagada revealed that the supplier had not lifted any 43 grade cement from the IDCOL godown during that period. He also failed to produce any documents towards purchase of 43 grade cement during the said period. It was assumed that Sri Mohapatra had supplied 5000 bags of slag cements and managed to obtain certificate from the petitioner to have supplied 43 grade cement and derived a pecuniary benefit of Rs.25,000/- @ Rs.5.00 less per bag.

Thus a total amount of Rs.2,39,520/- has been allowed as pecuniary benefit to the two cement suppliers by the petitioner by giving false certificates on the credit bills of the suppliers.

During enquiry at IDCOL cement factory, Baragarh, it was ascertained that M/s. Sriram Enterprises, Rayagada had lifted 344.8 metric ton of 43 grade IDCOL cement and 1511.9 net Portland Slag Cement (hereafter 'PSC') whereas Sri Kishore Chandra Mohapatra had lifted only 132 metric ton of PSC cement from Baragarh IDCOL factory during 01.04.1997 to 14.11.1997 and he has not lifted any 43 grade cement during that period. All the relevant documents, registers and challans relating to supply

of IDCOL cement by the accused persons to O.T.D.P., Kashipur during the year 01.04.1997 to 14.11.1997 were seized from O.T.D.P., Kashipur and from IDCOL Ltd., Bargarh and accordingly, charge sheet was submitted against the petitioner, Kishore Chandra Mohapatra and Dusmanta Kumar Singh on 30.06.2004 under sections 13(2) read with 13(1)(d) of 1988 Act and sections 420, 477-A read with section 120-B of the Indian Penal Code. Sanction order to prosecute the petitioner as required under section 19 of 1988 Act was obtained from the Government on 15.10.2004.

4. Mr. Asok Mohanty, learned Senior Advocate appearing for the petitioner being ably assisted by Bikram Kishore Nayak 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 but slag 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 petitioner just to harass him 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 petitioner had got pecuniary benefits due to alleged supply of slag cement by the suppliers 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. It is contended that the contractors who have been examined as witnesses by the Investigating Agency have stated that they collected 43 grade of IDCOL cement from the petitioner in the execution of the civil works assigned to them. 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 01.04.1997 to 14.11.1997, a total of 49,800 bags of OPC 43 grade cement were stated to have been supplied to O.T.D.P., Kashipur by M/s. Sriram Enterprises though the said firm had received 6896 bags of 43 grade cement from IDCOL godown at Rayagada. No documents could be produced by the said firm relating to procurement of the balance 43 grade cements and therefore, there was every justification for the investigating agency in drawing presumption that the rest 42,904 bags were slag cements which were supplied to O.T.D.P. but false certificates were obtained with the connivance of the petitioner who was the store in charge. He further contended that even though supplier Kishore Chandra Mohapatra had not lifted any 43 grade cement from the IDCOL godown at Khaliguda, Rayagada but he had shown to have supplied 5000

bags of 43 grade cement to O.T.D.P. by obtaining false certificates with the connivance of the petitioner. It is further contended that 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 relevant period. 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 who was the store in charge. 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.2,39,520/- 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.2,39,520/- in connivance with the petitioner. 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 01.04.1997 to 14.11.1997, while the petitioner 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 49,800 bags of OPC 43 grade of IDCOL brand cement to O.T.D.P., Kashipur @ Rs.133.70 paisa per bag and M/s. Kishore Kirana Store, Kashipur also supplied 5000 bags of OPC 43 grade of IDCOL brand cement to O.T.D.P., Kashipur @ Rs.133.60 paisa per bag. Certificates on

the credit bills in that respect were given by the petitioner. The first information report was lodged on 13.06.2002 and charge sheet was submitted on 30.06.2004.

The charges framed against the petitioner read as follows:-

Firstly:- That during the period from 01.04.1997 to 14.11.1997 you being the public servant employed as Junior Engineer, O.T.D.P., Kashipur and in charge of stores of O.T.D.P., Kashipur, by corrupt or illegal means and/or by otherwise abusing your position as such public servant, obtained pecuniary advantage of Rs.2,39,520/- for yourself and for the two firm owners namely Shri Kishore Chandra Mohapatra, Proprietor Kishore Kiran Store, Kashipur and Sri D.K. Singh, Proprietor, M/s. Sriram Enterprisers, Rayagada by manipulating records and documents of O.T.D.P., Kashipur 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) of the Prevention of Corruption Act, 1988 and within my cognizance.

Secondly:- That during the aforesaid period you cheated the O.T.D.P., Kashipur by dishonestly inducing it by manipulating records and documents of O.T.D.P., Kashipur showing receipt of IDCOL 43

grade cement and accepted delivery challans and credit bills from Kishore Kirana Store, Kashipur and M/s. Sriram Enterprisers, Rayagada as genuine causing loss to the Government to the tune of Rs.2,39,520/- 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 IDCOL 43 grade cement from the aforesaid two firms causing loss to the Government to the tune of Rs.2,39,520/- 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 namely Kishore Kirana Store, Kashipur and M/s. Sriram Enterprisers, Rayagada to do an illegal act namely received slag cement bags instead of IDCOL 43 grade 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.2,39,520/- 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 27th 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. Kishore Kirana Store, Kashipur had not lifted a single bag of OPC 43 grade cement from the IDCOL godown situated at Khaliguda, Rayagada and M/s. Sriram Enterprises has lifted only 6896 bags of OPC 43 grade cement from the IDCOL godown situated at Khaliguda, Rayagada but the suppliers have supplied 5,000 bags and 49,800 bags cement respectively to O.T.D.P., Kashipur and the petitioner as store in charge had mentioned the receipt of such quantity of cement bags of 43 grade in the stock register. He further stated that the suppliers 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 Kishore Kirana Store and only 6896 bags out of 49,800 supplied bags were lifted in case of M/s. Sriram Enterprises, 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., Kshipur 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, Kshipur. The contractors like Rosan Kumar Singh and Kailash Chandra Mandal have stated that they received 43 grade IDCOL cement for different project works from the petitioner.

The two suppliers Kishore Chandra Mohapatra and Dusmanta Kumar Singh were examined on 04.07.2003 by the Inspector of Vigilance and their statements were recorded. The supplier Dusmanta Kumar Singh has stated that the cements which could not be procured from IDCOL godown, Khaliguda were brought from outside on credit basis and supplied to O.T.D.P. and he further stated that since the purchases were made six to seven years back, the documents relating to such purchases were not available with him and that he had given the income tax return and sales tax clearance certificate to O.T.D.P. office. The supplier Kishore Chandra Mohapatra has also stated that the outside parties were supplying cement to him and accordingly he was supplying to the O.T.D.P. office and since he had received the entire dues, he had not preserved the documents relating to the purchases of cement and that he had given the income tax return and sales tax clearance certificate to O.T.D.P. office. The petitioner 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, 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 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 Raygada 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 petitioner. There is no ground for presuming that the petitioner has committed the offences alleged. There is no strong suspicion against the petitioner. Submission of charge sheet is based totally on unfounded assumptions and it has resulted in causing miscarriage of justice. 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 petitioner and as such, in the interest of justice, the impugned order cannot be sustained in the eye of law.

9. Accordingly, the criminal revision petition is hereby allowed. The impugned order dated 27.02.2008 passed by the learned Special Judge (Vigilance), Jeypore in G.R. Case No. 29 of 2002 in framing charges against the petitioner stands quashed and set aside and the petitioner is hereby discharged from the offences charged.

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S.K. Sahoo, J.

Orissa High Court, Cuttack
The 23rd February, 2018/Sisir