IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 2080 of 2011

Jaya Krishna Champati .... **Petitioner**
Mr. Prasanta Kumar Jena, Advocate

-Versus-

State of Orissa .... **Opposite Party**
Mr. Sitikanta Mishra, ASC

CORAM:
JUSTICE R.K. PATTANAIK

DATE OF JUDGMENT:30.05.2023

1. Instant petition under Section 482 Cr.P.C. is filed by the petitioner challenging the impugned order dated 9th May, 2011 under Anneuxre-1 passed in connection with G.R. Case No. 112 of 2010 by the learned SDJM, Bhubaneswar corresponding to Nayapalli P.S. Case No. 9(9) dated 15th January, 2010 registered under Section 120-B IPC and Sections 10 and 13 of Unlawful (Prevention)Activities Act,1967 (hereinafter referred to as the 'UAP Act') on the grounds inter alia that the same is not tenable in the eye of law and hence, liable to be quashed in exercise of the Courts' inherent jurisdiction.

2. In fact, the informant, namely, IIC, Nayapalli P.S. drew a plain paper F.I.R. dated 15th January, 2010 stating therein that after recovery of some incriminating articles/publications pertaining to Maoist activities after arrest of the wife of Maoist leader Sabyasachi Panda by Balugaon police, a tip off was received regarding storage of such publication and other literature in Tarini Print Point, Nayapalli, Bhubaneswar owned by the petitioner and accordingly, search was conducted at the said place and at the

end of it, 19 sheets of CPI(Maoist) posters printed in Oriya were recovered containing messages of Maoist ideology to encourage and spread unlawful activities with a view to instigate the mass against the State. With details of other facts, the report was lodged, consequent upon which, Nayapalli P.S. Case No. 9(9) was registered and later to the submission of final chargesheet, the learned court below passed the impugned order of cognizance under Annexure-1 which is currently under challenge.

3. Heard Mr. Jena, learned counsel for the petitioner and Mr. Mishra, learned ASC for the State.

4. It is made to reveal from the record that after the local P.S. commenced investigation, it was taken over by the CID, Crime Branch, Cuttack and during investigation, material evidence was collected and then, a preliminary chargesheet was submitted keeping the investigation open and considering the same, the learned court below took cognizance of the offences under Section 120-B IPC and Sections 10 & 13 of the UAP Act, the correctness of which was challenged in CRLMC No. 3001 of 2010 and disposed by order dated 13th May, 2011, whereby, it was set aside being without jurisdiction. According to the petitioner, in order to frame him, a supplementary chargesheet was submitted dated 9th May, 2011 under Annexure-1, upon which, the learned SDJM, Bhubaneswar again took cognizance of the offences under Sections 16, 18 and 20 of the UAP Act. It is pleaded that the impugned order vide Annexure-1 passed by the learned court below was without application of judicial mind to the facts and law. Furthermore, the petitioner claims that there is no iota of any material evidence for taking cognizance of the offences and therefore, order vide Annexure-1 is unsustainable in law, inasmuch as, there has been no compliance of Section 45(2) of the UAP Act and that apart, even if the material evidence collected during

investigation is accepted to be true, the same does not attract Section 15 of the UAP Act so as to take cognizance of the alleged offences. It is alleged that when the initial order of cognizance was set aside by this Court in CRLMC No. 3001 of 2010, somehow or the other to implicate the petitioner, the supplementary chargesheet was filed which is not based on any additional evidence and therefore, the impugned order under Annexure-1 cannot be sustained in law.

5. Mr. Jena, learned counsel for the petitioner submits that due to want of sanction, the order of cognizance based on the preliminary chargesheet was quashed by this Court on 13th May, 2011 and thereafter, without any additional evidence, the supplementary chargesheet was filed with the consent, considering which, the learned court below passed the impugned order i.e. Anneuxre-1. A copy of the order in CRLMC No. 3001 of 2010 is available with the record referring to which Mr. Jena, pleads for quashing of Annexure-1.

6. Mr. Mishra, learned ASC for the State, on the other hand, submits that the order of cognizance dated 17th March, 2010 was interfered with and set aside, since there was no sanction but during the pendency of CRLMC No.3001 of 2010, the supplementary chargesheet was filed which was considered on merit and since in the meantime, sanction was obtained, rightly, therefore, the learned court below took cognizance of the offences under Annexure-1 which is absolutely justified and in accordance with law.

7. In CRLMC No. 3001 of 2010, this Court by order dated 13th May, 2011, set aside the order of cognizance dated 17th March, 2010 on the ground that necessary sanction which is pre-requisite for initiation of the proceeding under Section 196(2) Cr.P.C. read

with Section 45 of the UAP Act was not in place and therefore, it was to be held as illegal without jurisdiction. It was clarified therein that in case of any additional chargesheet submitted by the prosecution, the order shall be construed not to have any bearing on the same with the liberty for the petitioner to challenge it according to law.

8. From the side of the State, addifitional affidavits have been filed pursuant to the directions of this Court from time to time. One of such affidavits dated 7th August, 2014 is in relation to the sanction accorded by the Government indicating therein that the State Government by order dated 16th April, 2011 granted it under Section 196 Cr.P.C. read with Section 45 of the UAP Act for prosecution of the petitioner for the alleged offences while annexing a copy thereof. Again, an affidavit dated 22nd October, 2014 was filed with the clarification that the Government in Home Dept. by letter dated 17th March, 2011 appointed the Additional Secretary to Government, Law Department as the Review Authority to make recommendation in the matter of sanction for prosecution in terms of Section 45(1)(ii) of the UAP Act with a copy of the notification appended to it. As further mentioned in the said affidavit that all the materials against the petitioner were placed before the Additional Secretary to Government, Law Department, who had independent review of it and offered opinion dated 2nd April, 2011 recommending the Home Department for sanction later to which the Principal Secretary accorded it on 8th April, 2011 after being approved by the Hon'ble Chief Minister. The relevant note sheets and the final order dated 16th April, 2011 with respect to sanction have been filed along with the additional affidavit dated 22nd October, 2014. Then affidavit dated 11th November, 2014 was filed reiterating the fact regarding the proposal which was resubmitted as the sanction

was not obtained in accordance with Section 45(1)&(2) of the UAP Act within the time stipulated which was reviewed by the Authority and the same was accepted by the Government and finally approved on 17th December, 2011 with the permission to criminally prosecute the petitioner. Similarly, the note sheets and order of the Government, Home Department were annexed to the affidavit. Referring to the above affidavits, it is submitted by the State that the sanction was obtained from the Government and thereafter it was submitted along with the supplementary chargesheet, whereupon, the learned court below took cognizance of the offences against the petitioner considering the evidence on record and hence, it should not be disturbed.

9. Mr. Jena, learned counsel for the petitioner refers to an affidavit dated 29th September, 2022 sworn by the petitioner pursuant to the direction of this Court dated 26th September, 2022 while challenging the propriety of the proceeding as a whole in view of the impugned order dated 9th May, 2011 in G.R. Case No. 112 of 2010. Mr. Jena submits that when the order of cognizance without prior sanction was held without jurisdiction, the subsequent order of sanction dated 17th October, 2011 post-cognizance makes the mandatory provision of law insignificant by placing reliance on an order of this Court dated 9th March, 2021 passed in CRLMC No. 1473 of 2016, a copy of which is at Annexure-6. It is contended that the State admitted about the invalid sanction as at Annexure-A to the additional affidavit as not to be in conformity with Rules 3 & 4 of the Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008 which is, therefore, an attempt to remedy the same by subsequent order dated 17th December, 2011 much after the order of cognizance passed and that apart, said order dated 16th April, 2008 also did not reveal about any

independent review by the Authority as required under law and hence, the sanction cannot regularize the proceeding before the learned court below. With the above submission, it is contended by Mr. Jena that the impugned order under Annexure-1 is still without jurisdiction.

10. While dealing with the matter of sanction, this Court in **Dandapani Mohanty Vrs. State of Odisha** (CRLMC No. 1473 of 2016) disposed of on 9th March, 2021 which has been referred to by Mr. Jena, learned counsel for the petitioner, it was concluded that sanction of the appropriate Government in view of Section 196 Cr.P.C. and Section 45 of the UAP Act is a condition precedent for taking cognizance, in absence whereof, the order becomes nonest in the eye of law. It proceeded further to observe that at a subsequent stage the sanction order of the Government would not meet the deficiency good as by the time of order of cognizance, there was no such sanction against the accused, for which, the order is a nullity and the consequential proceeding would therefore be nonest in the eye of law. There is no quarrel over the legal position as expressed by this Court in **Dandapani Mohanty** (supra). The said view is reiterated by the Court for the reason that an order of cognizance without sanction is a nullity and therefore, the proceeding stands vitiated and for that matter, any sanction post- cognizance at a later stage cannot regularize it. In the aforesaid case, after the order of cognizance, the case was committed to the Sessions court and at the stage of framing of charge, such a question was raised as to if the proceeding can be held as valid when the very order of cognizance was nonest in the eye of law due to want of sanction even though such sanction was accorded later on. Under such circumstances, it was held that since the consequential proceeding of commitment is based on an invalid order of cognizance due to lack of sanction, both the

orders of the courts cannot stand and as a result, the enquiry pending before the learned Sessions court was quashed.

11. Mr. Jena also relies on the judgment of this Court in **Subhashree Das @ Milli Panda & Others Vrs. State of Orissa** (CRLMC No. 3080 of 2010) dated 19th October, 2011, wherein, the order of cognizance was set aside on the ground that there is no valid sanction although sanction for prosecution was obtained, yet it was not based on a review by a validly appointed authority to carry out independent examination of evidence collected during investigation. However, considering the additional affidavits, it is made to suggest by the State that Additional Secretary to Government in Law Department was appointed as the authority to review the evidence and after a proposal was received from him, the Home Department accorded sanction with the concurrence of Hon'ble Chief Minister. So the said decision in **Subhashree Das @ Milli Panda** (supra) is not applicable to the present case. Now the consideration is whether the order of cognizance after submission of chargesheet having been set aside due to want of sanction, can be subsequent order under Annexure-1 be held as lawful?

12. For proper apprehension, it is apposite reproduce the relevant extract of Section 45 of the UAP Act which is quoted herein below:

> "Cognizance of offences-(1) No Court shall take cognizance of any offence-
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> (i) Under Chapter III without the previous sanction of the Central Government or any officer authorized by the Central Government in this behalf;
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> (ii) Under Chapters IV and VI without the previous sanction of the Central Government or, as the case may be, the State Government, and where such offence is committed against the Government, and

> where such offence is committed against the Government of a foreign country without the previous sanction of the Central Government.
>
> (2) Sanction for prosecution under sub-section (1) shall be given within such time as may be prescribed only after considering the report of such authority appointed by the Central Government or, as the case may be, the State Government which shall make an independent review of the evidence gathered in the course of investigation and make a recommendation within such time as may be prescribed to the Central Government or, as the case may be, the State Government."

13. On a reading of the aforesaid provision, it is clear that no court shall take cognizance of any offence without sanction and as per sub-Section (2) thereof, sanction for prosecution shall be given after considering the report of such authority appointed by the appropriate Government which shall review of the evidence gathered in course of investigation and to make a recommendation within such time as may be prescribed. So, therefore, in absence of sanction, a prosecution cannot lie which is to be insisted upon by a court before taking cognizance of the offence on receiving the chargesheet. In the case at hand, there was no sanction earlier and hence, the order of cognizance was set aside but later on, it was obtained and submitted along with the supplementary chargesheet which is challenged by the petitioner on the ground that the illegality cannot be set at right by such a move of the prosecution. In **Dandapani Mohanty** (supra), the order of cognizance was passed without sanction and thereafter, the case was committed to the Sessions court and since the entire proceeding was invalid for having no sanction, the order of Sessions court declining discharge was set aside along with the order of cognizance. In the present case, however, the facts are dissimilar to **Dandapani Mohanty** (supra), inasmuch as, the order of cognizance was set aside as there was no sanction

and thus held to be illegal and without jurisdiction but a supplementary chargesheet was received under Annexure-4 resulting thereby passing of impugned order under Annexure-1. If the order of cognizance is set aside due to lack of any sanction of the Government, it does not debar investigation and seeking sanction. If after investigation is concluded and chargesheet is submitted and at the time of taking cognizance of the offence, if the court finds that there is no sanction which is a mandatory requirement under law, it can direct a sanction to be placed for deciding the further course of action.

14. In the case at hand, the learned court below ought to have considered the sanction while taking cognizance of the offences before proceeding against the petitioner, a wrong which was rectified by this Court in CRLMC No. 3001 of 2010. It may be said that when the order of cognizance dated 17th March, 2011 was set aside, the situation stood relegated to the stage of investigation. By that means, the investigating authority may collect sanction and submit an additional chargesheet to prosecute the accused. In the event, any such chargesheet is received by a court with the sanction which had not been submitted earlier, in the considered view of the Court, it can consider the material evidence and thereafter take a decision on cognizance. In other words, where investigation was concluded with a chargesheet with no sanction or at the time of order of cognizance, no sanction was called upon, as a result of which, either the Court declined to take cognizance against the accused or having taken cognizance of the offences, the same was set aside by a higher court, in any view of the matter, it has to be held that the material evidence so collected during investigation may be examined with a supplementary or additional chargesheet with the statutory sanction in place. So, therefore, it would not be

incorrect to reach at a logical conclusion that notwithstanding the previous order of sanction dated 17th March, 2010 set aside in CRLMC No. 3001 of 2010, there was no bar for the State to obtain sanction and the investigating agency, such as CID, CB to submit a supplementary chargesheet and therefore, the learned court below for that matter did not commit any error in law while taking cognizance of the offences under Anneuxure-1 vis-à-vis the petitioner.

15. Accordingly, it is ordered.

16. In the result, the CRLMC stands dismissed.

(R.K. Pattanaik)
Judge

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