IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.643 of 2024

(An application U/S. 401/397 of CrPC corresponding to Section 438/442 of BNSS, 2023).

R. Venkat Ramanan @ R. Vanket Ramanan .... ***Petitioner***

-versus-

State of Odisha .... ***Opposite Party***

For Petitioner : ***Mr. Ramani. K., Advocate***

For Opposite Party : ***Mr. R.B. Mishra, Addl.PP***

CORAM:

JUSTICE G. SATAPATHY

DATE OF HEARING : 15.04.2025
DATE OF JUDGMENT: 30.04.2025

G. Satapathy, J.

1. This criminal revision is directed against the impugned order dated 29.08.2024 passed by the learned Chief Judicial Magistrate, Ganjam at Berhampur in G.R. Case No. 366 of 2011-(B) refusing to discharge the petitioner from the criminal case for commission of offences punishable U/S.120(B)/420/ 468/471/34 of IPC r/w. Sections 4/5/6 of Prize Chits & Money Circulation Scheme (Banning) Act, 1978 (in short, "*the Act*").

2. Briefly stated, the allegations against the petitioner are that one K.Chakrapani Reddy of village Chamakhandi lodged a FIR before IIC, Chamakhandi stating therein that on 01.07.2010 the accused V.Lachhmeya Reddy of M/s. Rightmax Technotrade International Ltd. had given assurance to him and other villagers to get triple benefit in 33 months of deposit of any amount. The said company was managed by the petitioner and others and believing the words of V.Lachhmeya Reddy, the informant had deposited Rs.9,00,000/- on 01.07.2010 in the said company and received bond of Rs.14,000/-, Rs.10,000/- and Rs.10,000/- on 10.07.2010, 16.10.2010 and 01.07.2010. Despite deposit of the money, the informant did not receive any bond as regards to his total deposit. It is also stated by him in the FIR that other villagers had deposited money, but when he and other villagers did not get refund of their deposit, he lodged the FIR which came to be registered as Chamakhandi P.S. Case No. 92 of 2011 resulting in commencement of investigation which

ultimately ended in submission of charge sheet against the petitioner and others for commission of offence punishable U/S. 120(B)/420/468/471/34 of IPC r/w. Sections 4/5/6 of the Act.

3. On the basis of materials collected in the investigation, cognizance of offence was taken and some of the accused persons faced trial before the Court of Chief Judicial Magistrate, Ganjam at Berhampur in G.R. Case No. 366 of 2011, however, the said accused persons numbering 04 facing the trial got acquitted in the original case on conclusion of trial. Since the petitioner and five other accused persons did not appear in the original case, the case against them was separated and split up by the learned trial Court vide G.R. Case No. 366 of 2011-(B), but subsequently the petitioner and four others appeared in the split up case, however, only the petitioner filed a discharge petition to discharge him from this case for commission of offence punishable U/Ss. 120(B)/420/468/471/34 of IPC r/w. Sections 4/5/6 of the Act mainly on two grounds that his name

is absent in the FIR with no overt act being attributed to him and the acquittal of co-accused person in the original trial. The learned trial Court, however, by the impugned order rejected such discharge petition of the petitioner giving rise to the present revision.

4. In the course of hearing of the revision, Mr. Ramani. K., learned counsel appearing for the petitioner submits that co-accused standing on similar footing has already been acquitted by the learned trial Court in G.R. Case No. 366 of 2011 and the name of the petitioner being conspicuously absent in the FIR and no overt act having been attributed against the petitioner, the petitioner should have been discharged from the case. However, the learned trial Court erroneously applied the law and rejected the discharge petition of the petitioner which can be rectified by allowing this revision. Accordingly, Mr. Ramani. K., learned counsel for the petitioner prays to allow the revision by setting aside the impugned order and discharging the petitioner from the criminal case.

4.1. On the other hand, Mr. R.B. Mishra, learned Addl. Public Prosecutor, however, strongly opposes such prayer of the petitioner by *inter alia* contending that not only the learned trial Court has passed the order rightly refusing to discharge the petitioner, but also there is a prima facie case against the petitioner for proceeding in this case and, therefore, this revision petition by the petitioner merits no consideration. Accordingly, Mr. Mishra prays to dismiss this revision.

5. After having considered the rival submissions upon perusal of record, since the petitioner assails the impugned order refusing to discharge him from the criminal case mainly on the two grounds such as absence of his name in the FIR and acquittal of co-accused persons, this Court considers it apposite to reiterate the provisions under which an accused can be discharged in a case upon Police report which has been apparently provided in Section 239 of the CrPC/262(2) of the BNSS which reads that if, upon considering the Police report and

the documents sent with it under Section 173 of CrPC/193 of the BNSS and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of 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. The aforesaid provision, if read together with Sec. 240 of the CrPC/263 of the BNSS makes it ample clear that while dealing with a discharge petition and considering charge, the Court has to consider the Police report and the documents submitted therewith U/S. 173 of the CrPC/193 of the BNSS and after giving the parties an opportunity of being heard, the Magistrate has to pass an order to say whether the charge is groundless or there is/are ground(s) for proceeding further against the accused person.

6. It is, however, claimed by the revision petitioner that he had filed a discharge petition U/S. 227 of CrPC., but since the offence alleged is triable

by Magistrate 1st Class and the proceeding arising out of upon a police report involving trial of warrant cases, the revision petitioner can maintain an application U/S. 239 of CrPC till 31.06.2024 or maintain a similar application U/S. 262(2) of the BNSS w.e.f. 01.07.2024 on which date the BNSS came into force, but it is not clarified by the revision petitioner as to when he filed the discharge petition which is in fact very important because Sec. 262(1) of the BNSS prescribes that a discharge petition U/S. 262(2) of the BNSS can be filed by the accused within a period of sixty days from the date of supply of copies of documents U/S. 230 of BNSS which cannot be taken lightly since the statutes provides a thing to be done in a particular way, the same has to be done in that way or not at all. In this case, the revision petitioner has not made it clear when the copies of documents were supplied to him and when he filed the discharge petition which assumes significance in this case and thereby, the challenge of the revision

petitioner to the impugned order refusing to discharge him shall fall on that score.

7. Be that as it may, this Court also considers it to remind that this Court in exercise of revisional jurisdiction is not justified to re-appreciate the facts and documents to substitute its own view, unless the Court passing the order on discharge petition in fact has not considered the Police report and the documents annexed therewith in accordance with the provision governing discharge of the accused, or improperly considered the same to an extent which is unacceptable by the prescribed yardsticks of considering the discharge petition of the accused. Further, it is to be reminded, once charges are framed, the revisional Court should go slow in exercise of revisional jurisdiction to rely upon the documents other than those referred to in Section 239 of the CrPC/ 262(2) of the BNSS to disturb the order on discharge petition of the accused. From a studied scrutiny of provision of Section 239 CrPC/ 262(2) of the BNSS, it is apparently clear that the

Court shall not in a normal case consider any new document/material beyond the Police report and documents submitted therewith U/S. 173 of CrPC/193 of the BNSS.

8. In this case, the petitioner in order to secure his discharge from the criminal case harps on two grounds; firstly, absence of his name in the FIR and secondly, acquittal of co-accused in original trial, but fact remains that FIR is neither an encyclopedia of facts nor is it a report within the meaning of Section 173 of CrPC/193 of the BNSS. On the other hand, the acquittal of co-accused persons is on the basis of the evidence led in the trial which is not relevant in the split up cases like this because the evidence has not been taken in the presence of the accused petitioner. It is, however, contended by the learned counsel for the petitioner that no overt act has been attributed against the petitioner, but neither the Police report nor any documents submitted with the Police report has been produced either by the revision petitioner or the State to justify such plea or

contention. On the other hand, the case was instituted around 14 years before and the present petitioner having not appeared in this case, the case against him was split up. It is also equally well settled that in considering the discharge petition, the Court has definitely power to sift and weigh the evidence for the limited purpose of finding out whether a prima facie case is made out against the accused persons or not. It is trite law that, if the materials placed on record discloses grave or strong suspicion as distinguished from mere suspicion against the accused which has not been properly explained, the Court would be fully justified to frame charge and proceed against the accused in the trial. The test to determine prima facie case against the accused would naturally depend upon the facts and circumstance of each case and it is difficult to lay down any universal rule of application. By a cursory glance of the materials on record, if two views are equally possible and the Court is of the considered opinion that the evidence produced before him gives rise to strong or

grave suspicion against the accused, it would be perfectly within the domain of the Court to frame charge against the accused.

9. This Court is, however, considered it useful to refer to a recent judgment in ***State of Gujurat vs. Dilipsinh Kishorsinh Rao;(2023) 17 SCC 688***, wherein the Apex Court has held in paragraph-7, 8, 9, 10, 11, 12 ,13 and 14 as under:-

> ***7****. It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed.* ***At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material. The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge****. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are*

grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.

8. *At the time of framing of the charge and taking cognizance the accused has no right to produce any material and call upon the court to examine the same. No provision in the Code grants any right to the accused to file any material or document at the stage of framing of charge. The trial court has to apply its judicial mind to the facts of the case as may be necessary to determine whether a case has been made out by the prosecution for trial on the basis of charge-sheet material only.*

9. If the accused is able to demonstrate from the charge- sheet material at the stage of framing the charge which might drastically affect the very sustainability of the case, it is unfair to suggest that such material should not be considered or ignored by the court at that stage*. The main intention of granting a chance to the accused of making submissions as envisaged under Section 227 of the Cr.P.C. is to assist the court to determine whether it is required to proceed to conduct the trial. Nothing in the Code limits the ambit of such hearing, to oral hearing and oral arguments only and therefore, the trial court can consider the material produced by the accused before the I.O.*

10. *It is settled principle of law that at the stage of* ***considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true*** *and evaluate said material in order to determine whether the facts emerging from the material taken on its*

face value, disclose the existence of the ingredients necessary of the offence alleged.

11. *This Court in* ***State of Tamil Nadu Vs. N. Suresh Rajan And Others (2014) 11 SCC 709*** *adverting to the earlier propositions of law laid down on this subject has held:*

> *"29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge,* ***the court has to proceed with an assumption that the materials brought on record by the prosecution are true*** *and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To*

put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

12. *The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged.* ***The expression "the record of the case" used in Section 227 Cr.P.C. is to be understood as the documents and articles, if any, produced by the prosecution.*** *The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.*

13. *The primary consideration at the stage of framing of charge is* ***the test of existence of a prima-facie case,*** *and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the* ***State of Maharashtra Vs. Som Nath Thapa (1996) 4 SCC 659*** *and the* ***State of MP Vs. Mohan Lal Soni (2000) 6 SCC 338*** *has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record*

would certainly lead to conviction at the conclusion of trial."

10. The scope and ambit of the power of revision has been succinctly explained by the Apex Court in ***Dilipsinh Kishorsinh Rao (supra),*** wherein it has been held as under:-

> ***"14.*** *The power and jurisdiction of Higher Court under Section 397 Cr.P.C. which vests the court with the power to call for and examine records of an inferior court is for the purposes of satisfying itself as to the legality and regularities of any proceeding 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 or the perversity which has crept in such proceedings.*
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> ***17****. The revisional court cannot sit as an appellate court and start appreciating the evidence by finding out inconsistency in the statement of witnesses and it is not legally permissible. The High Courts ought to be cognizant of the fact that trial court was dealing with an application for discharge."*

11. On a careful scrutiny of the impugned order on the backdrop of the principle narrated above, it appears that the learned trial Court has taken into consideration the materials available on record by observing *inter alia* that the present revision petitioner is one of the Director of the said

company and the informant had deposited money in the said company, but did not get back the said amount and the IO on due investigation has submitted charge sheet against the present petitioner and other accused persons. Thus, on a careful conspectus of the impugned order in juxtaposition with the principle laid down by the decisions referred to above on the face of facts and merit of the case, this Court does not find any illegality or perversity in the impugned order to frame charge and proceed against the accused persons. Nonetheless, it is informed by the learned counsel for the petitioner that in the meanwhile one or two witnesses have already been examined and therefore, at this stage it would not be proper to interfere with the impugned order merely because some of the co-accused persons have been acquitted of the charges which in fact had been arrived at on appreciation of evidence led in the original case, but not in the present case and therefore, there is no merit in the revision petition by the petitioner.

12. In the result, the present revision stands dismissed on contest, but there is no order as to costs.

(G. Satapathy)
Judge

Orissa High Court, Cuttack,
Dated the 30th day of April, 2025/S.Sasmal