

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1887 of 2022

(In the matter of an application under Section 482 of the Code of Criminal Procedure)

Rabindra Kumar Jena Petitioner

Versus

Republic of India (CBI) Opposite Party

Advocate(s) appeared in this case:-

For Petitioner : Mr.A.Lekhi, Senior Advocate

For Opp.Party : Mr.S.Nayak, Advocate (CBI)

CORAM : JUSTICE B.P. ROUTRAY

सत्यमेव जयते

JUDGMENT

6th February, 2023

B.P. Routray, J.

1. The Petitioner, accused of commission of offences under Section 120-B, 409, 420 of the Indian Penal Code (IPC) and Section 4,5 & 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (hereinafter referred as '1978 Act'), has prayed for quashing of the criminal proceeding initiated against him in C.B.I., SPE, EOB-VII, Bhubaneswar Case No.RC.49(S)/2014-Kolkata dated 15th June 2014, as

well as the charge-sheet dated 2nd March, 2021 indicting him for aforesaid offences in the court of the learned Special Judge, C.B.I.-1, Bhubaneswar and the issuance of process against him.

2. The Petitioner was a Member of Parliament elected from Balasore constituency in the State of Odisha.

3. Initially, different cases relating to chit fund scam were registered at different local police stations in Odisha against the principal accused Prashant Kumar Dash and Seashore Group of Companies, which were subsequently taken over by the CBI pursuant to direction dated 9th May, 2014 of the Supreme Court of India passed in W.P.(Civil) No.401 of 2013 and W.P.(Civil) No.413 of 2013. The offences registered against Prashant Kumar Dash and Seashore Group of Companies are under Sections 420, 468, 471, 406, 467, 417, 418, 422 and 120-B/34 of the Indian Penal Code (IPC) and Section 4,5,6 of the 1978 Act. The allegations against Prashant Kumar Dash and his Seashore Group of Companies are that, they misappropriated huge amounts from general public dishonestly and fraudulently by alluring common public depositors through various schemes with false promise of higher rate of interest. They collected money from general public by way of illegal deposits and duped them without any refund as promised to them.

4. Initially, charge-sheet dated 7th March, 2015 was submitted against eighteen accused persons including Prashant Kumar Dash and different Seashore Group of Companies. A supplementary charge-sheet was filed on 12th January naming six more accused persons. The name of present Petitioner did not find place therein. Again, further supplementary charge-sheet dated 2nd March, 2021 was submitted by the CBI, wherein the name of present Petitioner-Shri Rabindra Kumar Jena was arraigned. It is alleged that the Petitioner and Prashant Kumar Dash hatched a conspiracy along with others to influence general public for making such deposits leading to subsequent misappropriation. It is also alleged that a sum of Rs.1.75 Crores was diverted to the Petitioner unauthorizedly during the period from 3rd September to 29th October 2011, out of the money received through such public deposits by Prashant Kumar Dash and Seashore Group of Companies. The Petitioner was neither a member of M/s Seashore Multipurpose Cooperative Limited nor any other Cooperatives of Seashore Group of Companies at any point of time and such transfer of funds in favour of the Petitioner is in violation of the Odisha Self-help Cooperative Act, 2001 and against the Memorandum of Associations. The materials reflect that said amount was paid by Seashore Group to the Petitioner for extending local

support for unhindered running of illegal business of Money Circulation Schemes of Seashore Group.

5. Petitioner's case is that, the supplementary charge-sheet dated 2nd March, 2021 has been submitted after seven years from the date of registration of F.I.R. by the CBI and after six years from submission of the initial charge-sheet dated 7th March, 2015. The only evidence gathered against him during those subsequent years after submission of the first charge-sheet is the statements dated 15th November, 2016 of three witnesses, namely, Jaykishore Mohapatra, Jalendra Sahoo and Nabakishore Acharya, who were the employees of Seashore Group, recorded under Section 161 of the Cr.P.C. It is explained by the Petitioner that Rs.1.75 Crores, allegedly received by him from Seashore Group to garner local support for unhindered activities of Seashore Group of Companies, is without any basis and material. The Petitioner borrowed Rs.1.75 Crores from Seashore Group of Companies during the year 2011-12 in order to meet his personal expenses and against the same, Seashore Group of Companies availed loan of Rs.1.855 Crores from Petitioner's Group of Companies and the transactions have been duly reflected in the documents submitted to Income Tax Department. The prosecution has attempted to attribute undue criminality in the

transaction through imaginary and concocted stories and as per the observations made by this Court in ABLAPL No.823 of 2017, while releasing the Petitioner on anticipatory bail, the Petitioner is to get additional Rs.10 lakhs from Seashore Group of Companies. According to the Petitioner, before December 2013 he was never a member of any political party and not even remotely associated with any political party, and for the first time he was elected as the Member of Parliament in the year 2014. Prior to that, he never had hold any position either in the Government or in any Public Authority and therefore, the question of providing any political patronage or support or influence on the public in favour of Seashore Group to collect deposits does not arise.

The Petitioner initially was working in Balasore Alloys Limited as a Graduate Engineer. On 11th November, 2011 he left the employment as Managing Director of Balasore Alloys Limited in order to look after his own business, i.e. his companies in the name and style of M/s Supratik Estates Pvt. Ltd. (renamed as 'Supratik Infra Ventures Pvt. Ltd.), Supratik Stocks and Securities Pvt. Ltd., Jai Matadi Exports Pvt. Ltd. and Kripalu Trade Link Pvt. Ltd. Between the period from 3rd September, 2011 to 29th November, 2011, due to crunch of liquid funds in his company, he availed personal loan to the tune of Rs.1.75 Crores

from Seashore Group of Companies including its other entities like Seashore Multipurpose Cooperative Ltd. and Sanket Investment and Marketing Ltd. in ten tranches. This loan amount was utilized to bear educational expenses of his children and other ancillary requirements. Subsequently, this loan amount was adjusted in the form of loan advanced to Seashore Group of Companies from the companies owned by the petitioner and his family members, i.e. Kripalu Trade Link Pvt. Ltd. and Jai Matadi Exports Pvt. Ltd. on different dates in between 25th November, 2011 to 30th March, 2012 with additional sum of Rs.10 lakhs, and there are several business transactions including transfer and retransfer of funds between Petitioner's Group of Companies and Seashore Group of Companies. Even after adjustment of Rs.1.75 Crores, the Seashore Group of Companies is still required to pay back a further sum of Rs.11.89 lakhs to Petitioner's Group of Companies. All those business transactions were held prior to joining of the Petitioner in the political party and elected as Member of Parliament. During the year 2011-12, when such money transactions took place between two groups of companies, neither any criminal case was registered against Seashore Group of Companies nor any allegations of duping the public was there against Prashant Kumar Dash. So all such allegations leveled against the

Petitioner in the charge-sheet, particularly when he was neither a member of any political party nor was holding any position either in Government or politically, the question of influencing general public does not arise and the only material alleged through the statements of those witnesses recorded under Section 161 Cr.P.C. are intended to damage the reputation and image of the Petitioner as a member of the political party as well as a gentleman of the locality to settle certain political vendetta.

6. Mr. Lekhi, learned Senior Counsel for the Petitioner urged that, the only purported evidence available against the Petitioner is the statements of those three witnesses, namely, Jaykishore Mohapatra, Jalendra Sahoo and Nabakishore Acharya, which is even accepted as truthful, still no offence can be made out against the Petitioner either under the IPC or under the 1978 Act since no material is there to reveal how and when local support was garnered by the Petitioner and no positive assertions is there about the meeting of minds or agreement between the Petitioner and Prashant Kumar Dash to commit such illegal act of collection of deposits from public. Mr. Lekhi further submits that the subsequent charge-sheet submitted against the Petitioner is without any material worth credence, symbolizing any nexus between the

Petitioner and alleged commission of offences by Prashant Kumar Dash or Seashore Group of Companies and the charge-sheet is a desperate attempt to malign the Petitioner for political purpose. When the Petitioner has been dropped from indictment under Sections 468, 471, 406, 467, 417, 418, 422 and 34, IPC, the attempt of prosecution to arraign him for rest of offences with the aid of criminal conspiracy is also unsubstantiated in absence of any specific material to show any semblance of connection either to induce any gullible investor or general public to make the deposit or any fraudulent/dishonest intention. It is also submitted that the offences under Sections 409 and 420 of the IPC cannot co-exist simultaneously simply because of their required ingredients. And so far as the offences under the 1978 Act are concerned, the very ingredient for the same, i.e. the materials relating to promotion of illegal Money Circulation Schemes or Prize Chits is completely absent. In other words, the statements of the witnesses are not only lacking satisfaction of required ingredients but also are without any supporting material fact relating to promotion of alleged schemes.

7. Mr.Nayak, learned counsel for the CBI submits that the Petitioner by criminal conspiracy with Prashant Kumar Dash has received Rs.1.75 Crores in his personal savings bank account from Seashore Group of

Companies, i.e. M/s Sanket Investment and Marketing Limited, M/s Seashore Multipurpose Cooperative Limited and M/s Seashore Ganjam Multipurpose Cooperative Limited out of the public deposits collected unauthorisedly and illegally for local support and smooth running of such illegal money circulation schemes in Balasore area. The Petitioner was/is an influential person in that local area with his political background, and ample materials are there to reveal so. Mr. Nayak further submits that even accepting for a moment that the Petitioner did not have any political position, the same does not mean that he did not have any influence on local public at Balasore in as much as he belongs to the family of former Speaker of Odisha Legislative Assembly. It also does not mean that a person would not be influential without a political background. When the offences like cheating and misappropriation of money with criminal conspiracy are there and bank transactions are clear to reveal transfer of money, then nothing more remains in the contention of the Petitioner than to face criminal prosecution for the offences alleged against him.

8. A number of decisions are cited from both sides in support of their respective contentions and all of them are not required to be discussed here. But the fundamental principles, as set out in the case of

State of Haryana vs- Bhajan Lal, (1992) Supp 1 SCC 335, are relevant

to be reproduced here. They are as follows:

“102. (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

9. In the case at hand the receipt of amount to the tune of Rs.1.75 Crores by the Petitioner as hand loan amount from Seashore Group of Companies is not disputed. The detailed transactions are to the effect that, he received Rs.90,00,000/- from M/s Seashore Multipurpose

Cooperative Limited, Rs.65,00,000/- from M/s Seashore Ganjam Multipurpose Cooperative Limited and Rs.20,00,000/- from M/s Sanket Investments and Marketing Limited in his personal S.B. Account. It is the contention of the Petitioner that a sum of Rs.1.855 Crores were given back against such loan amounts taken by the Petitioner to different companies of Seashore Group from his Group of Companies. This contention of the Petitioner of course requires a thorough examination in course of the trial. Because, repayment of such amount as contended by the Petitioner are not that clear through materials collected during investigation. As per the allegations, receipt of the amount by the Petitioner is without any document or agreement and he was not eligible to receive such amount from the Cooperatives without being a member of any of the Cooperatives. It is even alleged that the Petitioner was not associated with M/s Jai Matadi Exports Ltd. and M/s.Krupalu Trade Link Pvt. Ltd. at any point of time through which the refund transactions were made with Seashore Group of Companies. It is again a matter of appreciation in course of trial.

10. Secondly, it is alleged that the Petitioner received such huge amount of money from Seashore Group of Companies for providing local support and protection for unhindered running of those companies

in Balasore area by collecting deposits from general public illegally, as a consequence of criminal conspiracy between him and the principal accused Prashant Kumar Dash. It is true that Prashant Kumar Dash and his Seashore Group of Companies have been accused of commission of offences under Sections 420/468/471/406/467/417/418/422/120-B/34 IPC and Section 4, 5, 6 of the 1978 Act. To attract the offence of criminal conspiracy read with cheating and other offences, circumstantial evidences, apart from the statements of witnesses, are relevant factors. As per the Petitioner, he joined in the local political party in December, 2013 and elected as Member of Parliament in May, 2014 and prior to that he served as Managing Director of Balasore Alloys till November, 2011. In between November, 2011 to December, 2013 he worked for his own Group of Companies. Here the Petitioner does not explain what relationship he had with Prashant Kumar Dash or his Group of Companies that prompted Seashore Group of Companies to give such huge amount of loan to the Petitioner personally. So, the receipt of money by the Petitioner gives prima facie presumption against him that he had a close relationship with Prashant Kumar Dash. This may be a business relationship or otherwise. But no document could be surfaced during investigation to reveal the nature of business between

the Petitioner with Seashore Group of Companies. It is not that the money was received through the companies owned by the Petitioner, but by him personally. So the otherwise inference is that he must have a close nexus with Prashant Kumar Dash, the principal accused. If the relationship is not purely business or official, then it must be for any suspicious purpose and this needs to be examined in course of trial. Therefore all such contentions put forth by the Petitioner that no material has been brought against him in course of investigation to reveal his association with Prashant Kumar Dash to influence general public for smooth collection of deposits are without merit.

11. So far as the commission of offences under 1978 Act is concerned, it is submitted on behalf of the Petitioner that neither any material regarding promotional activities is there against him nor any other activities are alleged against him. This contention of the Petitioner is again found without substance. As stated above, if he has a close nexus with Prashant Kumar Dash for which such a huge amount has been given to him by Prashant Kumar Dash through his companies, which still remains unexplained, then the presumption would be that it is for the illegal money circulation business in Balasore area. Besides, it is

also revealing from the allegations that the Petitioner had attended public meetings with other accused persons.

12. It is well settled that the power under section 482 Cr.P.C. has to be exercised by the High Court, inter alia, either to prevent the abuse of process of law or otherwise to secure the ends of justice. The power under section 482 Cr.P.C. are though very wide and undefined, but great caution is required in its exercise. Before forming an opinion to quash a criminal proceeding, more particularly in a case like the present one involving economic offences, this court must evaluate the materials surfaced in course of investigation whether the ends of justice would justify the exercise of inherent power. As discussed in earlier paragraphs, when a prima facie case is found made out against the petitioner much less economic offences, I do not see any reason in favour of the petitioner to warrant interference for quashing of the criminal proceeding or the charge-sheet submitted by the prosecution.

13. Resultantly, the CRLMC is dismissed.

14. It is made clear that all such observations made above in this judgment regarding merits of the case are for the limited purpose of this

application and the trial court shall not be influenced by any such observation while proceeding in trial.

(B.P. Routray)
Judge

//C.R.Biswal, Secy.//

