

IN THE COURT OF THE ADDL. SPECIAL JUDGE (VIGILANCE):  
BHUBANESWAR.

PRESENT:-

Sri I.K. Das, LLB,  
Addl. Special Judge, Vigilance,  
Bhubaneswar.

T.R No. 44/62 of 2007-05

(Arising out of Bhubaneswar Vigilance PS Case No. 20/2000)

Date of argument- 13.11.13

Date of Judgment- 22.11.13

S t a t e  
Vrs.

1. Ananta Pani, aged about 60 years  
S/o Late Sadasiv Pani, resident of Vill: Bidurpur  
PS: Delanga, Dist: Puri
2. Adwaita Acharya, aged about 47 years  
S/o Laxman Acharya, resident of Vill: Nariso  
PS: Balipatna, Dist: Khurda

....Accused person

Advocate for the prosecution-	Sri K.K. Kar, Spl. P.P., BBSR
Advocate for Accused Ananta Pani	Shri B.K. Pani & Associates
Advocate for Accused Adwaita Acharya	Shri K.C. Swain & Associates.
Offence Under Sections:-	Sec. 13 (1) (d) read with 13 (2) of PC Act and Sec. 409/120 B/34 IPC.

J U D G M E N T

Both the accused persons are facing trial in this case on the basis of one FIR filed against both of them by one A.K. Das, Inspector of Police, Vigilance Bhubaneswar Division on dtd. 31.3.2000 before the Superintendent of Police, Vigilance, Bhubaneswar Division.

2. As per the prosecution allegation, accused Ananta Pani was serving

as Revenue Inspector under Banamalipur Revenue Circle and was holding additional charge of Abhayamukhi Revenue Circle since November, 1999. The super cyclone on dtd. 29.10.99 and 30.10.99 devastated the coastal Odisha and the Government was pleased to sanction house damage assistance to the persons whose houses were damaged due to cyclone. Before disbursement of cash to the beneficiaries the revenue inspectors were entrusted with the duty to verify the losses of the applicants who had applied for house damage assistance. In the manner, many houses at village Nariso under Abhayamukhi revenue circle were damaged and the villagers applied to avail the house damage assistance from the Government. The Tahasildars were entrusted with the duty for disbursement of house building assistance to the individuals after verification of the report submitted by the revenue inspector. It was noticed that one Dayanidhi Sarangi of village Nariso had submitted one application for availing house damage assistance and accused Ananta Pani, RI had enquired into the matter on dtd. 10.12.99 and recommended that the house of Dayanidhi Sarangi was partially damaged in the cyclone. Accordingly, cash of Rs.1000/- was disbursed in favour of Sri Sarangi on dtd. 24.3.2000 on being recommended by Ananta Pani and being identified by one Adwaita Acharya of the same village. But, it was revealed that Dayanidhi Sarangi expired during first week of January, 2000 and by the time of disbursement in his favour, he was no more. Thus, it is alleged that both Ananta Pani and Adwaita Acharya entered into a criminal conspiracy and thereby permitted payment of Rs.1000/- in the name of the dead person-Dayanidhi Sarangi from Government exchequer. On the basis of such FIR, Superintendent of Police, Vigilance Bhubaneswar Division instructed OIC, Bhubaneswar Vigilance PS to register a case for the offence u/s 13 (2) readwith Sec. 13 (1)(d) of Prevention of Corruption Act and u/s 409/120 B/34 IPC and to take up investigation. On the same day, OIC, Vigilance PS Sri Gangadhar Pal registered the case under the offence as stated above and Inspector A.K. Das was directed to take up investigation of the case.

During the course of investigation, police examined the witnesses, seized some application forms, the service book of accused Ananta Pani and some

other papers. After completion of investigation, police could not collect sufficient material and therefore, submitted Final Report which was received by the Court on dtd. 5.9.01. But, the Court on perusal of the Final Report passed order on dtd. 7.4.03 that non-availability of the application which was seized during investigation and was released on zima of accused-Ananta Pani is not a ground to leave him scotfree and therefore, the Court did not accept the Final Report and on the other hand, directed that the sanction be obtained from the competent authority to further proceed in the case. After obtaining the sanction order, the Court took cognizance of the offence as stated above and issue summons to the accused persons to face the trial.

3. Plea of the defence is complete denial to the allegation and of false implication by the Vigilance Police.

4. Points for determination are as follows:-

(i) Whether accused-Ananta Pani being a public servant employed as RI, Banamalipur Revenue Circle in the year 1999 misappropriated the Government money of Rs.1000/- which was meant for distribution in the super cyclone in favour of one Dayanidhi Sarangi ?

(ii) Whether the said accused being a public servant employed as above, on the same day, time and place by corrupt and illegal means and by otherwise abusing his position as such public servant obtained for his pecuniary advantage to the extent of Rs.1000/- from Government exchequer in the name of one Dayanidhi Sarangi ?

(iii) Whether he being a public servant employed as above in the year 1999 during super cyclone had entered into conspiracy with one Adwaita Acharya of village Nariso who identified late Dayanidhi Sarangi in order to grab the Government money of Rs.1000/- in the name of late Sarangi who died much before the super cyclone ?

5. In order to prove its case, prosecution examined 7 witnesses, out of

which P.W.1 was the District Magistrate, Khurda who accorded sanction to prosecute the case. P.W.2 was the Tahasildar from whose custody the applications were seized. P.W.3 is one Ward-member in the village Nariso. P.W.4 is the son of late Dayanidhi Sarangi. P.W.5 is the Statistical Clerk posted in UGPHC, Balipatna who produced the death register for the year 1999 before the police during investigation. P.W.6 and 7 are I.Os of the case.

6. P.W.1 in his evidence said that all the documents in relation to the case was placed before him by S.P., Vigilance and after perusal of the same and having been satisfied he accorded sanction for prosecution. But, in his cross examination he admitted that the sanction order Ext.1 does not disclose that he verified the police papers before according sanction. He is also unable to say the name of the IO with whom he discussed regarding merit of the case. His evidence further reveals that after completion of investigation, final report was submitted before the Court, but the Court having not been satisfied directed him to accord sanction. It is also his admission that he cannot say if the original application of late Dayanidhi Sarangi was seized by the police for production before him and was left in zima of the accused RI. P.W.2 in his evidence said that in the year, 2000 he was working as Tahasildar, Bhubaneswar. Accused Ananta Pani was working as RI, Abhayamukhi revenue circle. As per his direction, the dealing assistant produced 6 nos. of application forms before the police which were seized. The service book of the accused RI was also seized in his presence. P.W.3 in his evidence said that he being the Ward-member in Ward No.8 under Nariso Gram Panchayat identified Labanyabati Sarangi wife of Dayanidhi Sarangi as beneficiary under house damage assistance scheme. He also identified some other beneficiaries and proved his signature on the application forms.

7. P.W.4 is the most important witness being the son of Dayanidhi Sarangi. He said that his house was damaged during the super cyclone and therefore, he alongwith his father and younger brother applied for Government assistance for repair of house. He further said that his father died on 21.12.99 and during his lifetime he did not get any amount under this scheme. He said that the amount shown to be disbursed in favour of his father and mother-Labanyabati are

misappropriated. In his cross examination he gave a different view that his mother Labanyabati had received Rs.1000/- or Rs.2000/- towards house damage assistance. P.W.5 produced the death register before the police and said that the necessary entry regarding the death has been entered by him in page No.65 and 66. P.W.6 took charge of investigation of the case from P.W.7 and he said that during scrutiny of the documents he found that Late Dayanidhi Sarangi was the applicant under house damage assistance scheme under application form No.40. He said that Rs.1000/- was paid to Dayanidhi who expired on 21.12.99. The said application was seized and left in zima of accused Ananta Pani by P.W.7. But, the said application was not available when he took up investigation of the case. As the application form was most vital for the purpose of prosecution against the accused persons and it was not traced, he submitted final report due to insufficient evidence. In his cross examination, this witness said that he received xerox copy of the application form alongwith zimanama from P.W.7, but the said xerox copy is also not available in the case record. P.W.7 is the initial IO of the case. He said that although Dayanidhi expired on 22.12.99, the cyclone relief of Rs.1000/- was received by him on 24.3.2000. Hence, he lodged FIR before the S.P., Vigilance. He being directed by the S.P., Vigilance took up investigation of the case and seized the application of Dayanidhi Sarangi and left in zima of the accused-RI, Ananta Pani. He also seized some other applications for comparison of signature of both the accused persons. The service book was seized in order to ascertain the service of accused-RI and his transfer. He said that although, the accused was in zima of the original application form he did not return the same for which he issued notice u/s 160 Cr.P.C. In spite of the notice, accused Ananta did not produce the application form No.40. The copy of said notice is neither seized by him nor produced in the Court. Learned defence counsel during cross examination of this witness has brought out from his mouth that the seizure list and zimanama in respect of the original application No.40 is also not available in the record. By referring his case diary dtd. 13.9.2000, he said that he seized the application on 31.3.2000. The zimanama is also not available in the record. The xerox copy of the application which was handed over in the office is also not

available. It is his admission that although he seized the original application and left it in zima of accused-RI as per the case diary, but not a single witness has been cited or examined by him to support such seizure and zima. His evidence further disclose that he issued notice u/s 160 Cr.P.C to the accused-RI to produce the original application which was left in his zima, but, neither the copy of notice nor any intimation to higher authority in that respect is available in the case record. He admitted that although he conducted most part of the investigation, the sanctioning authority has not discussed with him before according sanction. Learned defence counsel has brought out from his mouth that no intimation was received by him from the Court to file any protest petition to the final report when the final report was submitted in the Court. No step has also been taken to recover cash of Rs.1000/- from the accused-RI as he misappropriated the cash. He himself being the investigating officer failed to say as to who was entrusted with the money for disbursement in favour of the beneficiaries. This being the evidence available in the record from the side of the prosecution, let me examine now if the prosecution has been able to prove the case against the accused persons.

8. During the course of hearing of argument, learned defence counsel urged that the case against the accused persons is not maintainable under law and that as because the sanction order has been obtained from the competent authority by the direction of the Court. By referring to the order dtd. 7.4.03 passed by this Court, learned counsel argued that the sanctioning authority has not accorded sanction independently on application of his mind independently by referring to the documents submitted before him. Prior to it, on perusal of the same documents and materials on record, prosecution was of opinion that there was no material for filing charge sheet against the accused persons and therefore, submitted final report. But, as per the direction of the Court, the sanctioning authority was compelled to accord sanction. Such order is purely mechanical and is vitiated in law. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon to take a decision one way or the other. Defence relied on the decisions as reported in

**AIR 1997 (SC), 3400 in the case of Mansukhlal Vithaldas Chauhan vrs. State of Gujarat, AIR 2011 (SC), 3056 Arun Kumar Aggarwal vrs. State of Madhya Pradesh & others, 2000 (1) Crimes 56, Prabhulal Gaur vrs. State of Rajasthan, (1979) 4 SCC, 172 Mohd. Iqbal Ahmed vrs. State of Andhra Pradesh, (2009) 44 OCR (SC), 205 Krishan Lal vrs. Dharmendra Bafna & another.**

9. Before entering into the factual aspect of the case, learned defence counsel has argued that in the instant case, the investigation and trial are irregular and illegal basing on the principle as laid down by the Hon'ble Courts as stated above. In the decision, as reported in (1979) 4, SC 172 (supra), Hon'ble Apex Court held that in absence of valid sanction prosecution is void ab initio. In AIR 1997 Supreme Court (Supra), Hon'ble Court held that in absence of valid sanction normally the case is remitted to the lower Court, but as the case before the Hon'ble Court was 14 years old, Hon'ble Court held that that taking into consideration the pendency of case for a long period, it should not be permitted further to continue and therefore, acquitted the accused. It is further argued that the learned Special Judge, Vigilance after obtaining final report should have invited a protest petition from the informant as reported in 2009 44 OCR (SC), 205 (supra). Without adopting the legal procedure, this Court directed prosecution to obtain sanction which is irregular in procedure. Thus, on relying on the above decisions and taking into consideration the irregularities, learned defence counsel urged that the accused persons are entitled for acquittal in absence of valid sanction.

10. It is further argued that in the instant case, one A.K. Das, Inspector of Police reported the matter to the Superintendent of Police, Vigilance which was accepted as FIR. But, the same informant was directed to take up investigation by the Inspector of Police, Vigilance as appears from the endorsement on the body of FIR. Said A.K. Das has been examined as P.W.7. In his evidence, he admitted that he being the informant was also directed to investigate the case. Of course, P.W.6 took up investigation of the case from Sri A.K. Das towards the last part. Such procedure i.e. the informant being the investigating officer of the case is also

illegal under law. In the decision reported in 2005 (31) OCR, Supreme Court, 257, Hon'ble Apex Court held by referring to another decision

in **Megha Singh vrs. State of Haryana, (1996) 11 SCC 709**, the investigation was conducted by the very same police official who had lodged the complaint. Deprecating the practice, this Court observed that in the absence of independent corroboration, no conviction can be recorded in such cases. In the opinion of this Court, it was a “disturbing feature of the case”. The conviction of the accused was, therefore, set aside and he was ordered to be acquitted.

The same principle has been accepted by Hon'ble High Court of Orissa as reported in **2011 (Supp.II) OLR-317 in the case of Chirantan Sahu vrs. State of Orissa**. Hon'ble Court while dealing with a case u/s 482 Cr.P.C to quash the proceeding on the self same ground holding that no police officer ought to be permitted to act both as an “informant” as well as the “Investigating Officer”. Rules of natural justice require that in the event of police officer become the informant, he should not conduct the investigation in the said case, since in the said case the police officer would have to give evidence as a witness in course of trial. Hon'ble Court quashed the proceeding against the petitioner taking into consideration that such procedure will vitiate the principle of natural justice. On the basis of such principles laid down by Hon'ble Court, learned counsel for the accused persons argued that in the instant case prosecution failed to comply with the basic principles of law and therefore, the proceeding is not fair resultantly the accused persons should be acquitted from the instant case. I find sufficient force in the contention of the defence which has not been challenged by any means from the side of prosecution. The allegation in the instant case is self same, although two offences i.e. u/s 409 IPC and Sec. 13 (2) readwith Sec. 13 (1)(d) of Prevention of Corruption Act has been charged against both the accused persons. Therefore, it will be proper to assess the evidence to test if prosecution has been able to prove the case against both the accused persons.

11. Admittedly, there was a super cyclone on dtd. 29/30.10.99 which

devastated the coastal Odisha and many houses were damaged. Government of Odisha also opened a scheme for advancing some money for repair of the damaged houses. The allegation against both the accused persons was that they misappropriated cash of Rs.1000/- by showing disbursement of Rs.1000/- in favour of a dead person. It is incumbent on the part of the prosecution to prove that RI-Ananta Pani being a public servant was entrusted with money for disbursement to the beneficiaries and committed criminal breach of trust by dishonestly misappropriating the said amount. It is the case of the prosecution that Tahasildar was entrusted with the money and he was disbursing the amount to the beneficiaries on identification of the accused persons. There is at all no evidence on record that the money was with the accused persons and that they misappropriated the amount. Further, I find in the FIR that RI was entrusted with the duty of assessing the extent of damage of houses and to report to the Tahasildar. But, the concerned Ward members were identifying the beneficiaries by the time of disbursement of cash. It is available in evidence that late Dayanidhi Sarangi expired on 21/22.12.99, but cash was disbursed in his favour on 24.3.2000. If it is accepted that accused-RI enquired into the damage of the house of late Dayanidhi and submitted his report on 10.12.99, it does not appear that he committed any illegality as by the time he submitted report Dayanidhi was alive. In the FIR, it is further stated that on 24.3.2000, cash was disbursed in favour of late Dayanidhi by the Tahasildar on being identified by accused-Adwaita Acharya, but in presence of accused-RI. In this connection, the evidence of P.W.3 is very much material. He said that he being the Ward member was responsible to sign on the application form of the beneficiaries. The wife of late Dayanidhi namely, Labanyabati was an applicant to get house damage relief assistance. He categorically stated that Dayanidhi Sarangi was belonging to his ward but he had not signed on his application form. Therefore, a doubt arises as to how one outsider Adwaita Acharya was permitted to identify Dayanidhi to receive the cash even though he was not the Ward member of Ward No.8 of Village Nariso. P.W.3 also did not say that by the time of disbursement of cash RI was remaining present. It is difficult to accept as to how the case of Dayanidhi

was considered by the Tahasildar in a different way and he disbursed the cash on being identified by accused Adwaita Acharya who was not competent for such identification being not Ward member of the same Ward.

12. Originally final report was submitted by the police as the most material document i.e. the application form of Dayanidhi was not traced. Till the conclusion of trial, the said application could not produced in the Court. P.W.6 in his evidence said that application form No.40 was belonging to late Dayanidhi. But, the seizure list prepared by P.W.7 shows that the application No.40 was belonging to Labanyabati. There is no material on record that someone managed to take away the application of Dayanidhi and in its place substituted the application of Labanyabati. The explanation of P.W.7 that after seizure of application of Dayanidhi on dtd. 31.3.2000, he left the same in zima of accused -RI, Ananta Pani. Surprisingly enough neither the seizure list nor the zimanama are available on record. No witness has been examined in whose presence P.W.7 seized the lost application. P.W.2 was the Tahasildar, BBSR when police seized the documents from his office. He deposed that 6 nos. of application forms were seized by the police, but he does not say that the application of late Dayanidhi was also seized by the police from his office.

13. Learned defence counsel has also brought out from the mouth of P.W.7 that he has not examined any witness regarding seizure of application form of Dayanidhi or giving the same in zima. The said application form could have shown as to who identified Dayanidhi at the time of disbursement of cash even if he was dead. It is further submitted that the application forms having been submitted by the beneficiaries were in custody of Tahasildar and a register to that effect disclosing the name of the beneficiaries must have been maintained in the said office. Even if the application form is not traced, the register could have shown some light as to if Dayanidhi applied for house relief assistance, but prosecution also failed to produce the said register in the Court. Thus, the case from its initiation remains in doubt and many presumptions which cannot be accepted as legal evidence. Prosecution should have taken steps to realize cash of Rs.1000/- from the accused persons under OPDR Act, if they misappropriated the

amount which is also not done in this case. Learned defence counsel basing on the manner of investigation and latches in vital part of investigation urged that the accused persons are entitled for acquittal as prosecution miserably failed to prove its case. He relied on a decision reported in **AIR 2013 Supreme Court, 2348 in the case of Karan Singh vrs. State of Haryana & another**. Hon'ble Apex Court in the said decision held that in every case investigation must be judicious, fair, transparent and expeditious to ensure compliance with the rules of law. Hon'ble Apex Court also observed that every discrepancy in investigation does not weigh upon the Court to the extent that it necessarily results in the acquittal of the accused, unless it is proved that the investigation was held in such manner that it is dubbed as "a dishonest or guided investigation". It again creates doubt as to how Labanyabati was paid Rs.1000/- towards house damage assistance and again her husband late Dayanidhi was sanctioned the same amount for the same house. Materials available on record do not prove that accused Ananta Pani and Adwaita Acharya were entrusted with cash of Rs.1000/- and they entered into a criminal conspiracy to swallow the said amount and thereby misappropriated the same by showing on record that the disbursement was made in favour of late Dayanidhi Sarangi.

14. On thorough scrutiny of evidence available on record, documents produced in the Court and after hearing the argument from learned defence counsel and learned Special PP, Vigilance, I am of the considered opinion that prosecution has miserably failed to prove its case against the accused persons u/s 409 IPC and Sec. 13 (2) readwith Sec. 13 (1)(d) of Prevention of Corruption Act. Furthermore, there is no material on record to prove that the accused persons conspired with each other to grab the government money.

15. Accordingly, in view of the discussion held in the preceding paragraphs, both the accused persons are found not guilty of the offence punishable u/s 13 (2) readwith Sec. 13 (1) (d) of PC Act and Sec. 120 B/409/34 IPC and acquitted from the above charges u/s 235 (1) Cr.P.C. They be set at liberty and their bail bonds be cancelled forthwith.

16. The Zimanama be cancelled and seized articles if any be destroyed

after four months of appeal period is over, if no appeal is preferred or if appeal is preferred the same be dealt with in accordance with the direction of the Appellate Court.

Pronounced in the open Court to-day the 22<sup>nd</sup> day of November, 2013

Addl. Special Judge, Vig.  
Bhubaneswar.

Typed to my dictation and  
corrected by me.

Addl. Special Judge, Vigilance, Bhubaneswar.

List of witnesses examined for the prosecution

P.W.1:- Krushna Chandra Mohapatra

P.W.2:- Srimanta Mishra

P.W.3:- Nrusingha Charan Padhi

P.W.4: Rajendra Sarangi

P.W.5: Sarangadhar Senapati

P.W.6: Gopabandhu Pati

P.W.7: Akhay Kumar Das

List of witness examined for the defence

Nil

List of exhibits marked for the prosecution

Ext.1: Sanction order

Ext.1/1: Signature of P.W.1

Ext.2: Forwarding letter

Ext.3: Seizure list

Ext.3/1: Signature of PW 2

Ext.3/2: Signature of A.K. Das

Ext.4: Zimanama

Ext.4/1: Signature of P.W.2

Ext.4/2: Signature of A.K. Das

Ext.3/3: House building assistance application form

Ext.3/4: House building assistance application form

Ext.3/5: House building assistance application form

Ext.3/6: House building assistance application form

Ext.3/7: House building assistance application form

Ext.3/8: House building assistance application form

Ext.3/9: Signature of P.W.3

Ext.3/10: Signature of P.W.3

Ext.3/11: Signature of P.W.3

Ext.3/12: Signature of P.W.3

Ext.3/13: Signature of P.W.3

Ext.5: Seizure list

Ext.5/1: Signature of P.W.5

Ext.5/2: Signature of medical officer

Ext.6: Written FIR

Ext.6/1: Signature of P.W.7

Ext.6/2: Signature of S.P., Vigilance

Ext.6/3: Endorsement and signature of OIC

Ext.5/3: Signature of P.W.7

Ext.7 : Zimanama

Ext.7/1: Signature of P.W.7

List of exhibits marked for the defence

Ext.A to Ext. A/5: Signature of Rudra Mohan Pradhan

Addl. Special Judge, Vigilance  
Bhubaneswar.