
(2025) 10 OH CK 0030

Orissa HC

Case No: Criminal Revision Petition No.674 Of 2025

Sukhalata Nayak And
Another

APPELLANT

Vs

State Of Orissa
(Vigilance)

RESPONDENT

Date of Decision: Oct. 24, 2025

Acts Referred:

- Indian Penal Code, 1860 — Section 34, 193, 200, 420
- Code Of Criminal Procedure 1973 — Section 227, 228, 239, 397, 482

Hon'ble Judges: Chittaranjan Dash, J

Bench: Single Bench

Advocate: S. S. Das, Sangram Das

Final Decision: Dismissed

Judgement

Chittaranjan Dash, J

1. By means of this application, the Petitioners seek to quash the order dated 02.08.2025 passed by the learned Special C.J.M. (Vigilance), Bhubaneswar in V.G.R. No. 70 of 2016, whereby the charge-sheet was issued against them vide Vigilance Cell P.S. C.S. No. 22 dated 14.11.2023 under Sections 193/200/420/34 of the Indian Penal Code.

2. The background facts of the case are that on the allegation of irregularities in the allotment of land/ flats/ houses in Bhubaneswar and Cuttack, the Government of Odisha was pleased to constitute a Task Force under the chairmanship of the then Additional Chief Secretary, Revenue and Disaster Management Department, on 02.08.2014. The Committee submitted its recommendations on 03.11.2014. Thereafter, the Government, vide Order No. 11084(5)/GAD-CA(IV)-Misc.1/144/2014 (Pt.I) dated 06.05.2015, communicated the modalities for implementation of the recommendations of the Task Force regarding allotment of plots/flats/houses at Bhubaneswar and Cuttack. In the said order, the General Administration Department (Vigilance) was directed to enquire into cases of multiple allotments. Accordingly, a Vigilance enquiry was initiated.

3. During enquiry, it was ascertained that one Sri Sarat Kumar Nayak, S/o Nrusingha Charan Nayak, of At/P.O.-Mula Basanta, District-Cuttack, had submitted an application before the Orissa State Housing

Board, Bhubaneswar, on 14.10.1998 for allotment of a house under the H.I.G. Core Housing Scheme, Kanan Vihar, Phase-II, Bhubaneswar. At the time of submission of the application, he had declared that he agreed to abide by the terms and conditions contained in the brochure. After scrutiny of his application, House No. 82 was provisionally allotted in his favour on 11.12.1998, and finally allotted on 07.01.1999 by the Orissa State Housing Board, Bhubaneswar. Subsequently, on 24.02.2003, Smt. Sukhalata Nayak, W/o Sarat Kumar Nayak, submitted an application before the Orissa State Housing Board, Bhubaneswar, for allotment of an H.I.G. plot at Nandan Enclave, Kalarahanga, Bhubaneswar. At the time of submission, she too declared that she agreed to abide by the terms and conditions contained in the brochure. Petitioner No. 2, Smt. Sukhalata Nayak, also swore an affidavit before the Executive Magistrate, Bhubaneswar, on 24.02.2003, stating therein that neither she nor her family members owned any house/shop/residential plot within any scheme area of the municipality. Considering her application, the Orissa State Housing Board, Bhubaneswar, allotted Plot No. HIG (P)-08 in her favour on 24.08.2010, and she has been in possession of the said plot since then. It was, however, revealed that Smt. Sukhalata Nayak (Petitioner No. 2) had made a false declaration in her application and affidavit, using such declaration as true, knowing fully well that it was false. She thereby obtained allotment by suppressing the fact of the earlier allotment and possession of House No. 82 under the H.I.G. Core Housing Scheme, Kanan Vihar, Phase-II, Bhubaneswar, in favour of her husband.

The enquiry further revealed that certain officials of the Orissa State Housing Board, Bhubaneswar, intentionally and in connivance with Petitioner No. 2, recommended the allotment of the plot and omitted to verify whether any previous allotment existed in the name of Smt. Nayak or her family members, thereby abusing their official position and showing undue favour, which resulted in the allotment of Plot No. HIG (P)-08 at Nandan Enclave, Kalarahanga, Bhubaneswar, depriving a genuine applicant.

4. A report to that effect was submitted by the D.S.P., Vigilance, to the S.P., Vigilance, Cuttack, recommending registration of a criminal case. Accordingly, F.I.R. was registered in Vigilance Cell P.S. Case No. 71 of 2016 on 18.06.2016 under Sections 193/420/200/34 of the I.P.C. and Investigation ensued; witnesses were examined and statements were recorded, incriminating documents were seized, handwriting and signatures were examined, and prima facie evidence was collected indicating suppression of material facts by the Petitioners with intent to cheat the Orissa State Housing Board, Bhubaneswar, to secure an illegal benefit. Subsequent to submission of the charge-sheet, the Petitioners filed an application before the learned court seeking discharge from the alleged offences.

5. The learned trial court, upon hearing both parties and perusing the materials on record, held that there existed prima facie materials against the Petitioners sufficient for framing of charge and accordingly declined to discharge them. Being aggrieved by such findings of the learned trial court, the Petitioners have preferred the present application.

6. Mr. S. S. Das, learned counsel for the Petitioners submitted that the learned trial court failed to appreciate their contentions that, at the time of submission of the application, the Petitioners did not own any house, as the sale deed in respect of the said house had not been executed in favour of Petitioner No. 1 in terms of the agreement. He further strenuously argued mere allotment of a house does not ipso facto confer ownership unless the terms of the agreement are fulfilled and the sale deed is executed and registered, thereby transferring title and effect the mutation in favour of the allottee. He submitted that in the absence of ownership, it cannot be said that Petitioner No. 2 had suppressed material information while applying for allotment of the plot. The question, according to him, is one of legal interpretation rather than suppression of fact or commission of fraud. He further contended that Petitioner No. 2, Smt. Sukhalata Nayak, never filed any false affidavit before the Orissa State Housing Board, Bhubaneswar, and was unaware that House No. 82 stood in the name of her husband. It was, therefore, argued that the ingredients of the alleged offences are not made out from the materials on record and the order of cognizance deserves to be quashed.

7. Mr. Sangram Das, learned counsel for the State, on the other hand, vehemently opposed the contentions of the Petitioners and submitted that the grounds raised pertains to matters of defence and interpretation, which can be adjudicated only during trial. Hence, such issues cannot be examined at the threshold so as to discharge the charge sheeted accused.

8. It is a settled principle of law that, while considering an application for discharge, the learned trial court is required to apply its judicial mind only to determine whether a case has been made out by the prosecution for proceeding with the trial. At that stage, it is not necessary to weigh the evidence meticulously or examine the defence. The trial judge has to merely examine whether the materials placed by the prosecution in the charge-sheet disclose sufficient grounds for proceeding against the accused. If prima facie materials exist, indicating the possibility of the accused having committed the offence, charges are to be framed. However, if such materials are absent, discharge is warranted.

At the stage of framing of charge, the accused has no right to produce materials or documents to disprove the prosecution case. The Code does not grant any such right. The hearing envisaged under Sections 227 and 239 Cr.P.C. is only to assist the court in determining whether there is sufficient ground to proceed with the trial, and not to evaluate the defence evidence.

9. It is also well settled that at the stage of considering an application for discharge, the court must proceed on the assumption that the materials brought on record by the prosecution are true, and must evaluate them only to ascertain whether, on their face value, they disclose the essential ingredients of the alleged offences.

10. The Hon^{ble} Supreme Court, in its recent decision *State of Gujarat vs. Dilipsingh Kishorsingh Rao*, reported in 2023 SCC OnLine SC 1294, while adverting to earlier propositions of law, held as follows:

¶11. 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.

12. 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.

13. 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. It would be apposite to refer to the judgment of this court in *Amit Kapoor Vs. Ramesh Chandra* (2012) 9 SCC 460 where scope of Section 397 has been considered and succinctly explained as under:

¶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 scrutinise 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.

13. 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 aforesaid. Even framing of charge is a much-advanced stage in the proceedings under the CrPC.■

14. This Court in the aforesaid judgement has also laid down principles to be considered for exercise of jurisdiction under Section 397 particularly in the context of prayer for quashing of charge framed under Section 228 Cr.P.C. is sought for as under:

27. Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.■

15. 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. Having regard to the aforesaid facts and the settled position of law, the submissions advanced by the learned counsel for the Petitioners indicate that the Petitioners may have a plausible defence to be established through evidence during trial. However, this is not a case where it can be said that the materials brought on record by the prosecution do not prima facie constitute the offences alleged against them.

12. As a result, the impugned order passed by the learned trial court rejecting the prayer of the Petitioners for discharge cannot be said to be illegal or perverse. The same being in consonance with facts and law is found to be proper and justified. Accordingly, the CRLREV stands dismissed.