

M.M.DAS, J.

CRLMC NOS.1957 & 1951 OF 2009 (Dt. 24.01.2012)

PRASANT KUMAR PATTNAIK & ANR.Petitioners.

.Vrs.

STATE OF ORISSA & ORS.Opp.Parties.

CRIMINAL PROCEDURE CODE, 1973 (ACT NO.2 OF 1974) – S.197.

For Petitioner - M/s. A.K.Parija, S.P.Sarangi, P.K.Dash,
S.P.Panda.

For Opp.Parties - Addl. Govt. Advocate (for O.P.1)
M/s. B.B.Mishra, D.Sahoo (for O.P.2)
Mr. B.R. Behera (for Intervenor)

For Petitioner - M/s. Dr. A.K.Rath, D.Panda, D.Mohanty,
S.Mohanty, S.M.Patnaik, S.Nanda,
A.Pattnaik & B.P.Das.

For Opp.Parties - M/s. B.B.Mishra, D.Sahoo (for O.P.1)
Addl. Govt. Advocate (for O.P.2)

M.M. DAS, J. These two Criminal Misc. Cases have been filed under section 482 of the Criminal Procedure Code by the accused persons in ICC No. 483 of 2008 pending before the learned S.D.J.M., Puri challenging the order dated 4.5.2009 passed by the said learned S.D.J.M. taking cognizance of offence under section 15 of the Environment (Protection) Act, 1986 (hereinafter referred to as 'the E.P. Act') against them and further seeking quashing of the proceedings in the said ICC No. 483 of 2008.

2. As common questions of fact and law arise in both the Criminal Misc. Cases, they were heard together and are being disposed of by this common judgment.

3. The opp. party no.2 – Beach Protection Council of Orissa (in CRLMC No. 1957 of 2009) through Jagannath Bastia as its President filed the aforesaid complaint case against the petitioners in both the aforesaid Criminal Misc. Cases before the learned S.D.J.M., Puri impleading them as accused persons, making allegation that the accused no.1 - Shri Prasant Kumar Pattnaik, who is petitioner in CRLMC No. 1957 of 2009 illegally approved the building plan submitted by the accused no. 2, i.e., Shri Sudip Sen, Managing Director of M/s. JNB Build Tech Pvt. Ltd. (Petitioner in CRLMC No. 1951 of 2009) vide his letter No. 25/3/PKDA dated 24.8.2005 for construction of a commercial-cum-residential building and apartment over plot nos. 312/665, 312/666 and 312/6677 under khata No. 142/136, 142/137 and 142/138 in mouza - Sipasarubali under Brahmagiri Tahasil of Puri district on the Seaward side of the existing road and showing a newly developed road in the demarcated Coastal Regulation Zone (CRZ)-II area violating the provisions of the Costal Regulation Zone notification issued by the Ministry of Environment and Forests, Government of India, on 19.2.1991 under the provisions of

the E.P. Act and the amended CRZ notification No. SO-494(E) dated 9.7.1997, by abusing his power with mala fide intention for the interest of the builder. It has been further alleged in the complaint petition that the accused no. 2 – Sudip Sen (Petitioner in CRLMC No. 1951 of 2009) has been constructing a commercial building and a residential apartment over the said land violating the provisions of the CRZ notification dated 19.2.1991 under the provisions of the E.P. Act and the amended notification as referred to above. The complainant has stated that as per the provisions of the notification, the State Government has demarcated and declared the said area as CRZ-II category in a High Level Committee meeting held on 25.4.2000 under the Chairmanship of the Chief Secretary, Government of Orissa. As per the provisions of the CRZ –II, building shall be permitted on the landward side of the existing road or roads proposed in the approved coastal zone management plan of the area or on the landward side of the existing authorized structures. In the amended notification issued on 19.7.1997, it was clarified that no permission for construction of building shall be given on landward side of any new road except roads proposed in the approved coastal zone management plan, which are to be constructed on the seaward side. There was a specific statement in the complaint that in the instant case, there was no road on the seaward side of the above land neither in the revenue record and map of Government of Orissa nor in the approved costal zone management plan of the area. The roads and buildings division, Puri has started development of the said new road on the seaward side of the land in question on 28.2.2004 over plot Nos. 361 and 306, khata No. 344 in mouza - Sipasarubali and completed the construction of the road on 31.3.2006 by M/s. Nirmani Construction and Engineers Pvt. Ltd. The Collector, Puri has also alienated the said Government land in favour of the Executive Engineer, Roads and Buildings Division, Puri for construction of the said new road running from Hotel Hans Coco Palm to Sterling Holiday Resorts by district office letter No. 3631/Rev. dated 19.10.2004 and memo No. 139 dated 14.1.2004 respectively. It was alleged that as per Revenue record and map of the State Government published in the years 1977 and 1988, the kisma (status of the said land) is PATITA and BALIA and ABADAJOGYA ANABADI. Even from the development plan of Puri-Konark Development Authority (for short, 'the PKDA') prepared in the year 1998 under the signature of the then Secretary and Planning Member, it is seen that the said so-called road as proposed road, did not exist.

4. The complainant thereafter goes to allege that the Building Permission Committee of PKDA in their meeting held on 10.12.2002 under the Chairmanship of the Collector, Puri and Vice-Chairman, PKDA has rejected the building plan approval application of one Shri Ras Bihari Das, on the ground that the said road in question from Hotel Hans Coco Palm to Sterling Holiday Resorts was not existing as on 19.2.1991 and it has also not been reflected in the approved costal zone management plan. Therefore, the permission applied for cannot be considered as it does not confirm to the provisions of the CRZ notification. Allegation against the accused no.1 - Prasant Kumar Pattnaik, was made that he has changed the basic principle of PKDA for the interest of the accused no. 2-Sudip Sen, who is a powerful builder and approved the building plan submitted by accused no. 2 – petitioner in CRLMC No. 1951 of 2009 grossly violating the provisions of the coastal regulation zone notification. To cover up this irregularities, the accused no.1 – Prasant Kumar Pattnaik has prepared a Sub-Committee report dated 25.7.2003 under the signature of the Executive officer, Puri Municipality, Tahasildar, Puri and Executive Engineer, P.H. Division, Puri and himself and resolved that the

said road has not been reflected in the revenue record but it was in existence and use as a road before 19.2.1991.

5. In the initial deposition of the complainant recorded by the learned S.D.J.M., he has stated that he is the President of the Beach Protection Council of Orissa, which is a voluntary organization. He further stated that

there is provision that buildings should be allowed to be constructed on the landward side of the road as per the Government notification of 1991 and no permission shall be given for construction of buildings on the landward side of a new road which are constructed in the Seaward side of existing road as per the Government notification of the year 1997. He corroborated in his statement the allegation against accused no. 1 – Prasant Kumar Pattnaik.

6. The learned S.D.J.M. conducted an enquiry under section 202 Cr.P.C. and by the impugned order recorded that on perusal of the statements of the complainant and the witnesses recorded under section 202 Cr.P.C., a prima facie case under section 15 of the E.P. Act has been made out against the accused persons (petitioners in both the CRLMC) and took cognizance of the said offence and directed issuance of process against the accused persons.

7. Mr. Das, learned counsel for the petitioner in CRLMC No. 1957 of 2009 submitted that the impugned order taking cognizance has been passed without the sanction of the State Government or of the authority either under section 197 Cr.P.C. or under section 110 of the Orissa Development Authorities Act, 1982 (for short, 'the O.D.A. Act') for prosecuting of the petitioner – accused no. 1 – Prasant Kumar Pattnaik, who is a public servant, when the allegation made in the complaint is regarding an act while discharging his official duty. He further contended that permission for construction was granted under section 16 (3) of the O.D.A. Act, 1982 and, therefore, cognizance of offence under section 15 of the E.P. Act could not have been taken. Mr. Das also submitted that it is the Building Permission Committee of PKDA which has given approval to the plan and granted permission for construction, that too, on the land located in the landward side of the existing Marine Road behind Hotel Hans Coco Palm to Sterling Holiday Resorts. The existing road has been upgraded by the P.W.D., Puri, which exists since mid 1980 and was constructed and used by O.R.E.D.A. for maintenance of their Windmill. Thus, the road was in existence prior to CRZ-II notification issued on 19.2.1991. This fact is corroborated by the letter and Map issued by the Secretary PKRIT on 5.3.1987 to the Chief Architect, Government of Orissa which has been annexed as Annexure-7 to the CRLMC No. 1957 of 2009. He further contended that the Sub-Committee constituted by the Executive Engineer, Puri Municipality, Executive Engineer, PHD, Puri Tahasildar, Sadar, Puri and Planning Member and Secretary, PKDA reported on 25.7.2003 that the road is in existence since mid 1980 and is used by the public. Also the National Remote Sensing Agency, Hyderabad has prepared a map which was published during 1995-96 showing the existence of the road from Hotel Hans Coco Palm to Sterling Holiday Resorts along the Sea beach. Even in the adjacent location, permission has been granted by the PKDA to one Dr. Sabyasachi Pattnaik in 1998 who completed his building before 2000. Hotel Dream Land was granted permission by PKDA on 16.12.1999 and the said building was completed in 2001 taking access from the existing road. Further, in Appeal Case nos. 58

and 68 of 2004 before the Secretary, Housing and Urban Development Department, a joint site visit report was submitted on 14.3.2005 showing the existence of road prior to 19.2.1991 and in the said joint site visit report, the complainant himself is a signatory along with the accused no. 1- Prasant Kumar Pattnaik.

8. Dr. A.K. Rath, learned counsel appearing for the accused no. 2-Sudip Sen (Petitioner in CRLMC No. 1951 of 2009) contended that the allegation of the complainant that there was no road existing is far from truth. There was a Sub-Committee constituted to ascertain the existing road leading from Hotel Hans Coco Palm to Sterling Holiday Resorts. The meeting was held on 25.7.2003. After detailed discussion, the Sub-Committee found that plot no. 187 (2) of Baliapanda 308 (P) as well as 361 (P) of mouza - Sipasarubali on which the morrum road is in existence has been recorded as Government land with kism "PATITA" as per 1988 and 1977 ROR respectively. However, during 1988 plot nos. 361 and 306 of mouza - Sipasarubali was handed over to the Orissa Renewable Energy Development Agency (hereinafter referred to as 'the OREDA') for management of its windmill and during late 1980's. The OREDA constructed the said morrum road on the said land for maintenance of its windmills. On 19.2.1991, the Coastal Zone Regulation notification came into force. By that time the morrum road from the back of Hotel Hans Coco Palm over plot No. 187 (P) of Baliapanda, 306 (P) and 361 (P) of mouza - Sipasarubali was in existence though it has not been reflected in the RORs and settlement map as settlement operations commenced before the road was constructed in late 1980's. Subsequently, the OREDA project was closed and the road was used by public. During 1992-93, the State Level Committee had approved a building plan in favour of Sterling Resorts with the aforesaid road as the access to the project. The proceeding of the Sub-Committee was annexed to the complaint petition as Annexure-11. The same has been annexed as Annexure-8 in CRLMC No. 1957 of 2009.

Furthermore, in pursuance of the order dated 16.2.2005 of the appellate authority in Appeal Case Nos. 58 and 64 of 2004 preferred by one Sri Vivekananda Panigrahi, Sri Jagannath Bastia, Beach Protection Council, Orissa, Puri (complainant) and Secretary, PKDA jointly made the site visit on 19.3.2005. The committee on verification of the revenue record found that the road which is claimed to be in existence during 1990 and has been eroded subsequently has not been reflected in the revenue map. The committee further found that the said road was in existence much before 1990 and was being used by OREDA. Therefore, non reflection of the road on the revenue map should not be taken as a ground to negate existence of the road prior to 1991. It is apt to state here that Shri Jagannath Bastia was the member of that committee. After conducting site visit the committee submitted its report before the appellate authority vide Annexure-9. The complainant, Mr. Jagannath Bastia very cunningly withheld the said report. Much after the report of the committee vide Annexure - 9 the plan was approved in favour of the accused No.2-petitioner on 24.06.2005 vide Annexure - 2. The proceedings of the sub-committee vide Annexure - 9 is a public document.

9. Learned counsel for the complainant with regard to sanction of the State Government under section 197 Cr.P.C. in respect of the accused no. 1 - Prasanta Kumar Pattnaik, submitted that such sanction is not necessary before filing the complaint as the complainant has given 60 days notice by registered post with A.D. to the concerned authorities on 14.12.2005 as per the provisions of section 19 (b) of the E.P.

Act, read with Rule ;11 of the Environment Protection Rules, 1986 with intention to file the complaint case against the violators. He, therefore, submitted that the E.P. Act being a special Statute, it has over riding effect on the general law. Hence, sanction under section 197 Cr.P.C. is not required for filing any case alleging violation of the provisions of the E.P. Act in view of section 24 thereof. He reiterated the allegations made in the complaint petition in order to substantiate that the road in question was not in existence prior to 1991. He further submitted that the accused no. 1 – Prasanta Kumar Pattnaik being the only technical person and Planning Member of the PKDA, he is to examine the building plan as well as the legal provisions before approval of the same and, therefore, the accused no. 1 – Prasanta Kumar Pattnaik cannot escape from the mischief of section 25 of the E.P. Act in the guise that the plan was approved by the Plan Approval Committee of PKDA.

10. Upon hearing the learned counsel for the parties, the following three questions arise for determination:

- (i) Whether for prosecuting a public servant under section 15 of the E.P. Act, sanction under section 197 Cr.P.C. is required inasmuch as the plan having been sanctioned under the provisions of the O.D.A. Act, whether permission to prosecute the accused no. 1 – Prasant Kumar Pattnaik under section 110 of the O.D.A. Act is an essentiality ?
- (ii) When the building plan in question submitted by the accused no. 1 – Sudip Sen (Petitioner in CRLMC No. 1951 of 2009) has been approved by the Building Permission Committee of PKDA, can the accused no. 1 be held responsible for such approval in case such approval is found to be in contravention of the provisions of the E.P. Act. ?
- (iii) Whether this Court under law can consider the public documents annexed to the Criminal Misc. Case Petition at this stage of the case, in order to find out as to whether a prima facie case of commission of offence under section 15 of the E.P. Act has been made out by the complainant ?

11. To appreciate the rival contentions made by the parties, it would be apt to deal with question no. (iii), as set out above. Admittedly, the trial has not commenced in the criminal proceedings as further proceedings in the said case has been stayed by this Court. The question as to whether this Court can consider public documents, which have been annexed to the Criminal Misc. Case petitions at this stage of the case, was dealt with by the Supreme Court in the case of **Harshendra Kumar D. v. Rebatilata Koley and others**, (2011)3 SCC 351. The Supreme Court in the said case held as follows:-

“It is not the law that in a criminal case where trial is yet to take place and the matter is at the stage of issuance of summons or taking cognizance, materials relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstance, can be looked into by the High Court in exercise of its jurisdiction under Section 482 or for that matter in exercise of revisional jurisdiction under Section 397 of the Code. It is fairly settled now that while exercising inherent jurisdiction under section 482 or revisional jurisdiction under section 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the

High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations.

However, in an appropriate case, if on the face of the documents – which are beyond suspicion or doubt – placed by the accused, the accusations against him cannot stand, it would be travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at prima facie stage”.

(emphasis supplied)

It is, therefore, clear that documents which have been annexed to the Criminal Misc. Case Petitions, if are beyond suspicion or doubt, the said documents can be looked into in order to examine whether the accusations made by the complainant against the petitioners will stand in view of such documents.

13. Before traversing through the said documents annexed to the Criminal Misc. Case petition by the accused – Shri Prasanta Kumar Pattnaik, it would be appropriate to refer to the notification issued by the Ministry of Environment and Forests published in the Gazette issued under section 3 (1) and 3 (2) (v) of the E.P. Act, 1986 and Rule 5 (3) (d) of the E.P. Rules, 1986 declaring coastal stretch as Coastal Regulation Zone (CRZ) and Regulation activities in the CRZ, which has been annexed to the counter affidavit filed by the informant as Annexure-B/2 dated 19.2.1991. In the said notification, under Clause – 2, sub-clauses (i) to (xiii) certain activities were prohibited. The relevant portion of Annexure-1 to the said notification reads as follows:

“CRZ-II.

- (i) Buildings shall be permitted neither on the seaward side of the existing road (or roads proposed in the approved Coastal Zone Management Plan of the area) nor on seaward side of existing authorized structures. Buildings permitted on the landward side of the existing and proposed roads/existing authorized structures shall be subject to the existing local Town and Country Planning Regulations including the existing norms of FSI/FAR.
- (ii) Reconstruction of the authorized buildings to be permitted subject with the existing FSI/FAR norms and without change in the existing use.
- (iii) The design and construction of buildings shall be consistent with the surrounding landscape and local architectural style”.

By a subsequent notification dated 9.7.1997, considering the difficulties expressed by some of the State Governments, who drew the attention of the Central Government to such difficulties, by exercising powers conferred by sub-section (1) and Clause (v) of sub-section (2) of section 3 of the E.P. Act, 1986 read with sub-rules (3) and (4) of Rule 5 of the E.P. Rules, 1986, the Central Government made certain amendments to the earlier notification. Amendment of the above quoted CRZ (II) was to the following effect:

“4. In Annexure-I, in paragraph-6, in sub-paragraph (2)-

(1) xxx xxx xxx

(2) under heading CRZ-II, for item (i), the following shall be substituted, namely:-

“Buildings shall be permitted only on the landward side of the existing road (or roads proposed in the approved Coastal Zone Management Plan of the area) or on the landward side of existing authorised structures. Buildings permitted on the landward side of the existing and proposed roads/existing authorised structures shall be subject to the existing local Town and Country Planning Regulations including the existing norms of Floor Space Index/Floor Area Ratio:

Provided that no permission for construction of buildings shall be given on landward side of any new roads (except roads proposed in the approved Coastal Zone Management Plan) which are constructed on the seaward side of an existing road”.

Allegation of the complainant is that the above Coastal Regulation Zone-II, as amended, has been violated by the accused persons. A bare reading of the amended provision of Item No. (i) of CRZ-II clearly shows that construction of buildings shall be permitted only on the landward side of the existing road (roads proposed in the approved Coastal Zone Management Plan of the area) or on the landward side of the existing authorized structures. Such permission shall be subject to the existing local town and country planning Regulations. A proviso has been made that no permission for construction of buildings shall be given on the landward side of any new roads which are constructed on the Seaward side of an existing road. It is, therefore, vital to gather as to whether the permission granted to the accused –Sudip Sen (petitioner in CRLMC No. 1951/2009) is on the landward side of an existing road which was existing prior to the notification dated 19.2.1991. In this regard, looking at the facts of the case, it is found that pursuant to an order passed by the appellate authority in Appeal Case Nos. 58 and 64 of 2004 on 26.2.2005, notices were issued to Shri Vivekananda Panigrahi, who was the appellant in said appeals and Sri Jagannath Bastia, who is the complainant in this case and to hold a joint inspection on 19.3.2005 at 3.30 P.M. In pursuance of the said order, the appellant –Vivekananda Panigrahi and the complainant herein, namely, Shri Jagannath Bastia himself made the site visit on 19.3.2005. During the course of joint inspection, the appellant Shri Vivekananda Panigrahi and his learned Advocate filed certain documents relating to the existence of road between the properties of the appellant land and the Sea. The documents thus filed includes a certified copy of the map of National Remote Sensing Agency taken through Satellite during the year1996-97, certified copy of the Master Plan of Puri Sea Beach (Part), Xerox copy of the Gazette notification dated 13.3.1998 publishing the draft modified interim development plan of Puri Municipal area, xerox copy of the relevant portion of CRZ – II notification permitting building to the landward side of the existing road etc. The minutes of the said inspection made by the complainant and the appellant in the said appeals have been annexed as Annexure-9 to the CRLMC No. 1957 of 2009. It appears that the complainant himself endorsed in the said inspection report to the following effect:

“ xxx xxx xxx

The appellant further states that the new road being constructed by PWD along the sea-shore starting from Hans Coco-Palm (Prachi Hotel) up to Sterling Resort also has not been mentioned/reflected in the revenue map. But it is a fact that the said road was in existence much before 1990 and was being used by OREDA. Therefore, non reflection of the road on the revenue map should not be taken as a ground to negate existence of the road prior to 1991”.

14. This Court, therefore, prima facie, finds that a road was in existence along with the Sea-shore starting from Hotel Hans Coco Palm (Prachi Hotel) up to Sterling Holiday Resorts though such road has not been reflected in the revenue map, which was being used by OREDA in 1990.

15. With regard to question no. (ii) framed above, it is also clear that the alleged sanction of construction was accorded by the Building Permission Committee of PKDA constituted under section 6 of the O.D.A. Act, 1982 which is a statutory body and such approval of construction having been accorded by the Building permission Committee of PKDA, Shri Prasanta Kumar Pattnaik, who is the Secretary and Planning Member of PKDA and only communicated such approval of construction to the company of the other accused Sudip Sen cannot be individually held liable for such approval of construction, which also, prima facie, is not in contravention of CRZ-II .

16. In view of the above findings of this Court that there is no prima facie materials to show that the petitioners have committed the alleged offence. Though the question with regard to grant of sanction under section 197 Cr.P.C. has become academic, nevertheless, if the said question is considered in the facts of the present case, in relation to the accused Prasant Kumar Pattnaik (Petitioner in CRLMC No. 1957 of 2009), it would be seen that admittedly, the said accused is a public servant and the alleged offence is an act of the said accused purported to have been done in the discharge of his official duty. Section 197 of the Cr.P.C. bars a court from taking cognizance of such offences which are purportedly done in the discharge of official duty by a public servant except with previous sanction of the Central Government, in case, the person is employed at the time of commission of the alleged offence in connection with the affairs of the Union or sanction of the State Government if the person is employed at the time of commission of the alleged offence in connection with the affairs of the State.

17. The contention of the learned counsel for the complainant that section 197 Cr.P.C. has no application to the facts of the present case is not acceptable as the “offence” mentioned in section 197 Cr.P.C. is not confined to the offence under the Penal Code or any other particular Act. It is, therefore, clear that even for an offence committed under any Statute, be it a special enactment by a public servant purportedly in discharge of his official duty, cognizance of such offence cannot be taken by a court unless sanction from the Central or State Government, as the case may be, is obtained before taking cognizance. As stated above, in the instant case, Shri Prasanta Kumar Pattnaik (Petitioner in CRLMC No. 1957 of 2009) being admittedly a public servant and the alleged offence having been stated to be committed in purported discharge of his official duty, without a sanction being obtained, the learned court below was debarred from taking cognizance of such offence alleged against him. In these circumstances, even otherwise, the order taking cognizance of the offence under section 15 of the E.P. Act, 1986 against, Shri Prasanta Kumar Pattnaik (Petitioner in CRLMC No. 1957 of 2009) is also unsustainable.

18. A cumulative effect of all the above findings leads this Court to the conclusion that the order taking cognizance of the offence under section 15 of the E.P. Act, 1986 against the accused persons cannot be sustained as there is absolutely no prima facie case made out to show that such offence has been committed, more so, there is no sanction under section 197 Cr.P.C. to prosecute the accused - Shri Prasanta Kumar Pattnaik (Petitioner in CRLMC No. 1957 of 2009).

19. In the result, the order dated 4.5.2009 taking cognizance of the offence under section 15 of the E.P. Act, 1986 in I.C.C. No. 483 of 2008 is set aside and the entire proceeding in I.C.C. No. 483 of 2008 stands quashed.

20. Both the CRLMC accordingly stand allowed.

Applications allowed.