



**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**CRLMC No.2969 of 2024**

An application under Section 482 of the Code of Criminal  
Procedure, 1973.

***Prof. (Dr.) Rabindra Kumar  
Jena***

.....

***Petitioner***

Mr. Prateik Parija, Adv.

*-versus-*

***State of Orissa (Vigilance)***

.....

***Opposite Party***

Mr.Niranjana Maharana, A.S.C.  
for the Vigilance Dept.

**CORAM:**

**JUSTICE A.K. MOHAPATRA**

---

**Date of Hearing : 16.08.2024 | Date of Judgment: 16.04.2025**

---

**A.K. Mohapatra, J. :**

1. Heard learned counsel for the Petitioner as well as  
learned Additional Standing Counsel for the Vigilance Dept.  
Perused the CRLMC application, as well as other materials  
placed on record.



2. The present CRLMC application has been filed by the Petitioner under section 482 of the Cr.P.C, seeking quashing of the entire criminal proceeding vide Cuttack Vigilance Cell P.S. Case No. 19 of 2017 corresponding to VGR No. 64/17, involving offences under section 13(2) read with 13(l)(c)(d) of the P.C. Act, 1988 along with sections 409/420/34/120B of the IPC, qua the petitioner, pending in the court of Ld. Special Judge(Vigilance), Cuttack.

3. In the present matter, the FIR was lodged on 12.12.2017 by the Vigilance Dept. on the basis of the complaint lodged by one S.K. Samal, DSP Vigilance Cell, Cuttack. In the said F.I.R it has been alleged that the present Petitioner, who is a reputed doctor of the state and has been engaged at SCB Medical College & Hospital, Cuttack, has abused his official position and in doing so, he has shown undue favour to various pharmaceutical companies. The allegations also involve violations of one 'Odisha State Treatment Fund (OSTF)' which was established by the State Government in December of 2011 for providing respite to poor patients (under BPL category) seeking treatment for fatal ailments such as cancer and chronic heart ailments.



4. The essence of the prosecution's case and the heart of the allegation against the present petitioner, as derived from the FIR and the Submissions of the Learned Counsel for the Opposite Party-Vigilance Department, is as follows;

a) The present petitioner, Prof. (Dr.) Rabindra Kumar Jena, who was the HOD of the Hematology Department of SCBMC & Hospital, Cuttack during the relevant period of time (from the year 2013 to 2017), has been arraigned in the present matter on the allegations of acquiring illegal pecuniary benefits from pharmaceutical companies, criminal misconduct and corruption. The FIR further reveals that during the relevant period of time, the state government launched an OSTF scheme to provide financial aid and assistance to the tune of Two Lakh Rupees to the ailing Blood Cancer patients that fell under the BPL category. The State Government, for the said purpose of treatment of the ailing patients, procured the Chemotherapy drug "THYMOGAM", produced by 'Bharat Serum and Vaccines Ltd., Maharashtra'.



b) Instead of prescribing the cheaper drug “THYMOGAM” for the treatment of ailing patients, the various doctors of SCBMC and the present petitioner, as the HOD of the concerned department, have prescribed the drug “ATGAM” (produced by the pharmaceutical company ‘Pfizer’) to 14 Nos. of patients contrary to OSTF guidelines. As a result, the 1060 vials of ‘THYMOGAM’ procured by the SDMU (State Drug Management Unit) during 2013-2014 were left unused for months together. In fact, the petitioner has also allegedly compelled/pressurised patients to purchase the more expensive ‘ATGAM’ chemotherapy drug/injection.

c) It has been further alleged that the present petitioner, being the HoD of the concerned department, instead of restricting the doctors prescribing such expensive drugs, forwarded the application along with other documentation, on the recommendation of another co-accused (the nodal officer), to the screening committee for sanction and disbursal of the OST Fund in respect of the said 14 patients that were prescribed “ATGAM”. The Screening Committee has thereafter scrutinised the same and



disbursed the fund in favour of the government-empanelled shop 'HLL Lifecare Ltd.'.

d) The prosecution-Vigilance Department has admitted that no preliminary mandatory inquiry, by an expert committee, was conducted in the present case prior to the registration of the FIR against the petitioner-Prof. (Dr.) Rabindra Kumar Jena. However, subsequent to the registration of the FIR a medical team consisting of prof. (Dr.) Srikant Mohanty, HOD, Pharmacology; Dr. Naresh Pattnaik, Associate Professor (contractual), Clinical Hematology Department and Dr. Prasant Kumar Parida, Assistant Professor Medical Oncology of SCBMC & Hospital, Cuttack was formed. The said medical team has opined that the drug 'ATGAM' should not be prescribed to the 14 patients until the exhaustion of supply of 'THYMOGAM' available in the central store. The medical team was also of the opinion that the drug 'HAMSYL' should not be prescribed in a routine manner administered to the patients at the first instance without any adverse reaction.



e) The petitioner has also been alleged to have caused pecuniary loss to the government. It has been alleged that during the relevant period a total of 190 vials of 'ATGAM', at the average cost of Rs.15,359 per vial, was prescribed to 14 Nos. of patients. Out of the 14, 13 patients had to spend a further Rs.4,30,052 from their own pockets. In the event the patients had been prescribed 'THYMOGAM', priced at Rs.7,858 per vial, then would have had to spend Rs.1,17,870 over and above the allotted fund instead of Rs.4,30,052/-. Additionally, the prosecution has also stated that 33 Nos. of patients were administered 'HAMSYL' (by Emcure Pharmaceutical), of which 8 were administered 'HAMSYL' by the treating doctors without any history of adverse reaction. The prosecution has stated that 'HAMSYL' is more expensive compared to 'L-asparaginase'.

f) The petitioner has also been accused of violating ethical conduct by accepting benefits in the shape of hospitalities, travel benefits and accommodation from 'Pfizer' and 'Emcure' (producer of the drug 'HAMSYL') while attending various conferences and seminars - despite the



Rs.1,50,000/- granted to him by the state government for the same purpose - and showing undue favour to the aforesaid two Pharma companies by persuading other doctors of the department to prescribe the drugs 'ATGAM'(prescribed to 14 Nos. of patients) and 'HAMSYL'(prescribed to 33 Nos. of patients). Moreover, it has been alleged that the petitioner's visit to and stay at Minnesota University in 2013 was sponsored by Emcure Pharma Company (the producers of 'HAMSYL') to the tune of Rs.3,90,000/-.

g) Furthermore, the petitioner has also entered into a consultancy agreement with 'Pfizer' for providing consultancy advice in violation of the Medical Council of India (MCI) Regulations and without permission of the competent authority along with the State Government, as is required under the service code and MCI Guidelines. The petitioner has also been accused of travelling abroad without requisite permission from the appropriate Government. As such, it has been alleged that the petitioner-Prof. (Dr.) Rabindra Kumar Jena has not only entered into a criminal conspiracy with the above-



mentioned companies and as a result shown undue favour to the said companies and facilitated pecuniary advantage to the companies, but also caused huge losses to the Government exchequer.

**h)** As to the delay in completion of the investigation, the same is primarily due to collection of large number of documents, communications and instruction from different departments of the government, and examination of a large number of witnesses and documents, for the purpose of conducting a fair and proper investigation into the matter of accumulation of disproportionate assets in the case.

**5.** The learned Counsel appearing for the Petitioner has outright refuted the insinuations and allegations made against the petitioner and prayed for the quashing of the present criminal proceeding bearing Cuttack Vigilance Cell P.S. Case No. 19 of 2017 for alleged commission of offences under Sections 13(1)(c)(d) and 13(2) of the P.C. Act along with Sections 34/120B/409/420 of the IPC corresponding to VGR Case No. 64 of 2017 pending in the court of the Learned





Special Judge (Vigilance), Cuttack. In abutment of the petitioner's stance, the Learned Counsel for the Petitioner has taken the following grounds;

**a)** That the mandatory procedure of conducting prior inquiry, as directed by the NMC notification dated 29.09.2021 and the Hon'ble Apex Court, by an Expert Committee/Medical Board of the concerned field, having no conflict of interest with the accused petitioner, has not been followed in the present case.

**b)** That the doctors comprising the medical team are not experts in treating Blood Cancer patients. Also, the said medical team was formulated sufficiently after the registration of the FIR. In fact, the opinion of the medical team was not communicated to the petitioner and no notice/opportunity was given to the petitioner to serve a reply to the said opinion of the Medical Team. Furthermore, one of the doctors in the medical team (Dr. Naresh Pattanaik) has a conflict of interest with the present petitioner on account of a prior legal battle between the two. And two doctors in the said medical



team do not belong to the concerned field and lack experience in treating patients ailing from Blood Cancer.

c) The prosecution has also failed to adduce the exact provision or guidelines of the OSTF Scheme which the petitioner has been alleged to have violated.

d) The prosecution has not pointed out any particular direction/guideline under the OSTF Scheme or any other law directing the doctors to prescribe drugs/medicines by their generic molecular name instead of the specific name, or vice versa. In fact no guideline exists under either the OSTF Scheme or any other law directing the treating doctors to prescribe cheaper drugs irrespective of its efficacy or to not prescribe high cost drugs even if the said drugs provided better results and were necessary for the patients.

e) Furthermore, other connected persons, i.e. the predecessor of the present petitioner who also adopted the practice of prescribing drugs by their generic name instead of their specific name and the treating doctors who have actually prescribed the drugs 'ATGAM' and 'HAMSYL'



have not been made accused in the present case. Moreover, 'Pfizer' company, to whom the petitioner has been alleged to have shown undue favour, has also not been arraigned as an accused in the present case.

**f)** The Learned Counsel for the Petitioner has referred to the case of one Shankar Mohanty wherein after exhaustion of the OSTF limit, there was also a verbal instruction from the government to provide best treatment to the patient irrespective of the financial implications. As such, the High Power Technical Committee of the State under the chairmanship of the DMET sanctioned more funds for the treatment of the said patient. Therefore, if the extra funds expended in the case of other patients is to be treated as loss, then in the case of the aforesaid Shankar Mohanty, the members of the High Power Committee as well as the DMET should also be held liable for sanctioning extra funds without any objection.

**g)** As to the high price of the drugs in question, it has been stated that the fixation of the price of drugs is the domain of the Government and the doctors have no role in the



same. Additionally, the prescription of a particular drug is the prerogative of the treating doctor and is done keeping in mind the best response vis-a-vis the choice of the patient and the patient's ability to afford the same. In fact, all the patients were able to complete the treatment and none of the patients have ever made any complaint regarding the treatment. Also, the said 14 Nos. of patients who were prescribed 'ATGAM' made a conscious choice to be administered 'ATGAM' since it is the better drug compared to 'THYMOGAM'. Moreover, there are no alternative drugs for the treatment of Hypoplastic/Aplastic Anemia in India apart from 'THYMOGAM' and 'ATGAM'.

**h)** With regard to the drug 'HAMSYL', out of the 33 patients who were prescribed 'HAMSYL' (none of which were made by the petitioner) even though 8 patients had no history of reaction, the other 25 had a history of reaction. In fact, the Drug Inspector, Odisha vide letter No. 138 dated 29.02.2024 has directed to stop the use of L-asparaginase due to the serious adverse reaction involved. As a result, 'PEG L-asparaginase', i.e.



‘HAMSYL’ is considered as the best alternative. Also, ‘HAMSYL’ was administered to the patients strictly according to the treatment required by each patient and such treatment was undertaken by the treating doctors at their own prerogative. Additionally, it has been clarified that no vials of ‘THYMOGAM’ that were procured by the government were wasted.

i) Furthermore, it is not the case of the prosecution that the drug ‘ATGAM’ is not efficacious or that it is of inferior quality. In fact, the lcp submitted that research studies have revealed that ‘ATGAM’ returns better and early results in comparison to ‘THYMOGAM’. However, the government has procured the inferior ‘THYMOGAM’ despite the indent order clearly mentioning the generic name ‘Anti Thymocyte Globulin (ATG)’ and not specifically ‘THYMOGAM’.

j) That no undue favour has been shown by the petitioner to the alleged pharmaceutical companies and there is no criminal conspiracy as has been alleged. It has stated that the companies Pfizer and Emcure do not produce only



‘ATGAM’ and ‘PEG L-asparaginase’ respectively. The said companies also produce other drugs for the treatment of Blood Cancer. Ergo, in case there was any substance to the allegations of undue favour meted out by the petitioner, then other expensive drugs produced by the aforesaid companies would also have been prescribed by the petitioner. However, that is not the case presently.

**k)** That the petitioner-Prof. (Dr.) Rabindra Kumar Jena has not prescribed any of the alleged drugs, either ‘ATGAM’ or ‘HAMSYL’ (i.e. PEG L-asparaginase) to any patients. Additionally, the indent for procuring ‘HAMSYL’ was sent with the collective signature and consent of all the treating doctors, therefore the petitioner cannot be said to have shown undue favour to the company.

**l)** With regard to the claims of alleged benefits received by the petitioner from the concerned companies, it has been stated that no illegal pecuniary advantage was levied in favour of the petitioner during the relevant period. Attending seminars is a mandatory requirement as per para 9(ii) of the State Government notification dated



18.12.2013. Additionally, it was submitted that para 2(i) of the State Government order No. ME, I/P.4/92/15020/H dated 18.04.1992 mentions that the doctors may receive contributions and hospitality from foreign agencies/associations subject to the prior approval of the state/central government. Furthermore, as per the MCI notification No. 246, December, 2009, clause 3(9) of page 3, a medical practitioner is allowed to work for pharmaceutical and allied healthcare industries in advisory capacities as consultants/researchers/treating doctors/other professional capacity. The Government of India Gazette notification dated 14.12.2009 & notification dated 12.03.2024, clause 7(ii), clause 8.2 and clause 8.3 (where the earlier notification was confirmed) and MCI notification dated 10.12.2009, clause 6.8(g) have been cited to submit that the petitioner has not committed illegalities or ethical violations in accepting a consultancy role at 'Pfizer' as has been claimed by the prosecution. The aforesaid notifications have been adduced as Annexure-3 series to the present CRLMC application. Upon such background, It has been contended that mere



non-receipt of prior approval of the government cannot be treated as criminal liability. With regard to the alleged visit to Minnesota, it has been stated that the said visit was in the year 2013, whereas the drug 'HAMSYL' (i.e. PEG L-asparaginase) was introduced in the market on 16.01.2015 only. At that time, it was the only drug available, in the concerned field, in India. Ergo, the allegation with regard to undue favour shown to the company 'Emcure' is baseless. Nevertheless, the petitioner has not received any such alleged pecuniary benefits from 'Emcure' for the visit to Minnesota. Rather, referring to enclosures 8 and 9 series under Annexure-2, it has been stated that the entire expenditure for the travel and accommodation for the said trip was borne out of the pocket of the petitioner.

**m)** That, at not point in time has there been any transfer or entrustment of any amount from the OST Fund to the Petitioner. During the relevant period in question, neither the State Government, the Prescription Audit Team, nor the Screening Committee has ever raised any objection or allegation with regard to any





misappropriation of the OST Fund or any other pecuniary benefits received towards the travel and accommodation of the petitioner. Therefore, it was submitted that the question of the transfer of any money from the OST Fund to the account of the present petitioner does not arise in the present case.

**n)** Furthermore, a departmental proceeding (Annexure-4 to the present CRLMC application) was also initiated against the petitioner on the self-same allegations, by the competent authority, i.e. the Government in Health Department. The petitioner has been exonerated of all charges in the said departmental proceeding with the observation that the petitioner has not committed any illegalities as alleged against him and as such the departmental proceeding is dropped against the petitioner. In fact, the exoneration order also states that the main charge against the petitioner, with regard to the violation of the prescription order, is also not established.

**o)** Lastly, there has been an inordinate delay of more than 7 years in the completion of the investigation in the



present case and no trial has begun in the present case as of yet. To substantiate such ground, the Learned Counsel for the Petitioner has relied on the decisions of the Hon'ble Supreme Court in *Pankaj Kumar vs. State of Maharashtra* reported in (2008) 16 SCC 117, *Vakil Prasad Singh vs. State of Bihar* reported in (2009) 3 SCC 355, *Sirajul vs. State of UP* reported in (2015) 9 SCC 201 and *Kailash Chandra Mohanty vs. State of Odisha* reported in (2006) 1 OLR 576 and submitted that such unexplained delay is a direct violation of the petitioner's right to speedy trial as enshrined under Article 21 of the Constitution of India. As such, no prima facie case is made out against the petitioner and the continuance of the present case, is at best, an abuse of the process of the court.

6. Heard the learned counsels for both the parties, perused the record and the documents attached thereto. It is undisputed that the instant prosecution was lodged, without conducting a preliminary inquiry as mandatorily required by an Expert Committee of the concerned field prior to registration of this criminal case against the accused-petitioners, who are reputed



doctors of the Premier Cancer Institute of the State of Odisha, as the allegation is prescribing a particular chemo drug, which relates to treatment of cancer patients under the OSTF Scheme.

7. Law is well settled in the case of *P.Sirajuddin vs. State of Madras* reported in (1970) SCC 595, that in the matter of medical treatment /medical negligence, prior to registration of criminal prosecution, there must be a preliminary inquiry by an expert committee. Similar view as also ascribed in the Case of *Lalita Kumari vs. State of UP* reported in (2014) 2 SCC 1, in respect of allegation of corruption cases.

8. As it appears from the case record, after registration of the instant FIR and after the petitioner released from jail custody, to save the skin, Government constituted an expert team of three doctors, out of them two are not expert in the field of treating blood cancer patients. One doctor namely, Dr.Naresh Pattanaik(Associate Professor-Contractual) has conflict of interest with the petitioner, and he had also lost his case in their legal battle travelled them from this High Court to Hon'ble Supreme Court of India in the matter of their promotion and seniority etc.. Moreover, the principles of



natural justice has not been followed in the said Inquiry as the petitioner and other accused persons have neither been afforded an opportunity of hearing nor has any notice been served upon them. Therefore, the said inquiry and its finding are not sustainable in the eyes of law.

**9.** This Court is also of considered opinion that there should have been a preliminary inquiry in the case by an expert committee of doctors of the concerned field, especially where there are allegations of the present nature involving the prescription of a particular cancer treatment drug and matter of treatment of poor patients. More so, it should have been ensured that the committee members do not have any conflict of interest with the accused-doctor(s), and the principles of natural justice should have been followed in the said inquiry. In the instant case, the aforesaid mandatory principles as envisaged have not been followed prior to the initiation of this criminal Prosecution.

**10.** On a comprehensive perusal of the factual matrix of the present case, it appears that the fundamental allegation in this case relates to prescribing costlier medicine i.e. “Atgam” and



“Hamsyl” instead of “Thymogam” and “L-Asparaginase” to the 13 & 33 nos. blood cancer patients respectively. The aforesaid patients are those that were treated under the OSTF Scheme and, upon being involved in the prescription of the aforesaid drugs, it has been alleged that the present Petitioner has violated the guidelines of the OSTF Scheme & the ethical Code and undue favors have been shown to the said Pharma Companies causing an equivalent loss to the Government. It is also the admitted position of the prosecution that none of the rules or provisions of the OSTF Scheme has been violated in this case by the petitioner or co-accused. The OSTF guideline never envisage or restrict or put any embargo to prescribe costlier medicine, especially when the same is better and necessary for the treatment. Similarly, the OSTF Guideline never envisages that cheaper medicine should be prescribed irrespective of the quality and result. None of the patients have also made any complaint against the accused-doctors regarding lack of any treatment or incompleteness of treatment or pressurization for purchasing the specific drug(s) in question. Similarly, there was no allegation that the drug(s) in question is/are of substandard quality or non-standard quality. Rather,



the drug in question are of standard quality and produce better result as per the research study.

**11.** Furthermore, prescribing any chemo drug or medicine to any patient is the sole prerogative and expertise of the treating doctors. In the matter of cancer treatment, the patients have right to choose their line of treatment and drugs, as per standard protocol, on the basis of counseling from the different available alternative line of treatment / drugs and as per their financial capability. It is the ethical, moral and legal obligation of the treating doctor to prescribe the best medicine to the blood cancer patients as there is a thin line between the life and death of the patients suffering from this sort of fatal disease. Moreover, there should not be any discrimination in the matter of treatment on the ground of rich and poor. In fact, it is also the constitutional obligation of the State to provide best medicine and treatment to the patients. For prescribing any particular drug of any pharmaceutical company for treatment of a disease like this, a doctor should not be held criminally liable, unless the said drug(s) is hazardous, non-Standard or sub-standard quality/brand or restricted by the appropriate Authority of the Government For that reason, if the pharma



company is benefitted, the same cannot be treated as an undue favour or loss to the Government exchequer. Especially when the patients, on their own informed consent and volition, have paid for the said drugs from their own pockets. Similarly, the Government cannot compel any patient to consume any particular drugs/medicines just because the said medicine/drugs are procured by the government or because the said drugs are cheaper than the alternatives, which might be more efficacious. Moreover, the price of the said drug in question has been fixed by the appropriate authority of the Government. The prescription audit conducted by the Government agency has not pointed out any such illegalities during the relevant period. The Screening Committee who have scrutinized the application and bill including medical prescription have not objected to the same in any point of time. Hence, petitioner should not be criminally liable for the alleged fraud, forgery, cheating and misappropriation etc. or undue favour etc.

**12.** In a similar parlance, a doctor cannot be made to face criminal Prosecution if he/she has any acquaintance with any pharma company for engaging him/herself in consultancy agreement with the said pharma company as advisor, and/or



he/she attended any seminar or conference, conducted by any such pharma company, as a speaker or advisor because the said doctor has prescribed the drugs of that particular pharma company. Otherwise each and every doctor in the country would face criminal prosecution. Moreover, the fact that the Petitioner attended the seminars/conferences and training programs as a mandatory requirement for career advancement and promotion of doctors cannot be sidelined. The Government of Odisha Notification dated 18.12.2023, in Para- 9(ii) and Notification/ Order of the Government of Odisha dated 18.04.1992 Para-2(i) as well as MCI Notification dated 10.12.2009 Clause- 6.8(g) support the case of the petitioner to the extent that “a Doctor may work for Pharmaceutical Industries in advisory capacity as Consultant, or any other Professional capacity”. Further the doctor is also entitled to hospitalities and accommodation allowance etc. for attending such seminar or conference or training programs/ lecture as a speaker or advisor conducted and sponsored by different pharmaceutical companies. In the instant case, the petitioner was invited to and attended the seminar and conferences as a speaker in the Minnesota, USA and various other places.





Hence, the benefit extended to him by the Emcure Pharma Company and/or Pfizer Pharma Company towards hospitalities, transportation and accommodation, cannot be treated as illegal. More so, he had attended the Conference at Minnesota, USA in the year 2013, and the alleged Drug Peg L-Asparaginase i.e. Hamsyl was produced by the Emcure Pharma Company in the year 2015, and the petitioner has also never prescribed any such drug Hamsyl of the said Emcure Pharma Company. In conclusion, if this sort of proceeding is encouraged, then no doctor would ever endeavor to treat any patient fairly and fearlessly as per the best treatment standards (including drugs) available. Therefore, he should not be made criminally liable on the ground of showing favour to that Company for any Offences as alleged against him.

**13.** Furthermore, a criminal case cannot be lodged against a Doctor, because he/she has prescribed costlier drugs or chemo injection which is beneficial and better resultant than the other available drugs. Moreover, in the instant case, other doctors of that institution/ department had also prescribed the similar drugs/ chemo injection to their patients availing benefits under the OSTF Scheme and they have been excluded from the case.



Similarly, the screening committee, who have sanctioned the OST Fund in favour of the empanelled shop without any objection, and the empanelled shop (who has obtained the said money) have not been made an accused herein. The pharma companies, who have been allegedly shown favour, have also not been made accused.

14. Besides, the prosecution has failed to show any document that a single drug like “Thymogam” or “L-Asparaginase”, as procured by the government, were wasted by the Petitioner. Similarly, there was neither any entrustment of fund nor a single pie has been transferred to the petitioner. The Petitioner has also not prescribed any such alleged drug like “Atgam” or “Hamsyl” to any such OSTF patients. Furthermore, various scientific studies proclaim that the drug “Atgam” produces better results than the drug “Thymogam” which was procured by the Government. It is also borne out from record that during suspension period of the petitioner, the doctor in-charge had procured huge quantity of peg L-Asparaginase i.e. Hamsyl and most of them were wasted by him and thereby a loss of more than 8 lakhs was caused to the Government, and no FIR was registered against him despite direction of this



Court. Other doctors have also prescribed the said Drug “Hamsyl”. Therefore, it is not acceptable that at the instance of the petitioner they have prescribed the alleged Drugs i.e. “Atgam” or “Hamsyl”. It is also brought to the notice of this Court that the Drug Inspector, Odisha vide Letter No. 138, dated 29.02.2024 has instructed all the Store Medical Officer of the SCB Medical College & Hospital, that “L-Asparaginase” is not of standard quality and accordingly directed to stop the usage of the said drug (which were procured by the Government for providing treatment to poor blood-cancer patients). It fortifies Hamsyl is the best one for the treatment purpose of the said that the only alternative Drug i.e. rather the Authority who are responsible for procuring cheaper “L-Asparaginase” and “Thymogam” at the cost of life of the poor blood cancer patients and thereby wasted huge public fund, ought to have made liable for the same. At the same breath, the opinion of the so called team constituted by the Government is also not tenable and appears to be fallacious. It is also borne out from record the petitioner has contributed a lot to the state and had achieved a milestone in rendering his expertise and sincere effort in conducting Bone Marrow Transplantation (BMT) free



of cost in the Department of Hematology, SCB Medical College & Hospital.

**15.** At this stage, the Court deems it appropriate to direct its attention towards the order passed in the disciplinary proceeding conducted against the Petitioner. On perusal of the aforesaid order, under Annexure-4 series of the present CRLMC petition, passed in the departmental proceeding instituted on the self-same charges, which has been obtained through an RTI application, it is found that the Petitioner has been exonerated in the said departmental proceeding. The report also reveals that no contravention of OSTF, MCI, or any guidelines can be attributed to the Petitioner. In fact, the Petitioner was neither found to have violated the prescription audit nor was it established that the Petitioner had endorsed the prescription of the drugs in question. In fact, the only charge which has been established against the Petitioner is with regard to the non-submission of property returns. Therefore, it appears that the competent authority, in the Departmental Proceeding initiated against the petitioner on self-same allegations, has also opined that there are no such illegalities committed by the petitioner.



**16.** In view of the foregoing reasons, the very initiation of instant criminal proceeding, without conducting a preliminary inquiry by experts of the concern field, as observed above, is found to be ex-facie illegal. Moreover, no prima facie case of the alleged offences is made out from the uncontroverted allegations narrated in the FIR against the petitioner. Furthermore, the arbitrariness, discrimination, malafide and blatant illegalities on the part of the prosecution are apparent on the face of this case. In such view of the matter, this court has no hesitation in arriving at the conclusion that the present case falls squarely within the parameters, with regard to quashing of a proceeding, laid down in the case of *State of Haryana v. Bhajanlal* reported in *AIR (1992) SC 604*. Hence, allowing the further continuance of the present criminal prosecution would most definitely amount to an abuse of process of law. Accordingly, this court exercising its inherent jurisdiction under section 482 of Cr.P.C, is inclined to quash the criminal proceeding vide V.G.R No. 64 of 2017 emanated from Cuttack Vigilance Cell P.S. Case No. 19 of 2017 pending in the Court of Ld. Special Judge (Vigilance), Cuttack qua the present



petitioner in the interest of justice. Therefore, the same is hereby quashed.

**17.** The CRLMC application is allowed accordingly.

**(A.K. Mohapatra)**  
**Judge**

*Orissa High Court, Cuttack*  
*The 16<sup>th</sup> April, 2025/ Anil/ Jr. Steno*

Signature Not Verified

Digitally Signed  
Signed by: ANIL KUMAR SAHOO  
Designation: Junior Stenographer  
Reason: Authentication  
Location: High Court of Orissa  
Date: 16-Apr-2025 17:54:18

