



A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.163 of 2025

(In the matter of an application under Section 482 of Criminal Procedure Code, 1973/ Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023).

Batakrushna Dehury

...

*Petitioner(s)**-versus-**State of Odisha & Anr.*

...

Opposite Party (s)

Advocates appeared in the case through Hybrid Mode:

For Petitioner(s)

:

Mr. Anish Ankur Mishra, Adv.
Mr. Prasanna Kumar Mishra, Adv.

For Opposite Party (s)

:

Mr. Tej Kumar, ASC
Mr. Debi Prasad Dhal, Sr. Adv.
along with Associates
(for O.P.2)

CORAM:**DR. JUSTICE SANJEEB K PANIGRAHI****DATE OF HEARING: -26.03.2026****DATE OF JUDGMENT: - 22.05.2026***Dr. Sanjeeb K Panigrahi, J.*

1. The Petitioner has instituted the present Criminal Miscellaneous Case under Section 482 of the Code of Criminal Procedure, 1973/ Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, invoking inherent jurisdiction of this Court, *inter alia*, seeking to quash/set aside the order dated 02.01.2025 passed by the learned Sub-Divisional Judicial Magistrate, Kamakhyanagar in G.R. Case No.696 of 2022 being illegal, arbitrary and unsustainable in law.



I. FACTUAL MATRIX OF THE CASE:

2. The brief facts of the case are as follows:

- (i) Opposite Party No. 2 was the original owner of a JS81 Excavator Machine of JCB make bearing Serial No./Machine No. 1799898, manufactured in 2014, which he had purchased with financial assistance from Magma Fincorp Ltd.
- (ii) Due to financial difficulties, Opposite Party No.2 approached the Petitioner and offered to sell the aforesaid JCB machine for a consideration of Rs.13 lakhs. The Petitioner accepted the proposal and paid the entire consideration amount to Opposite Party No.2. Thereafter, Opposite Party No.2 delivered possession of the JCB to the Petitioner on 13.11.2018 after clearing the dues of Magma Finance Company. Since the Petitioner had no experience in operating or managing the JCB machine, it was mutually agreed that Opposite Party No.2 would manage the machine and pay a monthly rent of Rs. 50,000/- to the Petitioner.
- (iii) The Petitioner also availed financial assistance from SREI Finance Company for the said JCB. After taking possession, Opposite Party No.2 got an agreement executed in the name of his daughter-in-law, named, Ranjita Jena, stipulating that she would manage the vehicle and pay a monthly rent of Rs. 50,000/- to the Petitioner.
- (iv) Pursuant to the agreement dated 21.01.2019, the said JCB was managed by Opposite Party No.2 through Ranjita Jena (his daughter-in-law). However, Opposite Party No.2 neither paid the agreed monthly rent to the Petitioner nor allowed the Petitioner to take possession of the JCB machine. Consequently, the Petitioner



lodged an FIR at Tumusinga Police Station against Opposite Party No. 2, his son Jitu Jena and his daughter-in-law Ranjita Jena, which was registered as Tumusinga P.S. Case No. 222 of 2022 under Sections 420/406/506/294/34 of the Indian Penal Code, corresponding to G.R. Case No. 696 of 2022.

- (v) During the course of investigation, the Investigating Agency seized the JCB and reported the matter to the learned S.D.J.M., Kamakhyanagar. The Investigating Agency also seized documents relating to the financing of the vehicle and examined witnesses, including staff of SREI Finance Company.
- (vi) In the aforesaid G.R. case, Opposite Party No.2 filed an application under Section 457 of the Code of Criminal Procedure seeking release of the JCB in his favour. The said application was contested by the Petitioner and the learned Magistrate, upon hearing all parties and perusing the materials on record, rejected the prayer of Opposite Party No.2 by order dated 19.12.2022 in CMC No. 63 of 2022.
- (vii) Challenging the order dated 19.12.2022, Opposite Party No.2 filed Criminal Revision No.01 of 2023 before the learned Additional Sessions Judge, Kamakhyanagar. Upon hearing the parties, the learned Revisional Court confirmed the order of the learned Magistrate and dismissed the revision petition.
- (viii) Thereafter, upon an application filed by the Petitioner, the learned Magistrate, being satisfied, was pleased to release the JCB in favour of the Petitioner by order dated 21.08.2023 in Criminal Misc. Case No.79 of 2023 (arising out of G.R. Case No. 696 of 2022). The



Petitioner complied with the terms and conditions and the JCB machine was accordingly released in his favour on 22.08.2023.

- (ix) Having failed in his attempts to secure release of the JCB, Opposite Party No.2 filed ICC Case No.11 of 2023 before the Court of the learned S.D.J.M., Kamakhyanagar. Upon receipt of the complaint petition, the learned Magistrate, without proper application of mind, forwarded the complaint to Tumusinga Police Station for investigation under Section 156(3) of the Code of Criminal Procedure. Based on the same, Tumusinga P.S. Case No.124 of 2023 was registered against the Petitioner under Sections 406/419/420/467/468/471 of the Indian Penal Code.
- (x) Following the registration of the FIR in Tumusinga P.S. Case No. 124 of 2023 (corresponding to G.R. Case No.504 of 2023), the police repeatedly summoned the Petitioner. Apprehending arrest, the Petitioner approached this Court by filing ABLAPL No.10221 of 2023. Opposite Party No.2 entered appearance. Upon hearing the parties, this Court, by order dated 30.01.2024, allowed the anticipatory bail application and directed that the Petitioner be released on bail upon surrender, subject to conditions including full cooperation with the investigation and not transferring ownership of the machine without leave of the trial Court.
- (xi) The Petitioner duly cooperated with the investigation whenever required. However, the Investigating Officer harassed the Petitioner by repeatedly demanding production of the original sale deed. The Petitioner clarified that he had never executed any such sale deed and that the signature appearing on the document produced by



Opposite Party No.2 was forged. The Investigating Officer issued a notice dated 19.12.2024 under Section 91 Cr.P.C. directing production of the alleged original sale deed. In response, the Petitioner, by registered letter dated 22.12.2024, stated that no such document had been executed or was in his possession.

- (xii) Subsequently, without the knowledge of the Petitioner, the Investigating Officer filed an application before the learned Magistrate in G.R. Case No.696 of 2022 seeking cancellation of the zimanama. By letter dated 27.12.2024, the Investigating Officer requested permission to seize the JCB from the custody of the Petitioner and to release it in favour of the alleged true owner (Opposite Party No.2).
- (xiii) The learned Magistrate, by order dated 02.01.2025, rejected the prayer of the Investigating Officer to seize the vehicle from the Petitioner in connection with G.R. Case No. 504 of 2023.
- (xiv) However, without issuing notice to the Petitioner or affording him an opportunity of being heard, the learned Magistrate, by a separate order dated 02.01.2025, cancelled the earlier order releasing the seized vehicle in favour of the Petitioner. The Petitioner was directed to produce the JCB machine before the Investigating Officer within 10 days, failing which the Investigating Officer was permitted to take appropriate legal steps to recover possession of the vehicle. The said order dated 02.01.2025 is impugned herein.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

- 3. Learned counsel for the Petitioner earnestly made the following submissions in support of his contentions:



- (i) The agreement dated 21.01.2019 is neither disputed nor reported by the I.O. to be forged. It is only the so-called sale deed, allegedly prepared by Opposite Party No.2 to support the filing of the complaint case, which has been reported by the I.O. to contain a forged signature of Opposite Party No.2. However, upon scrutiny of the said sale deed, it appears that the signature of the Petitioner is also forged, yet it has not been sent for examination despite repeated requests by the Petitioner.
- (ii) From the FIR, it appears that the Petitioner never stated anything about the execution of such a sale deed, and it is only for the first time that Opposite Party No.2 has raised such an allegation. Even during the consideration of his application for release of the JCB before the learned Magistrate or the Revisional Court, he never disclosed the existence of the so-called "sale deed." While considering the Petitioner's application under Section 457 Cr.P.C., the learned Magistrate also examined the said sale deed and, being satisfied that it is not admissible in evidence, directed the release of the JCB in favour of the Petitioner.
- (iii) As per the prosecution case, the original sale deed is not available. The signature has therefore been verified from a Xerox copy, which is not admissible in evidence.
- (iv) Admittedly, two different FIRs have been registered, one at the instance of the Petitioner and another at the instance of Opposite Party No.2. It is also admitted on record that, after seizure of the vehicle, Opposite Party No.2 applied for release of the JCB in his favour, which was rejected upon consideration of his contentions.



Thereafter, he filed a revision, and during the pendency of the revision, he filed a complaint petition alleging the existence of a forged sale deed. Opposite Party No.2 relied on this document before the Revisional Court. However, the learned Revisional Court rejected his prayer for release in his favour. Thereafter, the Petitioner applied for release of the JCB, which was allowed after consideration of all materials, including the sale deed.

- (v) Except for the allegation that the signature of Opposite Party No.2 on the so-called sale deed is forged, there is no material indicating who is the scribe or creator of such a deed, whether it is the Petitioner or Opposite Party No.2. On a bare perusal of the document and comparison with the Petitioner's signatures in the FIR and the vakalatnama, it appears that the signature of the Petitioner on the alleged sale deed is also forged.
- (vi) The police deliberately did not seek verification of the Petitioner's signature on the sale deed, despite his request. The authenticity of the document is yet to be examined during trial.
- (vii) It is settled law that a party cannot be compelled to produce a document to his or her prejudice. The Petitioner has clearly informed the I.O., in response to notice under Section 91 Cr.P.C., that he has no knowledge of the sale deed and has never executed any such document.
- (viii) Therefore, as the Petitioner has fully cooperated with the investigation, it cannot be said that he has violated any condition. As such, without issuing notice, the learned court below has exceeded



its jurisdiction in passing the impugned order, which is liable to be quashed.

- (ix) The I.O. admittedly made two separate prayers, one for taking over possession of the JCB from the Petitioner and handing it over to Opposite Party No.2 and the other for cancellation of the interim release.
- (x) In respect of the first prayer, the learned Magistrate, upon consideration, rejected the request by order dated 02.01.2025. However, with regard to the second prayer, the learned Magistrate recalled/cancelled the interim release order on the very same day, i.e., 02.01.2025, directing the I.O. to take possession of the JCB from the Petitioner. Surprisingly, despite rejection of the first prayer, the I.O., after taking possession, handed over the JCB to Opposite Party No.2, which clearly indicates bias in favour of Opposite Party No.2. Subsequently, after an interim order was passed in the case, the learned Magistrate directed the I.O. to recover possession from Opposite Party No.2. The learned Magistrate thus passed two contradictory orders on the same day on two different prayers of the I.O., which is unjustified and renders the impugned order liable to be quashed.
- (xi) Admittedly, no notice was issued to the Petitioner, nor was any opportunity of hearing afforded to him. Once the order of release was passed in favour of the Petitioner, any order cancelling the same would directly affect his rights and interests in the property. In such circumstances, the learned Magistrate was required to issue notice to the Petitioner to show cause and to explain whether the allegation of



violation of conditions was true or legally sustainable. The failure to provide notice and an opportunity of hearing violates the principles of natural justice, which form the basic framework of the Constitution of India

- (xii) He placed reliance in the case of *M/s Daffodills Pharmaceuticals Ltd. &Anr. v. State of U.P. &Anr.*¹, wherein the relevant paragraph is reproduced below:

“15. In the present case, even if one assumes that Surender Chaudhary, the accused in the pending criminal case was involved and had sought to indulge in objectionable activities, that ipso facto could not have resulted in unilateral action of the kind which the State resorted to- against Daffodils, which was never granted any opportunity of hearing or a chance to represent against the impugned order. If there is one constant lodestar that lights the judicial horizon in this country, it is this: that no one can be inflicted with an adverse order, without being afforded a minimum opportunity of hearing, and prior intimation of such a move. This principle is too well entrenched in the legal ethos of this country to be ignored, as the state did, in this case.”

- (xiii) He also placed reliance in the case of *Gurdev Singh and Ors. v. State of Bihar and Ors.*², wherein the Supreme Court set aside an order cancelling the bail at the threshold which was passed without notice to the accused.
- (xiv) While releasing the vehicle, the learned Court below had put conditions as follows:

- i) He will not use the vehicle in any other crime.

¹ 2019 INSC 1366

² MANU/SC/0951/2000



- ii) He will produce the vehicle before this Court and I.O. as and when directed.
- iii) He will keep the vehicle insured at all times.
- iv) He will not change the color of the vehicle.
- v) He will not sale, mortgage, hypothecate the vehicle without prior permission of this Court.
- vi) He will not dispute the identity of the vehicle during the trial of the case.
- vii) He will not change the body of the vehicle without prior permission of this Court.

None of the conditions is alleged to have been violated. Since the petitioner did not violate any of the conditions, the cancellation of the *zima* / interim release was not permissible. The learned court below has taken several extraneous grounds for cancellation of the order, which is clearly hit by Section 362 of the Cr.P.C., as the court was not authorized to consider other materials for re-examining whether the release order was legal or illegal. Although the word “cancellation” is mentioned in the order, in effect it is not a cancellation but an order recalling the earlier order.

- (xv) Section 362 of the Cr.P.C. places a complete embargo on the Court from reviewing or altering any judgment or final order passed by it.
- (xvi) In view of such statutory restriction, since the impugned order is not based on any violation of conditions, reconsideration of the merits on the basis of further material produced by the I.O. is wholly without jurisdiction. It is only a higher forum that may examine



such material to determine whether the release order can be sustained.

(xvii) It is true that the I.O. has submitted a final report. However, the impugned order, having been passed with undue haste, bias, lack of jurisdiction and in violation of the principles of natural justice, is liable to be set aside. It is pertinent to mention that the Petitioner has already filed a protest petition upon submission of the final report by the I.O. and the dispute still subsists.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTY NO.2:

4. The Learned Counsel for the Opposite Party No.2 earnestly made the following submissions in support of his contentions:

- (i) At the first instance, the Petitioner filed Criminal Misc. Case No. 79/2023 before the learned SDJM under Section 451 of the Code of Criminal Procedure, seeking interim release of the JCB in his favour on the ground that he had purchased the JCB in question from Opposite Party No.2 on the strength of a “Deed of Sale” executed before the City Notary, Bhubaneswar, on 30.11.2018. Along with the petition under Section 457 CrPC, the Petitioner filed a copy of the said “Deed of Sale” before the learned SDJM to substantiate his claim of ownership over the JCB.
- (ii) Subsequently, suppressing the said fact before this Court, the Petitioner has developed a new version in ABLAPL No. 10221/2023 as well as in the present CRLMC petition, stating that he had purchased the JCB from Opposite Party No.2 on 13.11.2018 for a consideration of Rs.13 lakhs.



- (iii) The Petitioner further stated that Opposite Party No.2 delivered the JCB to him after repayment of the entire loan amount of Rs. 13 lakhs to Magma Finance Company. The reason for suppressing the earlier stand and introducing a new version appears to be that, during the course of police investigation, it came to light that the alleged “Deed of Sale” dated 30.11.2018 is a fabricated document, which had been produced before the learned Magistrate along with the petition under Section 457 CrPC.
- (iv) Upon perusal of the said “Deed of Sale,” the learned SDJM had released the JCB in favour of the Petitioner on interim zima. However, a bare perusal of the document reveals that there are no witnesses to the said “Deed of Sale,” although a column for witnesses exists and remains blank. Further, the signature of Opposite Party No.2 on the said document does not match.
- (v) Further, the Petitioner has stated in paragraph 11 of the petition that, after failing to secure release of the JCB, Opposite Party No.2 filed I.C.C. Case No. 11 of 2023 before the Court of the learned SDJM, Kamakhyanagar. This assertion is false.
- (vi) It is clarified that I.C.C. Case No.11/2023 was filed by Opposite Party No.2 much prior to the order passed in CMC No.79/2023. The complaint case was filed on 22.02.2023, whereas the order allowing CMC No.79/2023 was passed on 21.08.2023.
- (vii) The learned SDJM was pleased to forward the complaint petition to the police station for registration and investigation. Upon completion of investigation, the Investigating Officer submitted a



charge sheet against the Petitioner on 30.01.2025 for offences punishable under Sections 406, 420, 467, 468, and 471 of the IPC.

- (viii) Although the Investigating Officer issued notice under Section 91 Cr.P.C., the Petitioner initially avoided compliance and subsequently suppressed the original “Deed of Sale” and the agreement with Ranjita Jena. The Petitioner falsely informed the Investigating Officer that he had not executed the said documents, whereas, in fact, he had produced the same before the Investigating Officer on 22.09.2022 and later before the Court along with his petition under Section 457 Cr.P.C.
- (ix) The entire conduct of the Petitioner demonstrates a pattern of mischief and fraud played upon both the investigating agency and the Court. During the course of investigation initiated at the instance of Opposite Party No.2, the Investigating Officer discovered that the Petitioner had produced false and fabricated documents on 22.09.2022.
- (x) Consequently, the Investigating Officer had no option but to move the learned SDJM for cancellation of the interim zima granted in favour of the Petitioner on the basis of such forged documents. The Petitioner was well aware of the order passed by the learned Magistrate on 02.01.2025. The said order is based on the finding that the case in which the Petitioner had filed the application under Section 457 CrPC ended in a final report, and that the documents relied upon by the Court to grant zima were fraudulent. The order passed by the learned Magistrate is, therefore, legal, proper, and justified in all respects. The Petitioner has repeatedly attempted to



suppress material facts by making inconsistent and misleading statements.

- (xi) It is a well-settled principle of law that if the initial action is not in accordance with law, subsequent conduct cannot sanctify it. It is also a settled proposition that when the foundation is removed, the superstructure collapses. A person who has committed a wrong cannot be permitted to take advantage of his own wrongdoing.
- (xii) Reliance is placed on the judgment in *Devendra Kumar v. State of Uttaranchal & Ors.*,³ wherein the Supreme Court held that dishonesty should not be permitted to bear fruit and persons who have indulged in fraud or misrepresentation should not be allowed to benefit. In such circumstances, the Court should not perpetuate fraud by entertaining petitions on their behalf.
- (xiii) In the present case, the very foundation of the Petitioner's claim is the alleged "Deed of Sale" dated 30.11.2018, which has been found to be fraudulent upon due investigation by the Investigating Officer. Consequently, the Investigating Officer submitted the final form treating the FIR as false.
- (xiv) In view of the aforesaid facts and circumstances, the present CRLMC petition is not maintainable in law and is liable to be dismissed with costs.

IV. COURT'S REASONING AND ANALYSIS:

- 5. This Court has carefully examined the impugned order dated 02.01.2025 passed by the learned Sub-Divisional Judicial Magistrate, Kamakhyanagar in G.R. Case No.696 of 2022, the materials placed on record including the

³ (2013) 9 SCC 363



case diary extracts, the previous orders passed by the learned Magistrate and the Revisional Court, and the written submissions advanced by the learned counsel for the parties. The core issue for consideration is whether the learned Magistrate was justified in cancelling the interim release of the seized JCB excavator in favour of the Petitioner, without issuing any notice or affording an opportunity of hearing, and on grounds that essentially seek a review of a final order.

6. This Court finds that the impugned order suffers from multiple fatal legal infirmities. Foremost is the gross violation of the principles of natural justice. The order dated 21.08.2023 releasing the vehicle in favour of the Petitioner was a final judicial order disposing of the Petitioner's application under Section 457 of the Code of Criminal Procedure. The Petitioner had complied with the terms and taken possession of the vehicle on 22.08.2023. Thereafter, when the Investigating Officer moved an application for cancellation of the zimanama, the learned Magistrate proceeded to cancel that release order on 02.01.2025, without issuing any notice, without calling for a response from the Petitioner, and without any finding that the Petitioner had violated any of the conditions imposed at the time of release. This is a clear breach of the *audi alteram partem* rule. As held by the Supreme Court in *M/s Daffodills Pharmaceuticals Ltd. & Anr. v. State of U.P. & Anr.* (supra), no person can be inflicted with an adverse order affecting his rights without being afforded a minimum opportunity of hearing. The same principle was reiterated in *Gurdev Singh v. State of Bihar* (supra), where the Supreme Court set aside a cancellation order passed without notice to the affected party. The impugned order, therefore, cannot be sustained on this ground alone.



7. Further, the impugned order falls afoul of the embargo contained in Section 362 of the Code of Criminal Procedure, 1973. The said provision unequivocally states that no Court, after it has signed its final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error. The order dated 21.08.2023 was a final order disposing of the Petitioner's claim for interim custody. The learned Magistrate did not purport to cancel the release on the ground of violation of any condition. Instead, he proceeded to re-appreciate the entire factual matrix concerning ownership of the vehicle including the alleged sale deed, the tax invoice, the No Objection Certificate, and the repayment records and concluded that the Petitioner's claim was improbable. This is nothing short of a review and revision of a previous final order on the merits, which is expressly prohibited by law. The mere labelling of the application as one for "cancellation of zimanama" cannot circumvent the statutory bar. The power to cancel an interim release order exists only when the conditions of release are breached or when the order was obtained by fraud practised upon the Court. In the present case, no condition was alleged to have been violated, and the issue of fraud is a contentious factual dispute involving examination of signatures and documents, which is yet to be adjudicated. The Magistrate, by undertaking a mini-trial on the issue of title at the behest of the Investigating Officer, has clearly acted without jurisdiction.
8. The impugned order also suffers from internal inconsistency and arbitrariness. The record shows that the Investigating Officer made two distinct prayers: first, to seize the vehicle from the Petitioner and hand it over to Opposite Party No.2; and second, to cancel the interim release



order. By a separate order of the same date, the learned Magistrate rejected the first prayer. Yet, on the very same day, he granted the second prayer and directed the Petitioner to produce the vehicle before the Investigating Officer, effectively achieving the very result that he had just refused. This contradictory approach reflects a non-application of mind and renders the impugned order arbitrary and capricious. Moreover, it was later admitted that upon the Petitioner producing the vehicle, the Investigating Officer handed it over to Opposite Party No.2, which was precisely the relief that had been rejected. Such conduct by the investigating agency and the resultant prejudice to the Petitioner further vitiates the proceedings.

9. This Court is not oblivious to the fact that the Investigating Officer has submitted a final report in G.R. Case No.504 of 2023, treating the FIR lodged by Opposite Party No.2 as false, and that a charge sheet has been filed against the Petitioner. However, that final report is merely an opinion of the police and not a conclusive adjudication of rights. The Petitioner has filed a protest petition, which is pending before the learned Magistrate. The existence of a final report does not empower the criminal court to unilaterally cancel a prior judicial order without following due process. The proper course for the Investigating Officer, if he believed that the release order was obtained by producing forged documents, was to bring this material to the notice of the Court and seek appropriate directions after giving notice to the Petitioner. Instead, the learned Magistrate pre-judged the issue by relying solely on the Investigating Officer's assertions, without hearing the Petitioner. This is a classic case of



procedural impropriety that strikes at the root of the fairness of the judicial process.

V. CONCLUSION:

10. In light of the foregoing discussion, this Court is satisfied that the impugned order dated 02.01.2025 is not sustainable in law. It is accordingly quashed and set aside. The order dated 21.08.2023 releasing the JCB excavator in favour of the Petitioner shall stand restored. The learned Sub-Divisional Judicial Magistrate, Kamakhyanagar, is directed to hear and dispose of the pending protest petition filed by the Petitioner in accordance with law, uninfluenced by any observations made in the impugned order, and after giving an opportunity of hearing to all parties. The Petitioner is directed to continue to abide by all conditions imposed in the original release order, including producing the vehicle as and when directed by the trial Court pending final adjudication. The Criminal Miscellaneous Case is allowed.
11. Accordingly, the CRLMC stands **allowed**.
12. Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

*Orissa High Court, Cuttack,
Dated the 22nd May, 2026/*