

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2135 of 2012

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Angeshwar Sahani S/O Late Laxmi Sahani, Resident of Village - Tisidih, P.O. +
P.S. Moro, District - Darbhanga, through its Chief Executive of Hanuman Nagar,
Prakhand Matsyajivi Swablambi, Sahkari Samiti Ltd. Darbhanga

.... Petitioner/s

Versus

1. The State of Bihar
2. The Director Fisheries, Bihar, Patna
3. The District Fisheries Officer-Cum-Chief Executive Officer, Darbhanga

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pashupati Pd. Sinha
Mr. Deepak Kumar

For the Respondent/s : Mr. Gautam Bose, AAG-8
Mr. Ajay Kumar, AC to AAG-8

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 28-09-2015

Heard the parties.

2. The petitioner has filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of order dated 02.01.2012 passed by the respondent Director of Fisheries, Bihar, Patna, which has been communicated vide letter dated 5th January, 2012 issued by the Joint Director of Fisheries, Bihar, Patna to the Deputy Director of Fisheries, Darbhanga Circle, Darbhanga, as contained in Annexure-1 to the writ petition, whereby and whereunder the respondent Director of Fisheries, Bihar, Patna in exercise of his powers under Section 18(ii) of The Bihar Fish Jalkar Management Act, 2006 (in short, 'Act, 2006') has granted sanction for taking legal action and for prosecuting the petitioner for allegedly committing some offence under the Act, 2006.

3. Learned counsel appearing on behalf of the petitioner submits that while passing the impugned order dated 02.01.2012 vide Annexure-1 respondent Director has granted sanction for prosecuting

the petitioner, but at the same time he has taken cognizance of the offence; therefore, according to him, the order impugned is not sustainable. He further submits that the impugned order passed by the respondent Director is mala fide and on that count also it is liable to be set aside.

4. The matter has been contested by the respondents by filing a detailed counter-affidavit on behalf of the respondent no.2. Learned AAG-8 appearing on behalf of the respondents submits that by the impugned order dated 02.01.2012, merely a sanction has been granted by the respondent Director in exercise of his powers under Section 18(ii) of the Act, 2006. According to him, in the light of the aforesaid order, an F.I.R. was lodged by the District Fisheries Officer, Darbhanga, which gave rise to a substantive criminal case vide Moro P.S. Case No. 4 of 2012 dated 25.01.2012 for offences under Sections 406, 409 and 420 I.P.C. It is further submitted that before granting sanction for prosecution, the petitioner was granted opportunity of hearing and the requirement of Section 18(ii) of the Act, 2006 has been fulfilled. It is pleaded that before passing the impugned order, a notice was issued to the petitioner, whereafter, he entered appearance through a lawyer and all the required documents were provided to him, but, thereafter, for the reasons best known to him, he chose not to appear on the next date fixed. Therefore, the respondent Director was left with no option, but to pass an appropriate final order. It is contended that the impugned order cannot be legally faulted.

5. Before adverting to the rival submissions of the learned counsel appearing on behalf of the parties, it would be relevant to reproduce Section 18 of the Act, 2006, which reads as follows:

“18. Cognizance of offence:- (i) No court inferior to that of a Magistrate of the Second Class shall try any offence under this Act.

(ii) Any legal proceeding for prosecution for

an offence committed under this Act may not be initiated without the previous sanction of the Director Fisheries, and he shall give the person a reasonable opportunity of being heard before giving sanction of prosecution.”

6. From plain reading of Section 18(ii) of the Act, 2006, it is evident that only requirement of law is that before granting sanction, opportunity of hearing must be given to the concerned person, by the Director of Fisheries, and secondly, no legal proceeding for prosecution shall be initiated under the provisions of Act, 2006 unless sanction has already been granted by the Director of Fisheries. However, after grant of sanction by the Director of Fisheries, a substantive criminal case is required to be instituted and thereafter if final form/charge sheet is submitted by the competent authority, then only cognizance can be taken and trial can be conducted by the competent court, not inferior to the Magistrate of Second Class.

7. Now, coming to the present case, this Court finds that before passing the impugned order dated 02.01.2012, notice was issued to the petitioner, whereafter he entered appearance through his counsel on the date fixed. The papers demanded by the learned counsel appearing on behalf of the petitioner were supplied to him, but on the subsequent dates the petitioner decided not to appear and contest the matter for sanction, as a result thereof, the final impugned order was passed on 02.01.2012 (Annexure-1) by the Director of Fisheries granting sanction for prosecution against the petitioner. It is not in dispute that in the light of the aforesaid order, a substantive criminal case vide Moro P.S. Case No. 4 of 2012 dated 25.01.2012 for various offences was instituted and is now pending for investigation before the police. The plea of malafide is very vague and has not been

substantiated by sufficient materials. Further the persons concerned have not been impleaded as party respondents by name. Hence, on such a vague plea of malafide, impugned order cannot be legally faulted.

8. Now, the matter is under investigation before the police, therefore, the petitioner would be well advised to produce the relevant materials before I.O., in support of his defence, so that investigation is taken to its logical conclusion. By the impugned order only sanction for prosecution has been granted and it cannot be treated as an order of cognizance. The submissions made and apprehension raised in this regard by the learned counsel appearing on behalf of the petitioner is completely misconceived and unfounded, as no cognizance of the offence has been taken till date by any Court.

9. The present writ petition seems to be completely misconceived and devoid of merit; and is, accordingly, dismissed, but without costs.

(Birendra Prasad Verma, J)

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