

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.39862 of 2012

Arising Out of PS.Case No. -1170 Year- 2010 Thana -null District- VAISHALI(HAJIPUR)

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1. Rabindra Kumar Singh S/O Late Nag Narayan Singh Resident Of Village Devapur, P.S. Barauli, District Gopalganj, At Present Sub Inspector Of Police, P.S. Mahua, District Vaishali.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. Mridula Devi W/O Shyam Nandan Prasad Singh Resident Of Village Kutubpur Kothi, P.S. Sadar Hajipur, District Vaishali.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Radha Krishna Singh, Adv.

For the State : Ms G. Begum, APP

For Opposite Party No.2: Mr. Apurva Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 01-05-2015

In the present application filed under section 482 of the Code of Criminal Procedure, the petitioner seeks quashing of the order dated 02.09.2011 passed by the learned Judicial Magistrate 1st class, Vaishali at Hajipur in connection with Complaint Case No. 1170 of 2010 whereby, finding a prima facie case to be made out under sections 323 and 504 of the Indian Penal Code, the petitioner has been summoned to face trial.

2. On 01.05.2010 one Mridula Devi (Opposite Party No.2) filed complaint Case No. 1170 of 2010 before the learned Chief Judicial Magistrate, Vaishali at Hajipur stating therein that her husband is posted in Reserve Bank of India at Patna after his retirement from army, her eldest son is in service at Ahmedabad and



her second son is engaged in cultivation. On 23.04.2010 at 3.00 a.m., the petitioner went to her house along with constables. He knocked on the door and started abusing her using filthy words. She did not open the door whereupon the petitioner and other constables broke open the door and forced their entry into the house. They were searching for her son Awanish Kumar @ Pintoo. She objected to the action of the police and asked for authorization in respect of search of her house upon which the petitioner abused and slapped her. He snatched her gold chain and uttered threats. Subsequently, she learnt that the petitioner has instituted a case as Hajipur Sadar P.S. Case No.120 of 2010. On receipt of the aforesaid complaint, learned Chief Judicial Magistrate, Vaishali at Hajipur made over the case under section 192 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') to the court of Judicial Magistrate 1st Class, Hajipur for enquiry.

3. The learned Magistrate examined the complainant on solemn affirmation and three witnesses in course of enquiry conducted under section 202 of the Code. After going through the materials available on record, the learned Magistrate dismissed the complaint on 04.05.2011 in exercise of powers conferred under section 203 of the Code. Thereafter, the complainant preferred a revision against the aforementioned order dated 04.05.2011, vide



Cr.Rev. No.116 of 2011, before the learned Sessions Judge, Vaishali at Hajipur. In the aforementioned revision application, vide order dated 20th July, 2011, the learned Sessions Judge, Vaishali set aside the order dated 04.05.2011 and remanded the complaint to the learned Chief Judicial Magistrate for passing appropriate order after conducting further enquiry into the matter. Consequently, the learned Judicial Magistrate 1st Class passed the impugned order dated 02.09.2011, whereby he found prima facie case to be made out against the petitioner and summoned him to face trial.

4. It has been contended by the learned counsel for the petitioner that on information of one Rajendra Prasad Singh, Sonapur P.S.Case No.234 of 2007 was registered under section 392 of the Indian Penal Code. In course of investigation, the name of the son of the complainant, namely, Awanish Kumar Singh @ Pintoo transpired and accordingly the Sonapur Police sought written help of the police of Sadar Hajipur for which Sanha No.511 dated 23.04.2010 was entered at 00.30 hours. The police party headed by the petitioner raided the house of Awanish Kumar Singh @ Pintoo, following all legal procedures, in presence of two independent witnesses. In the said process, the complainant was requested to open the door and after she opened the door, search was made but the accused Awanish Kumar Singh was not found in the house and entry about the search

was made in the case diary on the same day. He has submitted that after concluding the investigation of the case, Sonapur Police submitted charge sheet under section 395 of the Indian Penal Code on 31st July, 2011 against Awanish Kumar Singh @ Pintoo and one another under sections 395 and 412 of the Indian Penal Code.

5. Learned counsel for the petitioner has further submitted that the petitioner was on official duty and, after adopting all legal procedures, he had made search of the house of the complainant to arrest her son Awanish Kumar Singh @ Pintoo, who was involved in a case of dacoity. He has submitted that the order taking cognizance is fit to be quashed as the same was barred under section 197(2) and (3) of the Code, which reads as under :

“197. Prosecution of Judges and public servants –

(1) xxxx xxxx xxxx

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.”



6. It has been contended that section 197(3) lays down that the State Government may, by notification, direct that the provisions of sub-section (2) of the said Section 197 of the code shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression “Central Government” occurring therein, the expression “State Government” were substituted. He has submitted that in exercise of powers conferred by sub-section (3) of Section 197 of the Code, the Governor of Bihar has issued a notification published in the extra ordinary issue of the Bihar Gazette of 24th May, 1980 whereby it has been declared that the provision of sub-section (2) of section 197 of the Code shall apply to the officers and men of the Bihar Police Force wherever they may be serving the State of Bihar charged with the maintenance of public order and who have been appointed by the Inspector General of Police, Bihar or any other Officers specially authorized to appoint any person to such force under the Police Act.

7. It has been submitted that by virtue of the aforementioned notification the provision of sub-section (2) of Section 197 of the Code shall apply to all the Officers and Men belonging to Bihar Police Force charged with the maintenance of public order. Since the

petitioner was a member of the Bihar Police Force, who was charged with maintenance of public order, he is entitled to claim protection under section 197(2) of the Code.

8. It has been contended that in the present case admittedly the petitioner was performing his official duty while he went in search of the son of the complainant, who was an accused in a serious case of dacoity. The allegation of breaking open the door, abusing and uttering threat have been made only in order to humiliate and harass the petitioner. He has submitted that in absence of sanction for prosecution, the order taking cognizance against the petitioner in the present case is bad in the eye of law.

9. The next contention of the learned counsel for the petitioner is that the instant complaint case has been instituted as a counter-blast by the complainant with a view to harass and humiliate the petitioner for the action taken against her son. In this regard it has been submitted that though according to the complainant the alleged occurrence took place in the night intervening between 23rd April, 2010 and 24th April, 2010, the complaint was filed on 1st May, 2010 i.e. after a delay of 7 days. According to the petitioner, there is no explanation offered as to why there was inordinate delay in filing the complaint.

10. Per contra, learned counsel for the State has contended that



the allegations made in the complaint petition has duly been supported by the complainant on oath as well as by the other witnesses, who deposed in course of enquiry conducted under section 202 of the Code. The learned Magistrate, who has passed the impugned order, has found prima facie material for taking cognizance under section 323 and 504 of the Indian Penal Code against the petitioner. According to him, the act complained of against the petitioner would not come within the purview of discharge of his official duty and thus the petitioner would not be entitled to any protection under section 197 of the Code. He has further submitted that there is no illegality in the impugned order passed by the learned Magistrate and at the initial stage of the case no finding can be given in respect of the fact that the complaint was instituted with ulterior motive.

11. Learned counsel for the opposite party no.2 has adopted the arguments advanced by the learned counsel for the State. He has further contended that a police officer cannot take protection under section 197 of the Code for the alleged act of high-handedness in discharge of official duty. The act of breaking open the door, abusing a lady and uttering threat can hardly be regarded as an act done in discharge of official duty.

12. I have heard respective counsel for the parties and perused



the record. It is the case of the petitioner that whatever he has done was done “while acting or purporting to act in discharge of official duty” and section 197 of the Code bars a court from taking cognizance of such offence except with the previous sanction. Since there is no sanction in the present case, the learned Judicial Magistrate should not have taken cognizance of the offence and the complaint was liable to be dismissed. On the other hand, the case of the complainant is that there was no need or necessity to take sanction of the State Government as the petitioner and other constables had deliberately, intentionally and forcefully entered into the house of the complainant after breaking open the door. They also abused and assaulted the complainant and threatened her with dire consequences. The said act was not done in discharge of duty or even under colour of duty but it has been done by them by taking undue advantage of their position and hence no sanction was required for taking cognizance of the offence against the petitioner.

13. In order to examine the issue involved in the present case, I would like to refer the case of ***Sankaran Moitra Vs. Sadhna Das & Another [(2006)4 SCC 584]***. In that case, a criminal complaint was filed against the appellant Sankaran Moitra, a police officer. In the complaint, it was alleged that the husband of the complainant was beaten to death on 10.05.2001 by the police personnel at the instance



of the appellant. On the said date there was general election of the State Assembly. The complainant's husband was supporting a particular political party. It was the case of the complainant that her husband was supplying food packets at the polling booth. At that time, some police officers came there and they beat her husband. When her husband left the place, policemen chased him towards the lakeside. Her husband stated to the police personnel that he did not know swimming and requested them not to beat him. But the police officers did not pay any heed to the request and continued to beat him. The husband of the complainant fell down and became unconscious. He was taken to the hospital but was declared dead there. The complainant informed the Deputy Commissioner of Police on 11.05.2011 that her husband was beaten to death by the police and demanded stern punishment to persons responsible for killing him. On the next day i.e. on 12.05.2011, the Deputy Commissioner of Police registered a case for an offence punishable under section 304 of the Indian Penal Code. For a long period no action was taken on the basis of the complaint made by the complainant. The complainant therefore filed a private complaint on 28.05.2001 in the court of learned Chief Judicial Magistrate against the appellant and two other police officers for offences punishable under sections 302, 201, 109 and 120-B of the Indian Penal Code. The Magistrate took cognizance



of the offences. On 16.06.2001, the Magistrate issued non-bailable warrants against the accused persons including the appellant. Meanwhile, on 30.06.2001, the accused preferred an application under section 210 of the Code before the Magistrate stating therein that a complaint was filed by the complainant on 12.05.2001 which had been registered as P.S. Case No. 112 of 2001 for an offence punishable under section 304 of the Indian Penal Code by the police station concerned and proceedings were initiated. It was also stated that thereafter fax message was sent to the Joint Commissioner of Police to investigate the case under section 302 which was treated as F.I.R. it was, therefore, prayed that the complaint dated 28.05.2001 may be stayed in view of the provisions under section 210 of the Code. Thereafter, the accused filed a petition under section 482 of the Code before the Calcutta High Court for quashing of proceedings. It was contended that the alleged occurrence had transpired “while acting or purporting to act” in the discharge of their official duties and no cognizance could be taken by the court except with the previous sanction of the State Government. It was argued that since no such sanction was obtained before filing the complaint, the complaint was not maintainable in law and was liable to be dismissed only on that ground. The Calcutta High Court dismissed the petition observing that it was a case of merciless beating by a police officer

causing death of a person which could not be said to be an act in the discharge of official duty. Thus, the High Court observed that the instant case could not be said to be a case covered by section 197 of the Code.

14. The judgment of the Calcutta High Court was challenged before the Supreme Court. After taking into consideration several decisions of the Supreme Court delivered in the past including decisions rendered in Matajog Dobey Vs. H.C.Bhari [(1955)2 SCR 925], Rizwan Ahmed Javed Shaikh Vs. Jammal Patel [(2001)5 SCC 7], Shreekantiah Ramayya Munipalli Vs. State of Bombay [(1955)1 SCR 1177], Amrik Singh Vs. State of Pepsu [(1955)1 SCR 1302], Pukhraj Vs. State of Rajasthan [(1973)2 SCC 701], B. Saha Vs. M.S. Kochar [(1979) 4 SCC 177], Bakhshish Singh Brar Vs. Gurmej Kaur [(1987)4 SCC 663], Rakesh Kumar Mishra Vs. State of Bihar [(2006) 1 SCC 557], Hori Ram Singh (Dr.) Vs. Emperor [1939 FCR 159], H.H.B. Gill Vs. R. [AIR 1948 PC 128] and H.H.B. Gill Vs. Emperor [AIR 1947 FC 9], a Bench of three Hon'ble Judges of the Supreme Court held in paragraphs 23, 25 and 26 as under :-

“23. Coming to the facts of this case, the question is whether the appellant was acting in his official capacity while the alleged offence was committed or was performing a duty in his capacity as a police officer which led to the offence complained of. That it was the day of election to the State Assembly, that the appellant was in uniform; that the appellant travelled in an official



jeep to the spot, near a polling booth and the offence was committed while he was on the spot, may not by themselves attract Section 197(1) of the Code. But, as can be seen from the facts disclosed in the counter-affidavit filed on behalf of the State based on the entries in the general diary of Phoolbagan police station, it emerges that on the election day information was received in the police station at 1400 hours of some disturbance at a polling booth, that it took a violent turn and clashes between the supporters of two political parties were imminent. It was then that the appellant reached the site of the incident in his official vehicle. It is seen that a case had been registered on the basis of the incidents that took place and a report in this behalf had also been sent to the superiors by the Station House Officer. It is also seen and it is supported by the witnesses examined by the Chief Judicial Magistrate while taking cognizance of the offence that the appellant on reaching the spot had a discussion with the officer-in-charge who was stationed at the spot and thereafter a lathi-charge took place or there was an attack on the husband of the complainant and he met with his death. Obviously, it was part of the duty of the appellant to prevent any breach of law and maintain order on the polling day or to prevent the blocking of voters or prevent what has come to be known as booth capturing. It therefore emerges that the act was done while the officer was performing his duty. That the incident took place near a polling booth on an election day has also to be taken note of. *The complainant no doubt has a case that it was a case of the deceased being picked and chosen for ill-treatment and he was beaten up by a police constable at the instance of the appellant and the officer in charge of Phoolbagan police station and at their behest. If that complaint were true it will certainly make the action, an offence, leading to further consequences. It is also true as pointed out by the learned counsel for the complainant that the entries in the general diary remain to be proved. But still, it would be an*

NO
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NO
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We hold that such sanction was necessary and for want of sanction the prosecution must be quashed at this stage. It is not for us now to answer the submission of learned counsel for the complainant that this is an eminently fit case for grant of such sanction.

26. We thus allow this appeal and setting aside the order of the High Court quash the complaint only on the ground of want of sanction under Section 197(1) of the Code of Criminal Procedure. The observations herein, however, shall not prejudice the rights of the complainant in any prosecution after the requirements of Section 197(1) of the Code of Criminal Procedure are complied with.”

(Emphasis supplied)

15. Regard being had to the ratio laid down by the Supreme Court in the case of ***Sankaran Moitra*** (Supra), I am of the considered opinion that when the petitioner went along with other constables to the house of the complainant on the alleged date of occurrence in order to search the son of the complainant, namely, Awanish Kumar Singh @ Pintoo, the act was done by him while he was performing his official duty. I find that one Awadhesh Singh, who has made his statement in course of enquiry as witness no.3, has stated in reply to the court question that earlier also Awanish Kumar Singh @ Pintoo had been sent to jail. He has further admitted that he came to know subsequently that the police had come to the house of the complainant in search of Awanish Kumar Singh @ Pintoo. I further find that the enquiry witness no.1 Ganesh Singh has stated in reply to the court



question that the complainant told him that the police had come to her house in search of Awanish Kumar Singh @ Pintoo. He has also admitted that Awanish Kumar Singh @ Pintoo had been sent to jail even prior to the alleged incident. Thus, I find that there can be no doubt to the fact that the police visited the house of the complainant in order to search the son of the complainant in performance of official duty or purported performance of official duty as the son of the complainant was wanted in connection with a case lodged under section 395 of the Indian Penal Code.

16. When I come to such conclusion, section 197 of the Code cannot be by-passed. Accordingly, I am of the view that the present application is fit to be allowed only on the ground of want of sanction under section 197 of the Code.

17. However, before parting with this case, I would also like to consider the second limb of argument advanced by learned counsel for the petitioner, by which a plea has been taken that the complaint has been filed with a view to harass and humiliate the petitioner as a counter-blast for the action taken against the son of the complainant. According to the complainant, the petitioner and other constables had made their forceful entry into her house in the night of 23rd April, 2010 but the complaint was filed on 1st May, 2010. The complainant has not given any explanation as to why there was delay in filing the

complaint. She has not stated that she ever approached the police in order to register any F.I.R.

18. In the factual background of the case, as noted above, I am of the opinion that the instant complaint is only an off-shoot of the action taken by the petitioner against the son of the complainant in his capacity as police officer. The complaint in question is manifestly attended with malafide. While saying so, I am conscious of the well settled legal position that when exercising jurisdiction under section 482 of the Code, this Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial court, but at the same time, I am also mindful of the fact that it is the duty of this Court to see that the judicial process should not be an instrument of oppression or needless harassment. The scope of exercise of power under section 482 of the Code and the illustrative categories of cases where the High Court may exercise its power thereunder relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by the Hon'ble Supreme Court in *State of Haryana Vs. Bhajan Lal [1992 Supp (1) SCC 335]*. The facts of the present case would clearly show that the complaint in question is attended with malafide. The case at hand fits in with

category no.7 of illustrative categories indicated in paragraph 102 of the judgment in State of Haryana Vs. Bhajan Lal (Supra), which reads as under :-

“102. (1)	xxx	xxx
(2)	xxx	xxx
(3)	xxx	xxx
(4)	xxx	xxx
(5)	xxx	xxx
(6)	xxx	xxx

(7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

19. That being so, the present application deserves to be allowed, which I direct. The impugned order dated 02.09.2011 passed by the learned Judicial Magistrate 1st Class, Vaishali at Hajipur in Complaint Case No.1170 of 2010 is quashed.

(Ashwani Kumar Singh, J)

Pradeep/-

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