

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.32135 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- NALANDA (BIHARSHARIFF)

- =====
1. Viresh Kumar Son of Jagdip Prasad Resident of Village and Post Office - Koklat Chak, Police Station - Noorsarai, District - Nalanda at present posted on the post of Panchayat Secretary in Sarmera Block, District - Nalanda
 2. Upendra Prasad, Son of Late Ram Keshwar Das, Resident of Village - Singhua, Police Station - Deo, District - Aurangabad at present posted on the post of Executive Magistrate at Samastipur
 3. Upendra Kumar, Son of Late Rajandhari Sharma Resident of Village - Mema, Police Station - Punpun, District - Patna at present posted Block Development Officer Nagarnausa, District - Nalanda
 4. Satyendra Kumar Mishra Son of Late Badrinath Mishra Resident of Village - Belan, Police Station - Sikraul Lock, District -Buxar at present posted as OSD in the office of District Magistrate Aurangabad

.... Petitioners

Versus

1. The State of Bihar
2. Jugal Kishore Prasad Son of Late Moti Bhagat Resident of Village - Nesra, Police Station - Karai Parsurai, District – Nalanda

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Jitendra Kumar Roy, Advocate
Ms. Nikki Singh, Advocate
Mr. Sumit Kumar, Advocate
For the Opposite Party/s : Md. Khurshid Alam, Advocate
For the State : Mr. Anish Chandra, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 22-05-2015

Heard learned counsel for the petitioners, learned counsel for the State and learned counsel for the opposite party no. 2.

2. The petitioners seek quashing of the order dated 18th July, 2012 passed by the learned Judicial Magistrate, Hilsa in Complaint Case No. 508(C) of 2007, whereby finding a prima facie case to be made out under Sections 409, 471 and 120-B of the Indian Penal Code, the petitioners have been summoned under Section 204 of the Code of Criminal Procedure (for short “the Code”) to face trial.

3. The complaint in question has been filed by the opposite party no. 2 namely Jugal Kishor Prasad against six accused persons named in the complaint petition including the four petitioners of the present case. It has been alleged that under Jawahar Rojgar Yojna Rs. 28,000/- and 50,000/- were sanctioned for two schemes bearing its numbers as 2 of 2002-03 and 05 of 2002-03 relating respectively to repairing a well and brick soling in village-Nesra and one Kaushlendra Kumar was contractor of both the schemes. But allegedly no work was done on spot in spite of repeated request made by the complainant to accused Vijay Kumar the then Mukhiya. However, the accused Upendra Prasad (petitioner no. 2), the then B.D.O. of Karai Parsuarai and the accused Kaushlendra Kumar, the then Gram Sevak, were also requested but they adopted



dilly dally tactics and the complainant got the information under the Right to Information Act that out of Rs. 75,800/-, Rs. 75, 220/- has been paid in advance for both the scheme. On making complaint to the District Magistrate, Nalanda, a report was sought from the accused Biresh Kumar (petitioner no. 1), the then Panchayat Sevak, the accused Satyendra Kumar Mishra present Block Development Officer (Petitioner no. 4) and the then Block Industrial Officer. The District Magistrate, Nalanda called for a report from the accused Biresh Kumar (petitioner no. 1), Upendra Prasad (petitioner no. 2), Upendra Kumar (petitioner no. 3) and Satyendra Kumar Mishra (petitioner no. 4). However, the petitioners having gone in collusion with the other accused persons prepared a false report showing the completion of work on spot and sent the same to the District Magistrate.

4. After institution of the complaint case, the complainant was examined on solemn affirmation and apart from him four witnesses namely, Shailendra Kumar, Rajdeo Prasad, Umesh Prasad and Chhote Prasad were examined during inquiry under Section 202 of the Code. Thereafter, the learned Judicial Magistrate, Hilsa summoned the petitioners and two others to face trial vide impugned order dated 18.07.2012.

5. It has been contended by the learned counsel for the



petitioners that the entire criminal prosecution is vexatious and malicious in nature. The petitioners were neither entrusted with any money nor were they concerned in any manner with execution of the works of the two schemes. The only thing alleged against the petitioners is that when the District Magistrate, Nalanda directed them to conduct an inquiry and submit a report, they submitted a false completion certificate in respect of the works referred to hereinabove.

6. It has been contended that petitioner nos. 2 and 4 are Class-II government servants, whereas petitioner nos. 1 and 3 are Class-III government servants. The report was submitted by them to the District Magistrate, Nalanda in discharge of their official duty. They are protected from prosecution in respect of any work done by them in the discharge of their official duty under Section 197 of the Code.

7. It has further been contended that no previous sanction of the Government or of any other authority was obtained by the complainant for prosecuting the petitioners in the present case. According to him, in absence of previous sanction, the learned Magistrate could not have taken cognizance of the offence or summoned the petitioners to face trial.

8. It has further been submitted that the witnesses

examined in course of inquiry have not supported the case of the complainant at all.

9. On the other hand, learned counsel for the opposite party no. 2 has submitted that the allegations made in the complaint petition have duly been supported by the complainant in course of inquiry. In view of the allegations made in the complaint petition, a prima facie case is made out and there is no error in the order passed by the court below. Moreover, the act complained of is of giving a false work completion certificate by the petitioners to the District Magistrate and no sanction would be required for prosecuting a public servant for such an offence.

10. Learned counsel for the State has adopted the arguments advanced by the learned counsel for the complainant.

11. I have heard respective counsel for the parties and perused the record.

12. Admittedly, in the present case, no sanction from any competent authority was obtained by the complainant before filing the complaint. The sanction was not granted by any authority even while the case was being inquired into or when the summons were issued by the court below against the accused persons. There is no dispute that two of the petitioners are Class-II government servants and the report was summoned from them by the District

Magistrate in respect of completion of work allotted by the government under the schemes of Jawahar Rojgar Yojna. The alleged report was submitted to the District Magistrate in discharge of their official duty.

13. I find that the witnesses examined in course of inquiry have not supported the case of the complainant at all. The answers given by the inquiry witnesses in reply to the court questions make them wholly unreliable. Their respective replies are as follows:-

“गवाह संख्या-1

शैलेन्द्र कुमार पिता राम राज प्रसाद, ग्राम-नेसरा, थाना - कराय,
जिला - नालन्दा ।

To the court

मैं कहीं नौकरी नहीं करता हूँ । खेती करता हूँ । गाँव में नापी से मालूम हुआ कि योजना है । योजना का कोई कागज नहीं देखे हैं । मैं रुपया निकालते हुए भी नहीं देखा हूँ । किसी प्रकार का कोई कागजात नहीं देखे हैं ।

H0/- शैलेन्द्र कुमार

19.7.07

गवाह संख्या-2

राजदेव प्रसाद, पिता - बाबूलाल प्रसाद, ग्राम-नेसरा, थाना - कराय,
जिला - नालन्दा ।

To the court

मैं किसी योजना के समिति के सदस्य नहीं हूँ । मैं मैट्रिक पास हूँ । अपने निजी कार्य के अलावे ब्लॉक जाने का अवसर नहीं मिलता है । उपरोक्त सब बात हमें मुदई बताए हैं । मैं नहीं जानता हूँ कि कितना का योजना था क्या काम हुआ क्या रुपया का निकासी हुआ । दुबारा मुदई D.M. से नहीं मिले थे ।

H0/- राजदेव प्रसाद

गवाह संख्या-3

उमेश प्रसाद, पिता -स्व० सिद्धजी प्रसाद ग्राम-नेसरा, थाना-कराय,
जिला - नालन्दा।

To the court

मैं किसी योजना समिति के सदस्य नहीं हूँ। मैं केवल किसान हूँ।
किस योजना में कब रुपया आता है कब निकासी होता है, इसकी
जानकारी हमें नहीं है। गाँव वालों से हमे योजना के बारे में पता चला।
मैं स्वयं से कुछ नहीं देखा है।

ह०/-उमेश प्रसाद

गवाह संख्या-4

छोटन प्रसाद, पिता-स्व० मुंशी भगत, ग्राम-नेसरा, थाना-कराय,
जिला-नालन्दा।

To the Court

पिछला B.D.O.कब Transferहुए या अभी के B.D.O.कब आए हमें
जानकारो नहीं है। योजना स्वीकृति के समय मैं नहीं था कि कब योजना
स्वीकृत हुआ था। घटना के बारे में हमें मुदर्ई युगल किशोर बताए थे।
मैं अपने से कुछ नहीं देखा था।

L.T.I.

छोटन प्रसाद

13.09.07. ”

14. The replies given by the respective witnesses, as recorded hereinabove, make it amply clear that inquiry witnesses were not at all aware about the allegations made in the complaint.

15. The controversy in the present case is, if the act of submitting a false report on the part of the petitioners to the District Magistrate could be said to be done by them while acting or purporting to act in the discharge of their official duty and even if the act complained of done in discharge of official duties, the petitioners would be protected from prosecution under Section 197 of the Code.



The expression “while acting or purporting to act in discharge of official duty” as mentioned in Section 197 of the Code has been subject matter of interpretation in several decisions of the Supreme Court. The act of public servant said to constitute an offence, may either itself be a part of official duty of the public servant or, the act, though not itself a part of the official duty, may be connected to the official duty. In the first situation, where the act itself is a part of official duty, the public servant is entitled to protection under Section 197 of the Code. In the second situation, where the act though not itself a part of official duty, the public servant concerned may be entitled to protection under Section 197 of the Code, if the connection between the two is such that it cannot be separated from part of official duty.

16. It is true that all acts done by a public servant in the purported discharge of his official duties cannot, as a matter of course, be brought under the protective umbrella of Section 197 of the Code. There can be cases of misuse and/or abuse of the powers vested in a public servant which can never be said to be a part of the official duties required to be performed by him. If the authority vested in the public servant is misused for doing things which are not otherwise permitted under the law, such acts cannot claim the protection of Section 197 of the Code.

17. The underlying object of Section 197 of the Code is to enable the authorities to scrutinize the allegations made against a public servant to seal him against frivolous, vexatious or false prosecution initiated with the main object of causing embarrassment and harassment to the concerned official. In order to apply the bar under Section 197 of the Code, each case has to be considered in its own fact, situation in order to arrive at a finding as to whether the protection of Section 197 of the Code could be given to the public servant.

18. The apex court in **Army Headquarters vs. C.B.I.** [(2012) 6 SCC 228], in para 82 and 83 opined as follows:-

“82. Thus in view of the above, the law on the issue of sanction can be summarized to the effect that the question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duty. In order that the public servant may not be unnecessarily harassed on a complaint of an unscrupulous person, it is obligatory for the executive authority to protect him

83. If the law requires sanction, and the court proceeds against a public servant without sanction, the public servant has a right to raise the issue of jurisdiction as the entire action may be rendered void ab initio



19. Coming back to the facts of the present case, the act complained of against the petitioners is of giving a false work completion certificate to the District Magistrate. It is an admitted position that the District Magistrate had sought a report from the petitioners in respect of the works conducted under two schemes of Jawahar Rojgar Yojna by other accused persons. Under such circumstance, the act of giving the inquiry report was certainly in discharge of official duty of the petitioners. If the inquiry report is true and honest, no question of any offence arises. It would appear that the petitioners had acted in good faith while performing their duty. The witnesses examined on behalf of the complainant are wholly unreliable.

20. Having regard to the facts of the present case and the evidence led on behalf of the complainant, I am of the view that the prosecution of the petitioners for the act complained of would be an abuse of the process of court.

21. The Supreme Court in **Pepsi Foods Ltd. and Another vs. Special Judicial Magistrate and others [(1998) 5 SCC 749]** in para 28 made following observations:-

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the



criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.” (Emphasis supplied)

22. For the reasons stated, hereinabove, I am of the view that the legal requirements to constitute the alleged offences against the accused persons are lacking. The learned Magistrate has not appreciated the facts and the law involved in the case while taking cognizance of the offence or summoning the petitioners.

23. In that view of the matter, the impugned order dated 18th July, 2012 passed by the learned Judicial Magistrate, Hilsa in Complaint Case No. 508(C) of 2007, and the entire criminal prosecution arising out of the said case, are quashed.

24. The application stands allowed.

(Ashwani Kumar Singh, J.)

