

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.28837 of 2008

Arising Out of PS.Case No. -0 Year- null Thana -null District- PATNA

=====

Braj Kishore Singh 'Prabhat' S/o Late Jugeshwar Prasad Singh R/o 177C Police Colony Anisabad Patna presently retired then posted as Deputy Secretary Bihar Vidhan Sabha Patna

.... Petitioner/s

Versus

1. State of Bihar.
2. Registrar General Patna High Court.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

Mr. Rakesh Kumar

Mr. Lalit Kishore (Aag3)

=====

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 08-05-2015

The petitioner seeks quashing of the order of cognizance dated 14.03.2008 passed by the Chief Judicial Magistrate, Patna in Complaint Case No. 738 C of 2008.

2. The background facts of the case is that C.W.J.C. No. 13948 of 2002 was filed by one Virendra Kumar challenging the recruitment process conducted by the Bihar Vidhan Sabha asserting that the Respondent nos. 6, 7 and 8 were so appointed who in his contention did not qualify for the said posts. During course of hearing of the writ application an affidavit having been sworn by petitioner who happened to be the Deputy Secretary, Bihar Vidhan Sabha was filed wherein it was submitted that names of Respondent nos. 6 and 7 were obliterated by whitener and hence there was no occasion for showing any favour to them. Accepting such contention, the writ

application was dismissed.

As against this the petitioner preferred L.P.A No. 1170 of 2005 where the Division Bench called for records and found that contrary to the statement contained in the Counter Affidavit, the answer books indeed contained the names of Respondents no. 6 and 7 and their names had not been wiped out with the whitener. In such circumstances, allowing the L.P.A this Court also directed the Registrar General Patna High Court to file a complaint against the present petitioner for swearing a false affidavit.

3. It has been submitted on behalf of the petitioner that filing an affidavit on oath is a routine matter. But the same is done after it is considered at various levels. This particular counter affidavit went up till the Speaker of the Vidhan Sabha and once the authority had approved the stand, the petitioner unknowingly in a routine manner swore the affidavit without looking into the records and if at all there was a discrepancy the Division Bench could have noticed him to explain his stand instead of which such a harsh step has been taken by it without adhering to the rules of natural justice. Hence the prayer is that proceedings be quashed.

4. On the other hand counsel for the High Court submits that since the prosecution was instituted on orders of Division Bench which is still subsisting this Court may not interfere in the matter.

5. Without alluding to the principles of quashing and powers

of the High Court, suffice it is to say that a High Court can exercise its inherent jurisdiction to the extent of protecting a citizen from unwanted prosecution. In the present case even if the petitioner had sworn an affidavit which was contrary to the records since he did not have a personal stake in the matter and the same had been settled at the highest levels, I would be inclined to set aside the proceedings. Also for the reason that at least an opportunity should have been given to him as to his stand and only after due consideration of the same it was fair or with an intent to mislead the Court such a step should have been taken.

6. In such circumstances, the application is allowed and the order of cognizance dated 14.03.2008 passed by the Chief Judicial Magistrate, Patna in Complaint Case No. 738 C of 2008 is hereby set aside.

7. However this order shall not given any undue advantage to any party.

(Anjana Prakash, J)

Prakash/-

U		T	
---	--	---	--