

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.39611 of 2012

Arising Out of PS.Case No. -769 Year- 1990 Thana -Kotwali District- BHAGALPUR

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Shilendra Kumar Jha, son of Late Bipin Bihari Jha, Resident Of Village Anandgarh Colony, P.S. Tilkamanjhi, District Bhagalpur, at present posted as Inspector of Police, Amor, District Purnea.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Abhay Shankar Jha, Advocate
Mr. Shailendra Kumar Jha, Advocate

For the Opposite Party/s : Mr. D. Nandan, A.P.P.

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 30-04-2015

The petitioner figured as accused in Kotwali P.S. Case No.769 of 1990, wherein offences punishable under Sections 148, 149, 302, 307, 324, 447 and 504 of the Indian Penal Code were alleged. The Chief Judicial Magistrate, Bhagalpur, took cognizance of the offence through order dated 24.09.2011. The petitioner prays for quashing of the same.

The principal ground urged is that the prosecution did not obtain permission as required under Section 197 of the Code of Criminal Procedure (for short, 'the Code') before the cognizance was taken.

Heard Sri Abhay Shankar Jha, learned counsel for the petitioner and Sri D. Nandan, learned Additional Public Prosecutor for

the State.

The petitioner was functioning as Sub-Inspector at the relevant point of time. He is sought to be prosecuted for various offences mentioned above. The incident was in relation to death of a student of a Medical College in the police firing. The petitioner challenges the order 24.09.2011 passed by the Chief Judicial Magistrate on the ground that the sanction of the Government was not obtained as required under Section 197 of the Code. Sub-Section (1) of Section 197 of the Code reads as under:

197.Prosecution of Judges and public servants.-

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government.

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.



From perusal of this it becomes clear that it is only in respect of a public servant not removable from his office save by or with the sanction of the Government, that prior sanction is necessary before cognizance can be taken. In other words, if the appointing authority for a public servant is the Government itself, sanction is necessary. For the petitioner, the appointing authority is the DIG of the Range and not the Government. For removal of an officer of the rank of the Sub-Inspector, the sanction or permission of the Government is not necessary. Therefore, the ground urged by the petitioner cannot be accepted.

An attempt is made to address the court on merits also. This Court is not inclined to deal with the same and no view is expressed, lest the trial gets affected, one way or the other.

The petition is, accordingly, dismissed.

Interlocutory application, if any, shall stand disposed of.

(L. Narasimha Reddy, CJ)

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