

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.44875 of 2012**

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Jai Ram Singh son of Sri Rajnandan Singh, resident of village-Barat, P.S  
Sitamarhi, District-Nawadah.

.... .... Petitioner

Versus

The State of Bihar

.... .... Opposite Party

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**Appearance :**

For the Petitioner : Mr. Arun Kumar, Advocate.

For the Opposite Party : Mr. M.Haque, A.P.P.

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**CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA**  
**ORAL ORDER**

2      07-05-2015

The Heard.

The petition appears meritless on the face of it. The  
reasons are as follows:-

Admittedly, the police had entered the house of the  
complainant for making a search on suspicion that some articles or  
properties were stored therein which were subject matter of some  
offences. This appears admitted from the very few first lines of  
paragraph-1 of the complaint petition. The officers of Wazirganj  
police station were arrayed as accused for the above act of  
entering into the house of the complainant for effecting search in  
relation to the suspect properties relating to some offences.  
Allegations were framed or fastened, as the case may be, that the  
police officers had committed certain offences by assaulting the

inmates of the house as also by taking away some ornaments or other properties.

The complaint petition was filed and the Magistrate refused to take cognizance of the complaint petition in want of appropriate sanction as he felt that the act complained of was as intricately associated with the official discharge of duties of the public servant as required sanction under Section 197 Cr.P.C. for taking cognizance and for their prosecution. Some decisions of this Court were placed before the Magistrate, but he held his ground as regards the sufficient compliance of the provisions of Section 197 Cr.P.C.

The learned counsel appearing for the petitioner attacked the order on two counts. It was submitted that the officers of Wazirganj police station were acting without their jurisdiction to go into the jurisdiction of other police station for entering into the premises and affecting the search. The second contention was that an ordinary citizen of India, like, a poor fellow the complainant could not be burdened with the direction of the Court to produce the sanction to prosecute the accused persons.

I take up the second contention for answering it first. Every citizen is equal before law and deserves protection in accordance with law. The principle of constitutional guarantee of



equality before law and equal protection of the laws partakes of seeking protection of law by following procedure established by law. The provision of Section 197 Cr.P.C. is reasonable, just and fair. There has never been any challenge to that provision by setting up an attack that it was quite derogation with Articles 14 and 21 of the Indian Constitution. If some one was seeking the protection of law, the procedure for seeking such protection are necessary to be followed by him. Moving the criminal law in motion is seeking the protection of law.

This Court could not accept the contention of the learned counsel that in cases of a poor complainant, the State should come to his rescue and negotiate the grant of sanction and production of the same before the competent Court. The argument is full of flaws inasmuch as the State has to grant sanction either by itself or through any of its administrative limbs. It must be fairly pursued to be obtained by a private person who desires to prosecute to his complaint petition. It is the duty of the complainant in such cases to approach the right authority by following the appropriate provision for obtaining the sanction to prosecute a public servant and if he is not inclined to do so;- then consequences of non-production of sanction order as required by Section 197 Cr.P.C. have to follow.



So far as the first contention of transgressing the area of jurisdiction of Wazirganj police of their police station by the accused persons is concerned, the Court reads Section 156 of the Cr.P.C. with Section 157 Cr.P.C. Section 156(1) Cr.P.C. empowers any officer-in-charge of a police station to investigate any cognizable case which a Court having the jurisdiction over the local area within the limits of such station would have power to enquire into or try under the provisions of that particular Chapter in which Section 156 Cr.P.C. has been placed. The connotation on the above provision is that it is not the jurisdiction of the police that determines the action to investigate a case. It may be that the police did not have the jurisdiction to investigate the commission of an offence, and the case may be tried by another Magistrate who could not have the control over the police station. As regards the investigation of the case, still the police could investigate such cases outside its jurisdiction. That interpretation gets further support from the proviso to Sub-section-(2) of Section 156 Cr.P.C. which legitimizes the investigation carried out by the police officer outside his jurisdiction or in inherent lack of jurisdiction to investigate and forbades the investigation from being questioned before a Court of law. If one could consider the provisions of Section 157 Cr.P.C., one may virtually find that mere reason to



suspect the commission of offences is enough for an officer to investigate under Section 156 Cr.P.C. Thus, when the two provisions are read together, one could appropriately consider the scope and ambit of the jurisdiction of the police officer to investigate a cognizable offence or a case. It could not be confined to the territorial jurisdiction of a Magistrate and considering the very purpose of establishing the police force for investigation purposes, the Code has been liberal in granting jurisdiction without there being any jurisdiction to a police officer to investigate such cases which may not be within his jurisdiction. That is the reason that the police officers of Wazirganj police station were transgressing their territorial area and were coming to the house of the complainant to make search and seizure and again for entering into the house of the complainant for making search and seizure. As such, it could not be said to be impermissible by the provisions of the Code of Criminal Procedure.

The question is as to whether it was the part of the official duty or, in fact, the official duty itself of the accused police officers or was it an alibi to commit an offence. Admissions made in the complaint petition may be considered to quash the proceedings. At the same time, such admissions could also be accepted to allow the proceedings in the trial court to go ahead. In



the very first paragraph of the complaint petition, the complainant stated that the police-officers-accused-persons came and entered inside the house of the complainant all on a sudden and when the complainant had objection to the trespass committed by the police officers, they had pointed out that they had the suspicion of some unlawful objects being stored therein and they had to make the search for the seizure of those article as permissible by the provision of the Cr.P.C.

As regards the entering into a premises for search and seizure of any article, the provisions of Cr.P.C. contained in Chapter VII empower a police officer to make entry into the premises merely on suspicion of storing some unlawful objects there. There is definitely some restrictions on entering into a premise during night, but that provision under Section 46 Cr. P.C. relates to arrest of a lady suspected to have committed an offence only.

These are some of the reasons upon which I find the learned Magistrate was rightly holding that the very entering and search of the house of the complainant was the part of the official duties of the policemen-accused-persons and that required production of sanction under Section 197 Cr.P.C. before the Magistrate to take cognizance of offences.

The petition, in the above views, appears meritless and  
the same is dismissed.

**(Dharnidhar Jha, J)**

B.Kr./-U.K./AFR.

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