

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.51173 of 2013

Arising Out of PS.Case No. -1278 Year- 2010 Thana -EAST CHAMPARAN COMPLAINT District-
EASTCHAMPARAN(MOTIHARI)

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Kauser Praveen, Wife of Md. Suhani Hasan, Resident of Moh - Agrawa, Post -
Motihari, P.S. Motihari Nagar, Distt. - East Champaran Petitioner
Versus

1. The State of Bihar
 2. Jai Prakash, Son of Mohan Prasad, Sub-Inspector, Town Police Station Motihari,
East Champaran
 3. Salim Kha, Son of Late Ismail Mian, Driver, Town Police Station, Motihari,
East Champaran Opposite Parties
- =====

Appearance :

For the Petitioner/s : Mr. Gopal Govind Mishra, Advocate
For the Opposite Party/s : Mr. Iftekhar Mahmood, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 28-03-2016

Heard learned counsel for the petitioner and learned
counsel for the State.

The petitioner seeks quashing of the order dated
27.09.2012 passed in Criminal Misc. No. 80 of 2012 by which the
learned Sessions Judge, East Champaran, Motihari has dismissed the
petition affirming the order of the Chief Judicial Magistrate, East
Champaran, Motihari dismissing the complaint for want of sanction.

2. The complaint is against the Sub-Inspector of Police
as well as the driver and seven other Constables, who are alleged to
have come to the house of the complainant and tried to break open the
grill gate of the complainant. It is alleged in the complaint petition
that on protest being raised, they are alleged to have forcibly entered
the house of the complainant by stair and other means; and after



destroying several valuable property, they arrested the father-in-law of the complainant. The complaint was filed in the year 2010 and even after granting time by the learned Chief Judicial Magistrate, East Champaran, Motihari for procuring sanction order to proceed with the case, same has not been procured. The learned Chief Judicial Magistrate, East Champaran, Motihari by the order dated 30.01.2012 rejected the complaint on the ground that on perusal of the case record of the complaint petition as well as photocopy of the Station House Diary, it transpires that the accused persons are government employees as opposite party no. 2 is the Sub-Inspector of Police and opposite party no. 3 is the Jeep Driver of the concerned Police Station and from the allegation made it is apparently clear that the act has been done in discharge of their official duty and sanction to prosecute under Section 197 of the Code of Criminal Procedure is necessary.

3. Learned counsel for the petitioner has, however, challenged the order of dismissal of the complaint on the ground that sanction for prosecution has not been produced as the case is against the Police Officers, who are alleged to have committed the occurrence during the course of discharge of their official duty. However, the only point raised is that the Police Officers are neither gazetted Officers nor they are public servants and hence, they would not come under the purview of Section 197 of the Code of Criminal Procedure.

However, on going into the definition of public servant enshrined under Section 21 of the Indian Penal Code, it appears that description seventh provides that **“every person who holds any office by virtue of which he is empowered to place or keep any person in confinement”** and description eighth provides that **“every officer of [the Government] whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience.”** Hence, apparently within the purview of description seventh and eighth, the Police Officers apparently come under the definition of public servants. The description ninth also provides that **“every officer whose duty it is, as such officer to take..... or to investigate or to report**” Hence, in that view of the matter, the Police Officer of the rank of Assistant Sub-Inspector of Police apparently appears to have come under the definition of public servant to attract Section 197 of the Code of Criminal Procedure and hence, I do not find any merit in the petition. The petition is, accordingly, dismissed.

(Gopal Prasad, J)

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