

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.21470 of 2013

Arising Out of PS.Case No. -1851 Year- 2012 Thana -PATNA COMPLAINT CASE District-
PATNA

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Dr. Seema Kumari W/o Late Dr. Shashi Shekhar And Daughter Of Sri
Rajeshwar Pd. Sinha Advocate, Resident Of Mohalla- Makhania Kuan
Road, Patna, P.S.- Pirbhore, District- Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. Dr. Basant Singh, s/o Late Raghubir Singh, Goghar Chikitsa Kendra
Gandhi Maidan Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Singh, Sr. Advocate
Sri Ram Sumiran Rai
For the Opposite Party/s : Mr. Zainul Abedin (APP)
Sri Sanjay Kuamr Verma
Sri Sanjay Kumar

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

6 07-04-2016 Heard Sri Rajendra Singh, learned senior counsel, who was

assisted by Sri Ram Sumiran Rai, learned counsel for the

petitioner, Sri Zainul Abadin, learned A.PP. as well as Mr. Sanjay

Kumar Verma, learned counsel, who was assisted by Sri Sanjay

Kumar, learned counsel appearing on behalf of the complainant/

opposite party no. 2.

The petitioner, who is widow of the deceased son of the

opposite party no. 2 has approached this Court invoking inherent

jurisdiction of this Court under Section 482 of the Code of

Criminal Procedure with a prayer to quash an order dated



11.12.2012 passed by Smt. Rumpa Kumari, learned Judicial Magistrate Ist Class, Patna in Complaint Case No. 1851(C) of 2012. By the said order the learned Magistrate at the stage of enquiry after examination of complainant on oath and witnesses directed for issuance of letter to Senior Superintendent of Police, Patna for getting the entire matter thoroughly enquired by a local police officer after conducting local enquiry. She had further directed for obtaining prosecution sanction in respect of one of the persons, who was arrayed as accused in the complaint petition namely Sri Rahul Anand. Since the order impugned has been assailed purely on the ground that same was contrary to the statutory provision the Court proposes not to elaborately discuss the facts of complaint. Fact remains that the complainant had alleged that she was assaulted by her father –in- law, who is opposite party no. 2 and other in –law’s family members. It is a fact that the husband of the complainant had committed suicide earlier. The complaint petition was registered as Complaint Case No. 1851(C) of 2012. After filing of the complaint before the Chief Judicial Magistrate under Section 192 of the Cr.P.C. transferred the same to the concerned learned Magistrate namely Smt. Rumpa Kumari, Judicial Magistrate Ist Class, Patna. Thereafter, the transferee the Magistrate started enquiry under



Section 200 of the Cr.P.C. She examined complainant on oath and also three witnesses were produced by the complainant. They were examined and discharged and thereafter a petition was filed by the complainant that complainant was not intending to examine further witnesses. Even though processes were not issued to the opposite party no. 2, he entered appearance and filed number of petitions. The complainant also replied to one of the petitions filed by the opposite party no. 2. While entertaining the accused before issuance of process the learned Magistrate has passed the impugned order. The learned Magistrate has considered the reply filed by the petitioner to a petition filed by the accused /opposite party no. 2 and thereafter, the learned Magistrate had noticed two accused namely Smt. Kavita Anand and Sri Rahul Anand as per photo copy of PASS-PORT and VIZA were resident of Washington D.C. (U.S.A.) and accused Sri Rahul Anand was working in the International Monetary Fund Washington D.C. (I.A.S.). Subsequently, the learned Magistrate has passed the impugned order for getting investigation conducted by an independent Police Officer and also for obtaining prosecution sanction in respect of one of the accused persons.

Sri Singh, learned senior counsel appearing on behalf of the

petitioner has assailed the impugned order on number of grounds. It was firstly argued that once the learned Magistrate had proceeded with a proceeding under Chapter XV of the Cr.P.C. and examined the complainant on oath and witnesses, the learned Magistrate was not authorized to direct for investigation. He further submits that it is settled that before issuance of process in a complaint proceeding the learned Magistrate was not at all authorized to entertain an accused or any petition filed by the accused. It has thirdly been argued that the accusation alleged in the complaint petition was not having any relation with discharge of official duty in respect of one of the accused regarding whom direction was issued for obtaining prosecution sanction. He submits that prosecution sanction under Section 197 of the Cr.P.C. in respect of Government Servant removable by the State Government or the Central Government is necessary in relation to an allegation in respect of discharge of official duty only. He submits that it was the case of the complainant that while she visited the house of the opposite party no. 2, father-in-law of the complainant, she was assaulted by the accused persons, so it was beyond imagination of having any relation with discharge of official duty of one of the accused. While corroborating his submissions regarding illegality committed in



respect of entertaining the accused before issuance of process in a complaint proceeding he has placed heavy reliance on a judgment of the Apex Court reported in **A.I.R. 1976 SUPREME COURT 1947 (Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and others.)** and number of other case laws. Regarding direction for obtaining prosecution sanction he has placed the provision contained under Section 197 of the Cr.P.C. and submits that provision itself clarifies that prosecution sanction is needed in respect of allegation pertaining to discharge of official duty. On the aforesaid grounds he has prayed for quashing of the impugned order.

Sri Sanjay Kumar Verma, learned counsel for the opposite party no. 2 has opposed the prayer of the petitioner. He submits that so far as the first objection is concerned i.e. postponement of process and directing for investigation under Section 202(1) Cr.P.C. is concerned, as per amendment it is mandatorily required that if during enquiry a fact comes to the notice of a Magistrate that an accused is residing beyond the territorial jurisdiction of the Magistrate, a Magistrate is fully competent to get the matter enquired through the Police or any other authority. To corroborate his submission he has placed reliance on **AIR 1976 SUPREME COURT 1672 (Devarapalli Lakshminarayana Reddy and**



others v. V. Narayana Reddy and others). He further submits that the learned Magistrate on the basis of the facts disclosed in the reply filed by the complainant itself has noticed that two accused persons were residing abroad and as such, the learned Magistrate has committed no error in directing for investigation. He has also argued that in compliance with the impugned order the matter was investigated by a Police Officer and report has also been submitted through the Senior Superintendent of Police, which is on record before the court below suggesting falsity of the accusation. Learned counsel for the opposite party no. 2 has also argued that prior to filing of the present complaint as per facts disclosed in the complaint petition itself the complainant had filed two complaints against the opposite party no. 2 and other members. He further submits that the petitioner has been forwarded as an accused in a case in which her husband had committed suicide. Accordingly, on the aforesaid grounds he has argued that the impugned order requires no interference.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. So far as the objection raised by learned counsel for the petitioner on the veracity of direction of the learned Magistrate for directing for investigation after examination of complainant and witnesses is concerned, as

per the provisions contained in Section 202 of the Cr.P.C. itself, the Court is of the considered opinion that the learned Magistrate was having jurisdiction to direct for such enquiry. It would be appropriate to quote Section 202 of the Cr.P.C. which is as follows:-

“202. Postponement of issue of process.- (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit [and shall , in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,—

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant”.

On perusal of the aforesaid provision particularly Sub Section 202(1)(b) of the Cr.P.C. it is evident that the investigation



during enquiry can be directed only after examination of complainant and witnesses. Accordingly on this issue there is no dispute. So far as entertaining accused before issuance of process is concerned, certainly time without number it has been held that in a complaint proceeding before issuance of process an accused has got no locus. Admittedly, in the present case before the court below number of petitions were filed by the opposite party no. 2 who was arrayed as accused before issuance of process and such petition was entertained which was also rightly or wrongly was replied by the complainant. This is the reason that the learned Magistrate has observed that this fact had emerged that two accused persons were residing abroad. Only thereafter she had noticed the photo copy of PASS-PORT and VIZA of two accused persons and thereafter she opined that keeping in view the fact that two accused persons were residing outside her jurisdiction she passed the order. This suggests that before issuance of process she had applied mind on the petition filed by the accused whereas accused was having no authority or locus to appear before issuance of process as has been held in Nagawwa Case (Supra). Moreover, it is not at all required to give reference of number of cases on this issue due to the reason that it is settled law that before issuance of process in complaint petition

accused person is having no locus. Secondly the order of the learned Magistrate whereby she had directed for obtaining prosecution sanction is concerned, it is simply erroneous and liable to be set aside. The allegation made in the complaint petition was not having any relation regarding discharge of official duty of one of the accused. Under the provisions of Section 197 of the Cr.P.C. prosecution sanction is required to be obtained only in case of allegation pertaining to discharge of official duty. This proposition can only be elaborated by way of quoting Section 197 of the Cr.P.C. which is quoted hereinbelow:-

“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]

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or

category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

[(3-A) Notwithstanding anything contained in sub-section (3), no Court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3-B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a Court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the Court to take cognizance thereon]

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held."

Accordingly, the Court is of the opinion that the order impugned is liable to be set aside on the ground firstly that the learned Magistrate has entertained the accused before issuance of process and proceeded further and secondly without any connection of allegation relating to discharge of official duty of one of the accused the learned Magistrate directed for obtaining

prosecution sanction. Since on the aforesaid two grounds the order impugned suffers illegality, certainly the order impugned is liable to be set aside and it is hereby set aside with observation that the learned Magistrate may proceed as if the accused /opposite party no. 2 had not appeared in the proceeding nor the learned Magistrate is required to take note of any document filed on behalf of the accused or any subsequent facts brought on record.

Keeping in view the fact that the complaint was filed in the year 2012 itself and the present petition was pending here since 2013, while allowing the petition it is necessary to observe that the learned Magistrate may proceed with the case expeditiously.

(Rakesh Kumar, J)

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