

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.31398 of 2013

Arising Out of PS.Case No. -625 Year- 2011 Thana -BHAGALPUR COMPLAINT CASE District-
BHAGALPUR

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Anil Kumar, Son of Late Ramjiwan Prasad, Resident of Mohalla-Imlital Danapur,
Danapur Cantt, P.S. Danapur, District- Patna, at present District Fisheries Officer-
cum- C.E.O., Bhagalpur, P.S. + District- Bhagalpur.

.... Petitioner.

Versus

1. The State of Bihar.
2. Bishundeo Pandit, Son of Late Moti Pandit, Resident of Village-Bihpur, P.S.
Bihpur, District-Bhagalpur.

.... Opposite Parties.

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Appearance :

For the Petitioner : M/s. Krishna Prasad Singh, Senior Advocate and
Mithilesh Kumar Singh, Advocate.
For the State : Mr. Dashrath Mehta, A.P.P.
For the Vigilance : M/s. Ramakant Sharma, Senior Advocate and
Amresh Kumar, Advocate.
For the Opposite Party No.2 : None.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
Date: 28-04-2017

Heard Sri Krishna Prasad Singh, learned senior counsel for
the petitioner, learned A.P.P. for the State and Sri Ramakant Sharma,
learned senior counsel for the Vigilance Department. None appears
on behalf of the opposite party no.2 despite service of notice upon
him.

2. This application, under Section 482 of the Code of
Criminal Procedure, has been filed for quashing the order dated
17.09.2012 passed in Complaint Case No.625 of 2011, whereunder



the court of the Judicial Magistrate, First Class, Naugachia, Bhagalpur, summoned the accused-petitioner and one Narottam Pandey under Section 204 of the Code of Criminal Procedure, on enquiry, finding prima facie case under Sections 341, 323 and 504 of the Indian Penal Code and Section 7 of the Prevention of Corruption Act.

3. The facts leading to this application is that the opposite party no.2 filed Complaint Case No.625 of 2011 with the contention that Title Appeal No.11 of 1984 was decreed on 20.06.1988 by the court of the First Additional District Judge, Bhagalpur, in favour of his father in respect of Khesra No.1209 measuring an area of 0.58 decimals land of Khata No.1984, situated in village and P.S. Bihpur, District-Bhagalpur. After the death of his father, he came in possession over the said land and also used to pay the rent to the State Government. Similarly, Ramashish Pandit, Ramdulari Devi and his three minor sons, namely, Pappu, Sinku and Rinku got an order in their favour in Case No.2211 of 1984 from the court of the A.S.O., Naugachhia, and they also came in possession over plot no.1206 measuring an area of 0.67 decimals land of village and P.S.-Bihpur, District-Bhagalpur. Narottam Pandey, Circle Officer, Bihpur, District-Bhagalpur, for illegal gain recommended the petitioner, the District Fisheries Officer-cum-C.E.O., Bhagalpur, for settlement of



the aforesaid land for fisheries. Accordingly, the land was settled for fisheries for the financial year 2011-12 in favour of Bhagwan Singh, who let out the land, as allotted to him, to Dunbahadur Singh and Dunbahadur Singh also let out the land to Md. Majeed Rain for fisheries. On knowing the said fact, the complainant/opposite party no.2 sent the legal notice to the petitioner through his counsel on 19.07.2011, who replied that due to wrong report of the Circle Officer, Bihpur, Bhagalpur, the land has been settled for fisheries. The further case of the complainant/opposite party no.2 is that the petitioner, the District Fisheries Officer-cum-C.E.O., Bhagalpur, and Narottam Pandey, the Circle Officer, Bihpur, District-Bhagalpur, asked him to give Rs.25000/- for not settling the land for fisheries in future but he refused to give Rs.25000/- to them. On 25.08.2011, the complainant/opposite party no.2 was called by the petitioner, the District Fisheries Officer-cum-C.E.O., Bhagalpur, and Narottam Pandey, the Circle Officer, Bihpur, District-Bhagalpur, in the Circle Office and both made demand of Rs.25000/- saying that settlement of the land for fisheries would be cancelled. When the complainant/opposite party no.2 refused to pay Rs.25000/-, the petitioner, the District Fisheries Officer-cum-C.E.O., Bhagalpur, and Narottam Pandey, the Circle Officer, Bihpur, District-Bhagalpur, ordered to remove the complainant/opposite party no.2 from the office



giving threatening to implicate him in a false case.

4. After filing of the Complaint Case No.625 of 2011 by the complainant/opposite party no.2, on enquiry under Section 202 of the Code of Criminal Procedure, the petitioner, the District Fisheries Officer-cum-C.E.O., Bhagalpur, and Narottam Pandey, the Circle Officer, Bihpur, District-Bhagalpur, were summoned by the court of the Judicial Magistrate, First Class, Naugachia, Bhagalpur, finding prima facie case under Sections 341, 323 and 504 of the Indian Penal Code and Section 7 of the Prevention of Corruption Act through the impugned order dated 17.09.2012.

5. Sri Krishna Prasad Singh, learned Senior counsel for the petitioner, submits that the petitioner and the co-accused Narottam Pandey were posted on the date of occurrence as the District Fisheries Officer-cum-C.E.O., Bhagalpur, and the Circle Officer, Bihpur, District-Bhagalpur, respectively, and, as such, both the petitioner and the co-accused Narottam Pandey, were Gazetted Officers and they were not removable from the office without the sanction of the State Government and the act, as alleged in the complaint petition, is said to be done in the office of Narottam Pandey, Circle Officer, Bihpur, District-Bhagalpur, therefore, summoning the petitioner and the co-accused Narottam Pandey through the impugned order without sanction of the State Government, as required under Sections 197 and



19 of the Prevention of Corruption Act, is illegal. Further submission is that the cognizance taking court on filing of the complaint petition cannot take the cognizance of the offence against the Government Servant nor it can send the complaint under Section 156(3) of the Code of Criminal procedure to the concerned police station for investigation of the case without sanction of the State Government, as required under Sections 197 and 19 of the Prevention of Corruption Act and placed reliance on the decision of the Apex Court in the case of **Anil Kumar & Ors. Vs. M.K. Aiyappa & Anr. {2014(1) PLJR 4(SC)}**.

On the other hand, Sri Ramakant Sharma, learned Senior counsel, appearing on behalf of the Vigilance Department, fairly conceded that before taking cognizance of the offence against the petitioner and the co-accused Narottam Pandey, who are the Gazetted Officers, the sanction of the State Government was required under Sections 197 and 19 of the Prevention of Corruption Act, as both were not removable from the office without sanction of the State Government on the date of occurrence, which is said to be taken place in the office of the co-accused Narottam Pandey.

6. From perusal of the complaint petition, it appears that the allegation has been made against the petitioner, the District Fisheries Officer-cum-C.E.O., Bhagalpur, and the co-accused



Narottam Pandey, the Circle Officer, Bihpur, District-Bhagalpur, by the complainant/opposite party no.2 to make demand of Rs.25,000/-in the office of the co-accused Narottam Pandey, Circle Officer, and to mishandle the complainant/opposite party no.2 on refusing to pay the same. As such, the impugned order summoning the petitioner and the co-accused Narottam Pandey without sanction of the State Government, as required under Sections 197 and 19 of the Prevention of Corruption Act, is illegal and amounts to an abuse of the process of the court.

7. Accordingly, the impugned order dated 17.09.2012 passed in Complaint Case No.625 of 2011 by the court of the Judicial Magistrate, First Class, Naugachia, Bhagalpur, summoning the accused-petitioner and the co-accused Narottam Pandey, under Section 204 of the Code of Criminal Procedure, on enquiry, finding prima facie case under Sections 341, 323 and 504 of the Indian Penal Code and Section 7 of the Prevention of Corruption Act, and the entire criminal proceedings in connection with the aforesaid complaint case are hereby quashed and this application is allowed.

(Rajendra Kumar Mishra, J)

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