

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.30309 of 2013**

Arising Out of PS.Case No. -1011 Year- 2011 Thana -BUXAR COMPLAINT CASE District-  
BUXAR

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1. Bharat Bhushan Tiwari, s/o late Raj Narayan Tiwari, resident of village-  
Bhabhnauli, Police Station- Muffasil (Arrah), Bhojpur, Dist.- Arrah, at present  
Asstt. Settlement Officer Munger, Distt.- Munger

.... .... Petitioner/s

Versus

1. The State of Bihar  
2. Smt. Chand Munai Devi, W/O- Raj Kishore Singh, R/O- Santh, P.S.- Itadhi,  
Distt- Buxar

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Rajiv Ranjan Kumar Pandey, Advocate

For the Opposite Party No.1: Mr. Nawal Kishore Prasad, APP

For the Opposite Party No.2: Mr. Dhirendra Singh, Advocate

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**CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA**

**ORAL JUDGMENT**

**Date: 14-02-2017**

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 27.11.2012, passed by the Judicial Magistrate, 1<sup>st</sup> class, Buxar, in Complaint Case No.1011-C of 2011/ Tr. No.1980 of 2012 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioner under Section(s) 323, 504 Indian Penal Code.

2. Heard learned counsel for the petitioner and the State as well as learned counsel for the Opposite Party No.2.

3. It has been submitted on behalf of the petitioner that the impugned order is bad in law as no sanction under Section



197 Cr. P.C. was obtained. It has further been submitted that he has falsely been implicated in this case.

4. Counsel for the petitioner has relied on the judgment of the Supreme Court in the case of *Bakhshish Singh Brar Vs. Gurmej Kaur and another* reported in *1988 Cri LJ 419*, *Pancham Lal Vs. Dadan Singh* reported in *1979 Cri LJ 1018* and *State through the CBI Vs. B. L. Verma and another* reported in *(1997) 10 SCC 772* in support of his submission.

5. Learned counsel for the Opposite Party No.2 submits that no illegality has been committed by the learned Court below in passing the impugned order.

6. Having perused the impugned order and the Complaint Petition as well as Solemn Affirmation of the complainant and the statement of the witnesses recorded during enquiry, this Court finds that the complainant, Chand Muni Devi, filed Complaint Petition alleging that on 29.09.2011 at about 1.00 PM her son, Pawan Kumar Singh, went to the Circle Officer (petitioner) to obtain Residential Certificate. The petitioner asked him to come on the next day. The son of the complainant told that today is the date fixed for giving the Residential Certificate on which the petitioner started beating him with fists and slaps and also asked the Anchal Guards to beat him. The Anchal Guards had also beaten the son of the



complainant with *lathi*, *danda*, fists and slaps. Pawan Kumar Singh got several injuries on his body. The Circle Officer (petitioner) abused the son of the complainant and did not supply water to him when he demanded the same. The Anchal Guards also snatched Rs.4200/- and wrist watch from the victim.

7. During enquiry under Section 202 Cr. P. C., Solemn Affirmation of the complainant was recorded. Besides Solemn Affirmation of the complainant, statement of two other witnesses, namely, Pawan Kumar (victim) and Pappu Yadav was recorded. The complainant has supported the allegation of the Complaint Petition in her Solemn Affirmation, which is available on the record with the Complaint Petition.

8. Learned Magistrate has mentioned in the impugned order that victim, Pawan Kumar (EW 1) and another witness, Pappu Yadav, (EW 2) have fully supported the allegation as made in the Complaint Petition. Learned Magistrate has further mentioned in the impugned order that Injury Report shows that along with other injuries the victim got injury above his eye brow, which are simple in nature. X-ray report could not be produced.

9. Section 197(1) Cr. P. C. runs as follows:

"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 save as otherwise provided in the Lokpal and Lokayuktas Act, 2013-

(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."

**10.** In the instant case, from the nature of offence committed by the petitioner as mentioned in the Complaint Petition and fully supported in Solemn Affirmation of the complainant as well as statement of the victim and another witness recorded during enquiry, this Court finds that protection under Section 197 Cr. P. C. cannot be given to a public servant, who indulges in assault when anyone approaches him on the date fixed to provide Residential Certificate and also orders his Anchal Guard to beat him causing injuries on his person.



**11.** From the impugned order, it appears that the documents (copy of the Injury Report) have been filed by the complainant during enquiry, which shows that victim along with other injuries sustained injury above his eye brow although the Injury was simple in nature.

**12.** Therefore, this Court does not find any illegality in the impugned order dated 27.11.2012, passed by the Judicial Magistrate, 1<sup>st</sup> class, Buxar, in Complaint Case No.1011-C of 2011/ Tr. No.1980 of 2012, by which he has found *prima facie* case against the petitioner.

**13.** This quashing application is, accordingly, dismissed.

**(Sanjay Priya, J)**

***J.Alam/-***

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