

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.17396 of 2012

Arising Out of PS.Case No. -0 Year- null Thana -null District- NALANDA (BIHARSHARIFF)

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Smt. Abha Sinha W/O Subodh Kumar R/O Flat No.-104, Shyama Shashwatam
Apartment Arah Garden Road, P.S.-Airport, P.O.-Bihar Vetnary College, Distt-
Patna

.... Petitioner/s

Versus

The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : M/s. S.K.Lal, Shyameshwar Kr. Singh
and Chaitanya Swaroop
For the State : Mr. Sadanand Jha,A.P.P.
For the Informant : Mr.Anil Kumar Choudhary

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 11-07-2017

This application under Section 482 Cr.P.C. has been
filed for quashing the order dated 03.12.2011 passed by the learned
A.C.J.M., Hilsa in Complaint Case No.338 c/2011 by which the
learned Magistrate, after enquiry, found prima facie case for the
offences under Sections 341, 323 and 504 IPC against the petitioner.

It has been submitted by the learned counsel for the
petitioner that she was working as Block Development Officer at the
relevant time of the occurrence and discharging her official duty. No
sanction has been obtained by the competent authority under Section
197(1) Cr.P.C. and therefore order taking cognizance is illegal.

Counsel for the petitioner has submitted that the
complainant is in habit of filing such type of complaint against
officials only to harass and to fulfill his illegitimate demand. Earlier



also he has filed a case against the Circle Officer-cum-Block Development Officer and Head Clerk of the office vide Complaint Case No. 415 C of 2005.

Learned counsel for the petitioner has further submitted that reason for filing the complaint case is that on 06.05.2011 the Block Statistical Supervisor submitted the complaint to the petitioner that on 05.05.2011 while he was discharging his duty in the Block Office, Nagar Nausa, one Ram Singh, Chairman, PACS, Ariyava Panchayat came to the office along with other persons and tried to bribe him for issuing false report. The petitioner after receiving the said complaint forwarded the same to the Officer Incharge P.S. Nagar Nausa. A copy of the said complaint dated 06.05.2011 was submitted to the District Magistrate, Nalanda. On 13.05.2011 the Incharge Officer, District Confidential Section, Nalanda directed the petitioner ,who at the relevant time was posted as Block Development Officer, Nagar Nausa to lodge an FIR against the said Chairman, PACS and to send intimation to the Superintendent of Police, Nalanda. The complainant learnt about the said complaint made by the Block Statistical Officer and the direction dated 13.05.2011 issued by the Nalanda Collectorate, Biharsharif and then on 26.05.2011, the Chairman of the PACS went to the Bock Office Nagar Nausa and started abusing and indulged in indescient behaviour with the petitioner. In past also complaint case was filed by the complainant



against the Circle Officer-cum- Block Development Officer and the Head Clerk of the office vide Complaint Case No. 415 (c)/2005 (Annexure 3).

Learned counsel for the opposite party no.2 has appeared and submitted that the complainant is a social worker and went in the Block Office to enquire about the progress of the complain.

The allegation in complaint petition, in short, is that on the date of occurrence when the complainant went to Block Office along with others to make enquiry about the progress of the complain , the petitioner sitting with others misbehaved with him and asked to throw them out and on the order of the petitioner, accused no.1 snatched Rs. 18,000/- and pass book of the complainant.

From the complaint petition it is evident that at the time of occurrence the petitioner was discharging his official duty in the office itself. It is further evident that alleged altercation took place between the petitioner and the complainant in course of discharge of official duty by the petitioner.

Section 197(1) Cr.P.C. provides that the Court shall not take cognizance of the offence against public servant while he was discharging his official duty except with the previous sanction of the State Government in the case of a person who is employed or was at the time of commission of the alleged offence employed in connection



with the affairs of a State, of the State Government .

Section 197(1) reads as follows:

“ 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 alleged offence employed, in connection with the affairs of a State, of the State Government.”

Counsel for the petitioner has relied upon decisions of this Court in the case of ***Pancham Lal –v- Dadan Singh reported in 1979 Cr.L.J. 1018*** and case of ***Jitendra Nath Tripathi –v- Prabhunath Singh and another, reported in 1986 PLJR 901*** and has argued that order of cognizance is bad in law, which has been passed without sanction of the competent authority as required under Section 197(1) Cr.P.C. The Court has held in both the judgments that Section 197 (1) Cr.P.C. is mandatory and in absence of sanction under Section 197(1) Cr.P.C. the prosecution against public servant is invalid.

From the facts and circumstances of this case, it appears that the complaint has been lodged by the complainant against



the petitioner only to take vengeance, because the petitioner has lodged complain against him earlier on 7.6.2011 (Annexure 4) on the order of District Magistrate, Bihar Sharif on the basis of which Nagar Nausa P.S. Case No. 65 of 2011 was registered for the offences under Sections 504, 506 and 353 IPC. It is also apparent from the facts stated in the complaint petition that at the relevant time of occurrence, the petitioner was discharging her official duty being Block Development Officer. Therefore, in such circumstances sanction under Section 197(1) Cr.P.C. was mandatory prior to taking cognizance against her. Therefore, order taking cognizance is not in accordance with law and the impugned order dated 03.12.2011 passed by the learned A.C.J.M., Hilsa in Complaint case No. 338 c/ 2011 along with the entire criminal prosecution against the petitioner is hereby quashed.

The application is accordingly allowed.

(Sanjay Priya, J)

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AFR/NAFR	AFR
CAV DATE	
Uploading Date	20/07/2017
Transmission Date	20/07/2017

