

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No. 15584 of 2012

Arising Out of PS.Case No. -0 Year- null Thana -null District- PATNA

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Devi Rajak, S/O Late Raso Rajak, Resident of Mohalla - Sandalpur, P.S. - Bahadurpur, District - Patna, at present posted as Engineer-In-Chief, Water Resources Development Department, Govt. of Bihar, Sichai Bhawan, Patna-1

.... Petitioner

Versus

1. The State of Bihar
2. Ram Kumar Chaudhary, S/O name not known to the petitioner, the then Junior Engineer (Mechanical), Field Machinery Division, Tilka Manjhi Chowk, Hatia Road, P.S. - Sadar Bhagalpur, District - Bhagalpur.

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Chandra Mauli Chaudhary, Advocate

For the State : Mr. Shyam Kumar Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 07-09-2017

Heard learned counsel for the petitioner and the State.

No one appears for opposite party no. 2.

This application, under Section 482 Cr.P.C., is for quashing the order dated 10.06.2008 whereby the learned Judicial Magistrate, 1st Class, Patna has taken cognizance against the petitioner under Section 166 of the Indian Penal Code in Complaint Case No. 942(C) of 2006 as well as for quashing the order dated 13.07.2010 passed by the learned 4th Additional Sessions Judge, Patna in Cr. Revision No. 664 of 2008 whereby the learned Sessions Judge refused to interfere with the cognizance order aforesaid.

Opposite party no. 2 Ram Kumar Chaudhary filed a



Complaint Case No. 942(C) of 2006 alleging therein that while this petitioner was working as Engineer-in-Chief in the department of Water Resources, Government of Bihar, the petitioner prepared a gradation list wherein the junior to the complainant, who was appointee of the year 1979, was placed above the complainant who claims to be appointee of the year 1975 and confirmed as Junior Engineer for the year 1978.

Learned counsel for the petitioner submits that the gradation list is at Annexure-4 and the same would reveal that there is no irregularity. No junior appointee has been placed above the complainant of the case. Moreover, for discharge of official duty, the petitioner could not have been prosecuted in absence of sanction from the competent authority. His further submission is that ingredients of offence under Section 166 of the Indian Penal Code are apparently not attracted on bare perusal of the complaint petition.

I find substance in the submission of the learned counsel for the petitioner that no sanction has been previously obtained to prosecute the petitioner who was a public servant on the date of occurrence and the act alleged was committed in discharge of his official duty for which he was competent. Furthermore, if a person is competent to do an act, he might commit some wrong which is curable and no criminal liability can be fastened for that purpose.



On perusal of the requirement of Section 166 of the Indian Penal Code as well as on perusal of Annexure-4, I find that there is no material to prima facie establish that the petitioner had knowingly disobeyed any direction of law regarding the way in which he has to conduct as a public servant.

Therefore, criminal prosecution of the petitioner is an abuse of the process of the Court, hence, the impugned orders as well as entire criminal prosecution of the petitioner stands hereby quashed and this application stands allowed.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	11.09.2017
Transmission Date	11.09.2017

