

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.41738 of 2013

Arising Out of PS.Case No. -244 Year- 2003 Thana -GOPALGANJ COMPLAINT CASE District-
GOPALGANJ

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Jai Prakash Yadav, Son of Sri Lakhan Yadav, resident of village P.O.-Sheikhpura,
P.S.-Bhargawan, District-Arraria

.... Petitioner/s

Versus

1. The State of Bihar
2. Shri Jitendra Mishra, son of Kanhaiya Mishra, resident of village - Bhirigichak,
P.S.-Kateya, District-Gopalganj.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Prakash Srivastava, Advocate.

For the Opposite Party/s : Smt. Renu Kumari, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 13-04-2017

1. This application has been filed for quashing the order dated 17.11.2005 passed by the learned Judicial Magistrate, 1st Class, Gopalganj, in Complaint Case No. 244 of 2003/T.R. No. 1490 of 2013 by which the learned Magistrate after holding enquiry found prima facie case against petitioner along with other accused persons for the offence under Sections 341, 323, 379 and 435 of the Indian Penal Code.

2. Heard learned counsel for the petitioner and State.

3. It has been submitted on behalf of the petitioner that at the relevant time, he was posted as SHO. There was no sanction accorded under Section 197 of the Cr. P.C.



4. Notice was issued to the opposite party No. 2 which was validly served but none has appeared on his behalf.

5. The learned counsel for the State is present. He has submitted that occurrence has not taken place while the petitioner was discharging his official duty. Therefore, there is no requirement to obtain sanction under Section 197 Cr. P.C. before taking cognizance.

6. The learned Magistrate on perusal of allegation made in complaint petition, the Solemn Affirmation of Complainant as well as the statement of two enquiry witnesses, has found *prima facie* case against the petitioner for the offences under Sections 341, 323, 379 and 435 of the Indian Penal Code. The learned Magistrate is only required to see prima facie case at the time of holding enquiry on the basis of allegation made in the complaint petition and the statement of the witnesses recorded during enquiry. He is not required to appraise the statement of witnesses recorded during enquiry in the manner as is done in the trial.

7. Section 197(1) of the Cr. P.C. is very specific that no Court shall take cognizance for the offence without sanction of the Government if the offence is alleged to have been committed by him while acting or purporting to act in discharge of the official duty.

8. In the instant case, from the complaint petition itself it appears that petitioner was not discharging any official duty.



The occurrence is alleged to have been committed by the petitioner and other accused persons in the house of complainant. The petitioner had forced the complainant to leave his land which is alleged to be the purchased land of the complainant. As such, there was no material in the complaint to show that the occurrence was committed by the petitioner while he was discharging his official duty.

9. Therefore, this Court does not find any illegality in the impugned order.

10. The application is dismissed.

11. The court below will proceed in the trial in accordance with law.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	NA
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