

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.51451 of 2013

Arising Out of PS.Case No. -46 Year- 2012 Thana -BEGUSARAI COMPLAINT CSAE District-
BEGUSARAI

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Ram Dular Prasad, Son of Sri Shailendra Prasad Singh, Resident of Village- Raili, P.S.- Pandarak, District- Patna, the then S.H.O., Teghra Police Station, District- Begusarai, presently posted a S.H.O., Khodawandpur Police Station, District- Begusarai (Bihar).

.... Petitioner.

Versus

1. The State of Bihar.
2. Raghunath Rai, Son of Ram Kishore Rai, Resident of Village- Goura, P.S.- Teghra, District- Begusarai (Bihar).

.... Opposite Parties.

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Appearance :

For the Petitioner : Mr.
For the State : Mr.
For the Opposite Party No.2 : Mr.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
Date: 04-07-2017

Heard learned counsel for the petitioner, learned A.P.P. for the State and the learned counsel for the opposite party no.2.

2. This application, under Section 482 of the Code of Criminal Procedure, is directed against the order dated 13.06.2013 passed in Complaint Case No.46C of 2012, whereby the court of the Chief Judicial Magistrate, Begusarai, summoned the accused-petitioner under Section 204 of the Code of Criminal Procedure, on inquiry, finding prima facie case under Section 420 of the Indian Penal Code against him.



3. The facts, leading to this application, is that the opposite party no.2 filed Complaint Case No.46C of 2012 against the accused-petitioner with the contention that on 22.12.2011, he alongwith his father Ram Kishore Rai and brother Mukesh Rai was uprooting the crops in the field. At that time, Ram Balak Rai, Harihar Rai, Ramanuj Rai and Shankar Rai brutally assaulted him and his brother Mukesh Rai through Khanti. Regarding the occurrence, he furnished the report at Police Station-Teghra but the accused-petitioner being the Officer Incharge of the Police Station-Teghra in collusion with the accused changed his written report by taking his signature forcibly on the blank paper because he was unconscious on sustaining grievous injury. As such, the accused-petitioner being the Officer Incharge of the Police Station-Teghra with an intention to provide benefit to the accused of Teghra P.S. Case No.220 of 2011 committed mischief and fraud.

4. Learned counsel for the petitioner submits that, admittedly, the petitioner was posted as the Officer Incharge of the Police Station-Teghra serving in the Bihar Police Force on the date of occurrence. The provision of Section 197(2) of the Code of Criminal Procedure speaks that there is bar in taking the cognizance of the offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in discharge of



his official duty, except with the previous sanction of the Central Government. Under Section 197(3) of the Code of Criminal Procedure, the State Government is empowered to notify that the provisions of sub-section (2) will apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein wherever they may be serving. The State of Bihar issued the Notification dated 24.05.1980 to the effect that the provisions of Section 197(2) of the Code of Criminal Procedure shall apply to the “Officer and men” wherever they may be serving the State of Bihar of the Bihar Police Force, charged with maintenance of public order and who have been appointed by the Inspector General of Police, Bihar, or any other Officer specially authorized to appoint any such person of such force under the Police Act, 1961. As such, the impugned order, summoning the accused-petitioner under Section 204 of the Code of Criminal Procedure, on inquiry, without previous sanction of the State Government, as required under Section 197(2) of the Code of Criminal Procedure, after Notification dated 24.05.1980 issued under Section 197(3) of the Code of Criminal Procedure, is bad in law. Learned counsel for the petitioner, in support of his submission, placed reliance on the decision in the case of **Om Prakash and others Vs. State of Jharkhand** {(2012) 12 Supreme Court Cases 72}.



5. Learned counsel for the opposite party no.2 submits that the act, which is alleged to have been committed by the accused-petitioner in the complaint petition, will not come within the purview of discharge of official duty, therefore, the protection under Section 197(2) of the Code of Criminal Procedure would not apply to the accused-petitioner.

6. To appreciate the rival submissions of the learned counsel for the petitioner and the learned counsel for the informant, the perusal of Sections 197(1), 197(2) and 197(3) is required, which are quoted as under:

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

197(2). No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

197(3).The State Government may, by notification, direct



that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein wherever they may be serving and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted."

7. Section 197(2) of the Code of Criminal Procedure clearly indicates that the cognizance of the offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government, can not be taken. Section 197(3) of the Code of Criminal Procedure empowers the State Government to issue notification to apply the provisions of Section 197(2) of the Code of Criminal Procedure to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein wherever they may be serving. The State of Bihar under Section 197(3) of the Code of Criminal Procedure issued Notification on 16.05.1980 to the effect that the provisions of sub Section 2 of Section 197 of the Code of Criminal Procedure shall apply to the "Officers and men" wherever they may be serving the State of Bihar of the Bihar Police Force, charged with the maintenance of public order and who have been appointed by the Inspector General of Police, Bihar, or any other Officer specially authorized to appoint any person of such force under



the Police Act, 1961.

8. Admittedly, the accused-petitioner was posted as the Officer Incharge of the Police Station-Teghra being the Sub Inspector of Police at the time of the alleged occurrence and the allegation against him in the complaint petition is that he changed the written report of Teghra P.S. Case No.220 of 2011 of the complainant-opposite party no.2 by another written report obtaining the signature of the complainant-opposite party no.2 forcibly on the blank paper.

9. In the case of **Om Prakash** (Supra), the application on Notification dated 16.05.1980 issued by the State Government of Bihar under Section 197(3) of the Code of Criminal Procedure was considered by the Hon'ble Supreme Court and held in paragraph-9 of the said Judgment, which is as under:

“9. Before we deal with the rival contentions, it is necessary to state one admitted fact which leads us to conclude that the reason given by the High Court for not quashing proceedings against appellant Om Prakash and others, namely, that no notification under Section 197(3) of the Code was produced by them protecting them from prosecution in respect of any offence alleged to have been committed while acting or purporting to act in discharge of their official duties, is incorrect. We have been shown a copy of the Notification dated 16.05.1980 issued by the State of Bihar which extends the protection of sub-section (2) of Section 197 of the Code to all the members of the police force as it includes both officers and men. Mr. Gonsalves, learned Senior Counsel for the complainant has



not disputed this position. It is, therefore, not necessary to dilate further on this issue.”

10. Thus, there is no doubt that after issuing the Notification dated 16.05.1980 under Section 197(3) of the Code of Criminal Procedure by the State of Bihar that the protection of Section 197(2) of the Code of Criminal Procedure is also extended to Bihar Police Force, i.e., officers and men, appointed under the Police Act. As such, the impugned order dated 13.06.2013, summoning the accused-petitioner under Section 204 of the Code of Criminal Procedure, on inquiry, finding prima case under Section 420 of the Code of Criminal Procedure, passed by the court of the Chief Judicial Magistrate, Begusarai, in Complaint Case No.46C of 2012, without previous sanction of the State Government is illegal and amounts to an abuse of the process of the court.

11. In the result, this application is allowed. The impugned order dated 13.06.2013 passed in Complaint Case No.46C of 2012 by the court of the Chief Judicial Magistrate, Begusarai, is hereby quashed.

(Rajendra Kumar Mishra, J)

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