

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38281 of 2011

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

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Krishna Choudhary, son of Sri Badri Choudhary, the then Managing Director,
Dist.-Central Co.-Operative Bank Limited, Khagaria. At present posted as District
Co-Operative Officer, Nawada, Dist.-Nawada

.... Petitioner

Versus

1. The State of Bihar
2. Chandan Kumar Singh, son of Late Devdhan Prasad Singh, R/O Vill. & Post.-
Sanhauli, P.S.-Khagaria (Chitragupta Nagar),Dist.-Khagaria

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Purushottam Jha, Advocate
Mr. Vikash Kr. Jha, Advocate
For the Opposite Party/s : Mr. Murli Dhar, APP

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
C.A.V. JUDGMENT
Date: 17-05-2017

Heard learned counsel for the petitioner and learned APP
for the State. In spite of notice and in spite of opposite party no. 2
having appeared through Vakalatnama, he has chosen not to appear on
earlier dates i.e. on 03.05.2017 and thereafter on 10.05.2017, hence,
the present application is being heard on merits.

2. This application under Section 482 of the Code of
Criminal Procedure (hereinafter referred to as the Cr.P.C.) has been
filed for quashing of order dated 29.03.2011, passed by learned
Judicial Magistrate 1st Class, Khagaria in Complaint Case No.
307C/2008 filed by opposite party no. 2 whereby and whereunder



cognizance for offence punishable under Sections 504 of the Indian Penal Code has been taken while issuing summons, with further prayer for quashing of the entire proceedings arising out of the said complaint case.

3. In short, the facts of the case is that opposite party no. 2 took loan of Rs. 15,13,676/- from the District Central Cooperative Bank Ltd., Khagaria in the year 1995 with interest @ 17% per annum and on failure to repay the said loan amount the Bank filed Certificate Case No. 01/2001-02 and 02/2001-02 in the court of Certificate Officer, Khagaria against the complainant/ loanee. During 2006-07 the petitioner was posted as District Cooperative Officer, Khagaria and was notified as ex-officio, Certificate Officer by the Collector, Khagaria and, as such, in discharge of his official duties he issued warrant of arrest against opposite party no. 2 on failure of his appearance in the court and for non-deposit of loan amount with interest to the Bank as agreed by him according to loan agreement. The complainant was arrested on the basis of aforesaid warrant of arrest and was allowed bail later on by the court. The complainant being annoyed with the order of issuance of warrant of arrest against him filed the instant complaint case as stated above in which learned court of Judicial Magistrate, 1st Class, Khagaria was pleased to take cognizance of the offence punishable under Section 504 of the Indian



Penal Code without obtaining sanction from the State Government as required under Section 197(1)(b) of the Cr.P.C. because the petitioner has passed the order of issuance of warrant of arrest in the capacity of certificate officer duly appointed by the District Magistrate, Khagaria while he was posted as District Cooperative Officer, Khagaria as a Gazetted Officer of the State Government.

4. In this connection learned counsel for the petitioner refers to Annexure-2, which is a letter issued by the office of the Commissioner, Munger Division, Munger, whereby the petitioner was delegated with powers under Section 3(3) of the Bihar and Orissa Public Demand and Recovery Act, 1914, of a Certificate Officer and in discharge of his official duty the warrant of arrest has been issued in Certificate Case No. 01/2001-02 and 02/2001-02. It is further submitted that the demand of Rs. 10,000/- per month by the petitioner to opposite party no. 2 was a false allegation and Title Suit No. 11/02 had also been filed in the court of learned Sub-Judge-I, Khagaria against the demand made by the Bank and its officials including the petitioner, who was the then Managing Director of the Bank that due to non-sanction of full amount of loan, as claimed by him, he had suffered a loss in business. It is submitted that the two witnesses examined on solemn affirmation, who supported the case of the complainant, were either employees of opposite party no. 2 or were in



close proximity of opposite party no. 2, hence, the order of cognizance without obtaining sanction of the State Government, as required under Section 197 of the Cr.P.C., is completely illegal, unjustified and abuse of the process of the court and will tantamount to miscarriage of justice. The revision case bearing Criminal Revision No. 48 of 2011 preferred by the opposite party no. 2 before the 1st Ad hoc Additional Sessions Judge, Khagaria against the order taking cognizance dated 29.03.2011, passed in the aforesaid complaint case for taking cognizance under other Sections of the Indian Penal Code was also dismissed on 27.01.2014.

5. In this connection, learned counsel for the petitioner refers to the judgment of this Court in the case of ***Gauri Shankar Dubey Vs. The State of Bihar and Anr.*** since reported in ***2000(2) PLJR 47*** wherein while relying on paragraph 8 he submits that a Government servant on official duty on the ground of lack of sanction under Section 197 of the Cr.P.C. the order of cognizance along with criminal proceedings should be held to be bad and liable to be quashed. Paragraph 8 of the said judgment is extracted hereinbelow for ready reference :

“8. Regarding the second point raised from the side of the petitioner no plausible argument could be placed from the side of the complainant as to why Section 197 of



the Cr.P.C. would not come to play in the present circumstances of the case except saying that matter of sanction can be considered at a belated stage also. In this connection, the learned counsel appearing for and on behalf of the petitioner has referred to a recent judgment of the Apex Court as reported in the 1999 (1) B.L.J. Supreme Court p. 697 (Md. Hadi Raja v. State of Bihar). The scope and interpretation of the amended provisions of Section 197 Cr.P.C. had been considered by the Apex Court and it was held that justification for protection of the government servant under Section 197 Cr.P.C. lies in public policy to ensure that official acts performed by a public servant do not lead to needless and vexatious prosecution of such public servant and it was desirable that it should be left to Government to determine question of expediency in prosecuting a public servant. In the discussion in that judgment it was held that before cognizance being taken, the point of sanction should be considered by the courts concerned.”

Further reference is made to the judgment in the case of ***Gauri Shankar Prasad Vs. State of Bihar and Anr.*** since reported in ***2000(3) PLJR 104(SC)*** wherein at paragraphs 8, 9 it has been



observed thus :

“8. What offences can be held to have been committed by a public servant while acting or purporting to act in the discharge of his official duties is a vexed question which has often troubled various courts including this Court. Broadly speaking, it has been indicated in various decisions of this Court that the alleged action constituting the offence said to have been committed by the public servant must have a reasonable and rational nexus with the official duties required to be discharged by such public servant.

9. More than four decades ago, this Court speaking through Chandrasekhara Aiyar, J. in *Matajog Dobey v. H.C. Bhari* (AIR 1956 SC 44) succinctly stated the principle of law in these words:

“The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act



exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits.

What we must find out is whether the act and the official duty are so inter-related that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation.”

In yet another recent judgment in the case of *Manoj Kumar Razak @ Manoj Razak Vs. The State of Bihar and Anr.* since reported in *2017(2) PLJR 485*, which is a case where a vigilance case was instituted on the basis of a private complaint of one Nirmala Kumari under the provisions of the Indian Penal Code and Prevention of Corruption Act, whereunder this Court in paragraph 6 held as under:

“Apparently, in the present case, FIR is based on a private complaint and once the Vigilance Judge decided to get the complaint inquired either himself or by some other agency in view of the provisions under Section 202 Cr.P.C., the mandatory condition of prior sanction for taking cognizance had to be complied, as such, entire criminal prosecution including the FIR is bad in law. Accordingly, the same stands quashed and this application is allowed.”



6. Thus, considering and reverting back to the facts and circumstances of the present case, it is evident that no prior sanction under Section 197 of the Cr.P.C. was taken by the State Government as the petitioner while discharging his official duties as a public servant and that of a Certificate Officer has issued warrant of arrest against opposite party no. 2 for non-payment of Bank's loan. Thus, keeping in mind, the decisions of this Court and of the Hon'ble Apex Court referred to above and in view of the fact that further proceedings if allowed to continue in the court of the learned Magistrate in the case of the petitioner would amount to gross abuse of the process of the court.

7. In the result, this application is allowed. Order taking cognizance dated 29.03.2011, passed by the learned Judicial Magistrate 1st Class, Khagaria in Complaint Case No. 307C/2008 and the entire criminal proceedings in connection with the aforesaid complaint case is hereby quashed.

8. The Registry to return the lower court records.

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	AFR
CAV DATE	10.05.2017
Uploading Date	19.05.2017
Transmission Date	NA

