

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.37416 of 2012

Arising Out of PS.Case No. -1179 Year- 2009 Thana -null District- BEGUSARAI

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1. Rajeshwar Jha Son Of Late Pt. Ghanshyam Jha Resident Of Village- Sukhsena,
P.S. - Barhera Kothi, District - Purnia, Present Posted As Executive Officer, Nagar
Parishad Dehri-On-Sone, District - Rohtas

.... Petitioner/s

Versus

1. State Of Bihar
2. Umesh Singh Son Of Late Satya Narayan Singh Residen Of Village - Khamhar,
P.S. - Muffasil, District - Begusarai

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Advocate. Mr.Avinash Kumar, Advocate Mr.Ajit Kumar, Advocate
For the Complainant	:	Mr.Sandeep Kumar Gautam, Advocate
For the State	:	Mr. Suresh Prasad Singh,A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 01-09-2017

This application under Section 482 Cr.P.C. has been filed for quashing the order dated 05.11. 2011 passed in Complaint case No. 1179 (C) of 2009 by the learned Judicial Magistrate, 1st class, Begusarai by which the learned Court below has found prima facie case against the petitioner and others for the offences under Sections 323, 341 and 504 of the Indian Penal Code.

It has been submitted by the learned counsel for the petitioner that in compliance of the order of the learned Sub



Divisional officer, Begusarai, the petitioner in the capacity of Executive Magistrate visited the shop bearing no. A/11, situated at Private Bus Stand Market Complex, Begusarai along with deputed police force and in presence of independent witnesses, vacated the shop and prepared the seizure list of the articles, which were kept inside the shop.

Learned counsel for the petitioner submits that on the same day i.e. 30.03.2009 the Sub Divisional Officer, Begusarai, was informed that the shop, in question, has been vacated and the articles kept in the shop had been seized and thereafter, seizure list was prepared and handed over to the Guard of the bus-stand. The entire exercise done by the petitioner was under his official discharge of his duty, as was assigned to him. He has been made accused in this case on account of said Act which was not done by him as alleged by the complainant in its complaint petition, which was false and frivolous ground.

The complainant has alleged in the Complaint petition that a shop bearing No. A/11 situated at Private Bus Stand Market Complex falling under Nagar Parishad, Begusari was settled in his favour and for that the complainant had entered into an agreement with Nagar Parishad, Lakhisarai. The



complainant was paying rent every month to Begusarai Nagar Parishad. The complainant later on learnt that Ramanand Singh and Dilip Kumar Singh are trying to get the complainant's shop vacated. The complainant received notice for vacating the shop and pursuant thereto Complainant gave notice under Section 80 of the Civil Procedure Code on 30.03.2009. It is further alleged by complainant that on the day of occurrence, he was in Begusarai market, where he came to know that the official of Nagar Parishad and police along with other accused persons had broken the lock and loaded all the articles of the shop on a tractor. The complainant visited his shop where he was assaulted by the accused persons and Rs. 1,00,000/- was taken by them.

The counsel for the petitioner has submitted that shop of complainant was vacated in discharge of his official duty. There was no sanction under Section 197 Cr. P. C. before taking cognizance against the petitioner.

Learned counsel for the Complainant has submitted that complainant was paying rent of the shop. There was no occasion for vacating the shop by the petitioner. He was assaulted when he reached at the time of vacating the shop. He further submits that the sanction can be obtained any time



during trial and therefore, the order is not bad in law.

In reply to the aforesaid submission, learned counsel for the petitioner has submitted that one joint application was filed by some persons on 30.04.2008 alleging therein that the shop which was settled in favour of Umesh Kumar, was sublet to Deepak Kumar on rent of Rs. 300/- per day. The matter was enquired by Ward Councilor-cum- Member, Standing Committee, wherein prima-facie the allegation was found true. Dipak Kumar admitted that he was running the shop, in question, which has been settled in favour of Umesh Kumar. Thereafter, a notice was issued to the complainant vide Memo No. 1085 dated 20.05.2008 which was not replied within time and a reminder notice was thus issued to Umesh Kumar vide Memo No. 113 dated 29.01.2009 which was replied by the Complainant but the same was found not satisfactory and further vide Memo No. 173 dated 07.02.2009 again notice was issued to the complainant by which he was directed to vacate the shop in question till 15.02.2009. Despite two consecutive notices served upon him, by which the complainant was directed to vacate the shop in question, for the reason of violating the terms of agreement the complainant choose to not vacate the shop. The matter was placed before Empowered



Standing Committee on 24.09.2008 and the Committee decided that the petitioner would take appropriate action in the matter.

The petitioner being appointed as Executive Magistrate, for getting the shop bearing No. A/11 vacated, wrote letter to the Superintendent of Police, Begusarai for deputing the police force on 30.03.2009, so that the shop may be vacated peacefully. In compliance of the order of Sub-Divisional Magistrate, Begusarai, the petitioner in the capacity of Executives Magistrate visited the shop bearing No. A/11 situated at Private Bus Stand Market Complex, Begusarai along with deputed police force and in presence of independent witnesses got the shop vacated and prepared the seizure list of articles which were kept inside the shop and on refusal by complainant to take those articles, the same were handed over to the Guard of the said Bus stand. The complainant after doing all the formalities, submitted report to the Sub-Divisional Officer, Begusarai, on the same day i.e. 30. 03.2009, informing therein that the shop in question has been vacated and the articles of the shop were seized and handed over to the Guard of the said Bus Stand after preparing seizure list.

In this manner, entire exercise was done by the petitioner under official discharge of his duty as assigned to



him.

It is admitted position that no sanction of the competent authority was obtained under Section 197 Cr.P.C. before launching prosecution against the petitioner. It is also admitted position that the petitioner had gone to the place of occurrence in discharge of his official duty which will be apparent from the facts described above.

Learned counsel for the petitioner has relied on the decision reported in **(2006) 1 SCC 557 (Rakesh Kumar Mishra Versus State of Bihar)**.

In the aforesaid judgment Hon'ble Supreme Court has held that bar Under Section 197 Cr.P.C. regarding Court's power to take cognizance is absolute and complete. The Court can not take cognizance of Complaint against Public servant in respect of an offence alleged to have been committed in discharge of official duty.

In the instant case the petitioner was doing the work in discharge of his official duty and got the shop vacated while discharging official duty. Section 197 (1) Cr.P.C. specifically lays down as follows:

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

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.

As such from plain reading of section 197 (1)

Cr.P.C., it is clear, that no Court shall take cognizance of such offence, except with the previous sanction of the State Government.

The learned Magistrate has taken cognizance in this case by the impugned order against the petitioner without sanction as required under Section 197 (1) Cr.P.C. The Court below failed to appreciate the fact that petitioner has got vacated the shop of complainant in discharge of his official duty.

In view of such, the impugned order passed by the learned Judicial Magistrate, 1st class, Begusarai is not in accordance with law.

Accordingly, the impugned order dated 05.11. 2011 passed by the learned Judicial Magistrate, 1st class, Begusarai,



in Complaint case No. 1179 (C) of 2009, along with entire criminal prosecution against the petitioner is hereby quashed.

The application is, accordingly, allowed.

(Sanjay Priya, J)

Sudha/-

AFR/N.A.F.R.	AFR
CAV DATE	
Uploading Date	06.10.2017
Transmission Date	06.10.2017

