

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29312 of 2011

Arising Out of Complaint Case No. -674C Year- 2007 District- NALANDA (BIHARSHARIFF)

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Arun Kumar Chaudhary son of Late Ramudar Chaudhary, resident of Village-
Mahmada, P.S.-Pusa, District -Samastipur at present posted as Sub-Inspector of
Police, New Police Line, Patna, P.S. Kotwali, District- Patna.

.... Petitioner

Versus

1. The State of Bihar
2. Upendra Kumar, son of Late Balchand Yadav, resident of Village-Satnag, P.S.-
Chandi, District -Nalanda

.... Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Manish Kumar No. 2, Mr. Kumar Vikram, Advocates.
For the Opposite Parties	:	Mr. Gopal Govind Mishra, Advocate.
For the State	:	Mr. Rajendra Prasad Nat, APP

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 16-05-2017

Heard learned counsel for the petitioner, learned counsel
for the Informant and learned counsel for the State.

2. The present petition has been filed for setting aside the
order dated 22.12.2010 passed by learned Judicial Magistrate, 1st Class,
Hilsa, Nalanda, taking cognizance against the petitioner in Complaint
Case No. 674(c) of 2007 for the offences under Sections 341, 323, 325,
504/34 of the Indian Penal Code.

3. The prosecution case as narrated in the complaint
petition is that the complainant Upendra Kumar had gone to the
market on 12.08.2007 along with his father and son for making
purchases when Anand Kumar and Munna Kumar along with one or



two chaukidars started beating and abusing him and carried him to the police station on tempo. The petitioner being the Officer-in-Charge of Chandi Thana got the complainant's hands and feet tied up, who was then assaulted along with his father and son who attempted to rescue him. The petitioner allegedly severely beat up the complainant with lathi causing fracture in his arms and shoulder leading him to lose consciousness. The petitioner wrongly reported that the complainant had been injured in a stampede in order to get him medically treated at the Referral Hospital. The complainant was then kept in lock-up on 12.08.2007 but was produced before the court after over 24 hours on 14.08.2007. It is further stated in the complaint that the acts of the petitioner, the chaukidars and the others were not in discharge of official duty and hence no prior sanction was required for their prosecution.

4. Learned counsel for the petitioner submits that the entire prosecution is a malicious one as evident from the surrounding facts and circumstances of the case. The complainant was an absconder in Sessions Trial No. 38 of 2004 arising out of Chandi P.S. Case No. 149 of 2001 under Sections 324, 307 and 34 of the Indian Penal Code and 27 of the Arms Act for which a warrant of arrest dated 25.01.2007 had been issued by the Court (Annexure-3). After a continuing search for months thereafter, the complainant was finally arrested on 12.08.2007 and produced before the Court on the very next date on 13.08.2007. The complainant received minor injuries when he tried to escape from



the police party at the time of arrest. It is submitted that the petitioner was merely discharging his official duty in executing the warrant of arrest issued by the Court against the complainant. Learned counsel for the petitioner further submits that even though the complainant was arrested on 12.08.2007 and produced on the very next day, he did not raise any objection and it is only as an afterthought a few days later that the present complaint was filed on 16.08.2007 in retaliation to the petitioner and the police party having arrested him.

5. It is therefore submitted that the order of cognizance is wholly illegal and unsustainable in absence of prior sanction being obtained in terms of Section 197 of the Criminal Procedure Code which is a mandatory pre-requisite for taking cognizance. It is submitted that the petitioner had acted in discharge of his official duty. The allegation raised in the complaint, apart from being retaliatory, is integrally connected with the petitioner's official act and is a direct fallout thereof. Reliance is placed on the decision of the Apex Court in *D.T. Virupakshappa Vs. C. Subash*, 2015 (3) PLJR 6, as well as a decision of a co-ordinate Bench of this Court in *Rabindra Kumar Singh Vs. The State of Bihar & Anr.*, 2015 (4) PLJR 27.

6. On the other hand, learned counsel for the complainant-opposite party no. 2 submits that the offending acts imputed to the petitioner do not constitute official acts of the petitioner and do not extend wide enough to grant protection of immunity from prosecution without prior sanction under Section 197 of the Criminal Procedure



Code. Reliance is placed on *Shambhoo Nath Mishra Vs. State of U.P. and Others, (1997) 5 SCC 326* and *Rajib Ranjan and Others Vs. R. Vijay Kumar, (2015) 1 SCC 513*.

7. Having heard the parties and on careful consideration of the materials on record, this Court finds merit in the submissions of learned counsel for the petitioner. It stands admitted in the complaint that the complainant was arrested on 12.08.2007 in connection with Sessions Trial No. 38 of 2004 pursuant to warrant of arrest having been issued upon cancellation of bail. The allegations made in the complaint are thus connected with and relatable to the discharge of official duties of the petitioner who had taken steps for execution the warrant of arrest. The sequence of events also shows that the complaint is retaliatory and vindictive which thus does not inspire much confidence in the veracity of the allegations contained therein.

8. In *State of Orissa through Kumar Raghvendra Singh and Others vs. Ganesh Chandra Jew, (2004) 8 SCC 40*, the Apex Court while dealing with the issue of “police excess” during investigation and the requirement of sanction of prosecution in that regard, held as follows:-

“7. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official



duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection."

9. *In Sankaran Moitra vs. Sadhna Das & Another, (2006) 4*

SCC 584, the Apex Court observed as follows:

"25. The High Court has stated that killing of a person by use of excessive force could never be performance of duty. It may be correct so far as it goes. But the question is whether that act was done in the performance of duty or in purported performance of duty. If it was done in performance of duty or purported performance of duty, Section 197(1) of the Code cannot be bypassed by reasoning that killing a man could never be done in an official capacity and consequently Section 197(1) of the Code could not be attracted. Such a reasoning would be against the ratio of the decisions of this Court referred to earlier. The other reason given by the High Court that if the High Court were to interfere on the ground of want of sanction, people will lose faith in the judicial process, cannot also be a ground to dispense with a statutory requirement or protection. Public trust in the institution can be maintained by entertaining causes coming within its jurisdiction, by



performing the duties entrusted to it diligently, in accordance with law and the established procedure and without delay. Dispensing with of jurisdictional or statutory requirements which may ultimately affect the adjudication itself, will itself result in people losing faith in the system. So, the reason in that behalf given by the High Court cannot be sufficient to enable it to get over the jurisdictional requirement of a sanction under Section 197(1) of the Code of Criminal Procedure. We are therefore satisfied that the High Court was in error in holding that sanction under Section 197 (1) was not needed in this case. We hold that such sanction was necessary and for want of sanction the prosecution must be quashed at this stage. It is not for us now to answer the submission of learned counsel for the complainant that this is an eminently fit case for grant of such sanction”.

10. The decisions relied upon on behalf of the opposite party no. 2 are not applicable in the present case as those decisions are concerned with acts of misappropriation of public funds/fabrication of false records which were held not to be in discharge of official duty. Those were not cases involving retaliatory complaints connected with acts admittedly done in discharge of official duty.

11. In the present case it is clear that the complaint case has been instituted in order to settle scores with the petitioner for having executed warrant leading to arrest of the complainant, and is well covered within the categories of cases where the powers of quashing may be exercised as enumerated by the Apex Court in para



102 of the decision rendered in *State of Haryana and others vs. Bhajan Lal and others*, 1992 Supp (1) SCC 335, which reads as under:

“(1) to (6)
(7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*”

12. In such circumstances, this Court is of the view that continuance of the criminal prosecution against the petitioner would amount to abuse of process of court and accordingly the impugned order dated 22.12.2010 passed by the learned Judicial Magistrate 1st Class, Hilsa, Nalanda taking cognizance in Complaint Case No. 674C of 2007 is hereby quashed.

13. The petition stands allowed.

14. Registry is directed to send back the lower court records without any delay.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	AFR
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