

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.31227 of 2014

Arising out of P.S. Case No.1121 Year 2012 Thana SARAN COMPLAINT CASE District SARAN

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Kamleshwar Kumar @ Kamlesh Kumar Singh Son of Late Deo Nandan Prasad
Resident of Village- Mahangupur, Police Station - Janipur, District- Patna, at
Present posted and working as Police Inspector, Gopalganj

.... Petitioner

Versus

1. The State of Bihar.
2. Daya Sindhu Son of Parash Nath Gupta, Resident of Village- Khagaul, Police
Station - Khagaul, District- Patna.

.... Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Jay Prakash Sharma, Advocate
For the State	:	Mr. Nand Kishore Pd., APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 11-09-2017

Heard learned counsel for the petitioner as well as learned
APP appearing on behalf of the State.

2. The petitioner, SHO of Ekma police station at the
relevant point of time, is an accused in Complaint Case No.1121 of
2012/Trial No.349 of 2014, pending in the court of learned CJM,
Saran at Chapra wherein by the impugned order dated 06.05.2013,
cognizance has been taken under Sections 323/504 and 166 of the
Indian Penal Code.

3. The facts in short, as alleged in the complaint petition,
is that the Indica Car of the complainant was seized in connection
with Ekma P.S. Case No.38 of 2011 and was lying in the police
station premises since 16.04.2011. The learned CJM, Chapra by order
dated 13.04.2012 directed to release the vehicle in favour of the



complainant. With the said order the complainant reached to the police station and produced the order before the SHO, the petitioner, who forwarded it to accused no.2, the I.O. of the case. The complainant found the A.C., music system and battery of the vehicle as well as stepney missing from the vehicle and alleged that it was stolen while it was kept at the police station. He complained in the matter to the petitioner who became enraged and directed the Sub-Inspector of Police, accused no.2, to lock up the complainant in *Hazat* and also abused and forced him to leave the police station and did not release the vehicle moreover threatened to falsely implicate in another case.

4. Learned counsel for the petitioner submits that the petitioner was SHO so being in such official position has been made accused in this case but no sanction has been obtained before taking cognizance though getting sanction under Section 197 Cr.P.C. is mandatory in nature for initiating a prosecution against a public officer. He further reiterates that he is made accused only because he was the SHO though after receiving the release order of the vehicle, he forwarded it to the I.O. of the case. He has placed reliance on two cases reported in (2006) 4 SCC 584 [*Sankaran Moitra v. Sadhna Das*] and (2001) 5 SCC 7 [*Rizwan Ahmed Shaikh v. Jammal Patel*].

5. Contrary to the submission of the learned counsel for



the petitioner, learned counsel appearing on behalf of the State submits that there is no nexus in between the alleged act of offence committed by the petitioner while acting in the discharge of his official duty.

6. Having considered the submissions of both sides and on perusal of record, this Court finds that the allegation against the petitioner is that when the complainant produced the order of the court for release of his seized vehicle, he found parts of A.C. system, music system, battery and stepney of the vehicle missing so made complaint orally to the petitioner who becoming enraged abused and threatened the complainant to falsely implicate in a false case and driven out of police station premises and the vehicle was not released. The act complained of against the petitioner does not appear to have any nexus in the discharge of his official duty. The primary object of introduction of Section 197 Cr.P.C. is to protect a public servant from unscrupulous element by lodging a false, frivolous or vexatious cases. It is a well settled position of law that there must be a reasonable nexus in between official duty of a public servant and the act alleged against him but if the act complained of against such public servant has no nexus with the official act or in discharge of his duty, such sanction is not required. This protection is only given to protect honest and sincere public servant. The impugned order of the CJM,



Chapra also shows that the vehicle has not been released. This Court does not find any reasonable nexus in between the act complained of against the petitioner and his official discharge of duty. It is not a part of duty of a police officer to abuse or threaten any person coming to the police station for the purpose of getting his vehicle released in view of the direction of the court, so this Court does not find that the prosecution is required to be quashed for want of sanction under Section 197 Cr.P.C.

7. The application stands dismissed.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
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