

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.377 of 2015

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

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1. Nawalesh Pathak S/o late Mr. Ramesh Pathak, Village-Bhatotar, P.S. Barhara, District Purnia, Bihar.

.... Petitioner

Versus

1. The State of Bihar
2. Amit kumar, S/o not known to the Petitioner, the then DIG of Police, Purnia.
3. Nayyar Hasnain Khan, s/o not known to the Petitioner, the then Superintendent of Police, Purnia.
4. Shibu Da (his real Name to be ascertained), S/o not known to the Petitioner, the then Reader in SP Office at Purnia.
5. Arvind kumar, S/o not known to the Petitioner, SI, the then SHO, Khazanchi Hat, Ps, Purnia.
6. Mitesh kumar, S/o not known to the Petitioner, the then SHO, Dhamdaha, P.s- Purnia.
7. Vipin kumar, S/o not known to the Petitioner, the then Inspector, Dhamdaha Ps, Purnia.
8. Pandey, S/o not known to the Petitioner, the then ASI, Barhara, Ps,Purnia.
9. Sudip keshri, S/o Kanhaiya Keshri, Rajendra Nagar, Madhubani, Purnia.
10. Madhuri, d/o not known to the Petitioner, the then ASI, Khazanchi Hat PS, Purnia.
11. Varun Mishra @Buchi, S/o Late Jeevanand Mishra, Village-Bhatotar,, P.s. Barhara, District Purnia, Bihar.
12. Constable Khan, s/o not known to the Petitioner, the then constable at Khazanchi Hat PS, Purnia.
13. 5 unidentified gunmen, s/o not known to the petitioner
14. 7 to 8 unidentified persons, s/o not known to the petitioner



.... Respondents

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Appearance :

For the Petitioner : Mr. Nawalesh Pathak (in person)
For the State : Mr. Manoj Kumar (App)
For O. P. No. 2-7 & 10: Mr. Arvind Kumar, Advocate
Mr. S. S. Thakur, Advocate

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

JUDGMENT AND ORDER
C.A.V.

Date: 10-01-2017

Whether dismissal of the complaint petition filed by the petitioner on the ground, inter alia, of absence of sanction under Section 197 of the Code of Criminal Procedure, 1973 (for brevity, "the Code") is valid in the facts and circumstances of the case, is the cardinal issue involved in the present criminal revision application filed under Section 397 read with Section 401 of the Code.

2. It is to be noted, at the outset, that the petitioner was made an accused in K. Hat Police Station Case No. 04 of 2011, registered, on 04.01.2011, which related to murder of a Member of Legislative Assembly of Purnea Sadar Constituency. The Opposite Party No. 5 herein was, at the relevant point of time, posted as Station House Officer of the concerned K. Hat Police Station. The Opposite Party Nos. 2, 3, 6 and 7 were, at the relevant point of time, posted as Deputy Inspector General, Purnea Range, Superintendent of Police,



Purnea, Station House Officer of Dhamdaha Police Station in Purnea district and Inspector of Police, Dhamdaha Police Station at Purnea, respectively. All these persons and other policemen have been arraigned as accused in the complaint petition, filed by the petitioner, which has been dismissed by the learned Court below, for want of prosecution.

3. I have heard the petitioner, Nawalesh Pathak, in person, learned Additional Public Prosecutor representing the State and learned Counsel appearing on behalf of Opposite Party Nos. 2 to 7 and 10.

4. The petitioner filed Complaint Case No. 1775 of 2013 on 20.06.2013 in the Court of the learned Chief Judicial Magistrate, Purnea, alleging therein that on 05.01.2011, three policemen and another person came to his house and told him that he was required at Purnea for interrogation concerning murder of Purnea Sadar M. L. A., Raj Kishore Keshari, on 04.01.2011. The petitioner along with his wife and two daughters accompanied the policemen in a vehicle. The vehicle was stopped on the outskirts of Purnea town and thereafter another vehicle reached at that spot, from which another unidentified gunman alighted. The petitioner was thereafter forcibly taken into the other vehicle. It is also alleged in the complaint petition that the persons present in the vehicle were discussing among themselves regarding a



plan to kill the petitioner. On 07.01.2011, the complainant was produced before the Deputy Inspector General, Purnea Range (Opposite Party No. 2) and the Superintendent of Police, Purnea (Opposite Party No. 3), who asked the petitioner to confess his killing of the Sadar M. L. A., or else, he would have to face dire consequences. The petitioner was allegedly made to put his signature on two pieces of paper at gunpoint.

5. On the same day, i.e. on 07.01.2011, the petitioner was produced in the Court of the learned Chief Judicial Magistrate, Purnea, whereafter he was sent to Purnea Central Jail. It is also alleged that when the petitioner was in Purnea Central Jail, the accused persons conspired to take his life, which was foiled by the then Jailor of the Central Jail. He was subsequently shifted to Beur Central Jail, at Patna, from where he was released on bail on 29.04.2011, for want of submission of charge sheet since the Central Bureau of Investigation was investigating the case. It is also alleged that when the complainant was produced in the Court, at Purnea, the Opposite Party Nos. 5 and 12 tortured him and abused him. Against the Deputy Inspector General, Purnea Range (Opposite Party No. 2) and the Superintendent of Police, Purnea (Opposite Party No. 3), it is alleged that they came out with defamatory statements when he was in jail.



Further, the petitioner had to shift to Jaipur with his family, where, too, he was subjected to stalking, intimidation and threatening by unidentified persons, according to complaint petition. The petitioner, thereafter, shifted to Dehradun, where also, the accomplices of the accused persons resorted to all sorts of nefarious activities against him. It has further been stated that recently when he visited his home village with his family to see his ailing father, some unidentified persons intercepted him and asked him to go back to Dehradun, or else face consequences. In a hotel at Purnea also, some unidentified persons hurled abuses on him.

6. The petitioner was examined on solemn affirmation (SA). His wife and one of the daughters were also examined before the Magistrate on SA in the year 2013 itself.

7. Since, no development was taking place on his complaint petition, the petitioner filed an application before this Court, giving rise to Cr.W.J.C. No. 940 of 2014, which came to be disposed of by an order, dated 25.02.2015, with a direction to the Court of the learned Sub Divisional Judicial Magistrate, Purnea, to expedite disposal of the said Complaint Case No. 1775 of 2013 in accordance with law. Thereafter, learned Judicial Magistrate, 1st Class, Purnea, passed the impugned order, dated 26.03.2015, dismissing the complaint petition as according to him, there was no sufficient ground



on record for proceeding with the complaint case.

8. This is the background in which the present criminal revision application has been filed, putting to challenge the said order, dated 26.03.2015, passed by the learned Judicial Magistrate, 1st Class, Purnea, in Complaint Case No. 1775 of 2013.

9. The Opposite Parties were noticed, pursuant to which they have entered appearance. A counter affidavit has been filed on behalf of Opposite Party Nos. 2, 3, 4, 5, 7 and 10, sworn by Opposite Party No. 5, who was, at the relevant point of time, posted as Station House Officer of K. Hat Police Station.

10. It has been stated in the counter affidavit that the petitioner was named accused in the First Information Report relating to murder of the Purnea Sadar M. L. A., which was instituted by the nephew of the deceased, namely, Sudip Keshari, who also has been made accused in the complaint case. It is his specific stand that since several eye-witnesses had supported the involvement of the petitioner in the murder of M.L.A. and there being ample evidence and sufficient ground for his arrest in connection with the same, after discussing the matter verbally with the Deputy Inspector General, Purnea Range, Purnea, and the Superintendent of Police, Purnea, a decision was taken to



arrest him. The petitioner was thereafter arrested by the Opposite Party No. 5 on 06.01.2011 and was forwarded to judicial custody on 07.01.2011. It is also his specific case that when the petitioner was produced before the learned Chief Judicial Magistrate, Purnea, on 07.01.2011, he did not complain of any misbehaviour or ill-treatment against the accused-Opposite Party Nos. 2, 3, 5, 7 and 10. The investigation of the said K. Hat Police Station Case No. 04 of 2011 was subsequently handed over to the C.B.I. for further investigation on 25.02.2011, whereafter the said opposite parties did not have any concern with the said murder case.

11. It is thus their plea that the petitioner was, as a matter of fact, arrested by the police in the official discharge of their duties, which is being described by the petitioner as an act of kidnapping. It has also been asserted that delay of nearly two-and-a-half years in filing the complaint case after the arrest of the petitioner indicates oblique motive.

12. The Opposite Parties have relied on notification issued by the Government of Bihar, vide No. 4142 dated 16 May, 1980, which has been subsequently reproduced in Home (Police) Memo No. 8348, dated 25.07.1996, extending statutory protection under Section 197 of the Code, prescribing requirement of sanction as pre-



condition for criminal prosecution against police personnel, irrespective of the post which they hold, if the act is in relation to discharge of their official duties.

13. The Opposite Parties have accordingly justified the dismissal of the complaint case by learned Judicial Magistrate, 1st Class, Purnea, by the said order, dated 26.03.2015, which has been challenged in the present revision application.

14. On a careful reading of the complaint case and statements of witnesses on solemn affirmation, the allegation against the Opposite Parties can easily be separated in two parts. The first being from the stage when the petitioner was allegedly kidnapped by the Officer-in-Charge of the Police Station and two others on 05.01.2011 in the name of taking him to the Police Station for the purpose of his interrogation in connection with the said murder case, which ended on 07.01.2011. This is to be kept in mind that the investigation was admittedly handed over to the C.B.I. on 25.02.2011 and the petitioner was released on bail on 29.04.2011, as no charge sheet could be filed against him within the statutory period.

15. The second phase begins after he is said to have left Purnea for Jaipur and thereafter to Dehradun. I have no hesitation in concluding that so far as the second phase is



concerned, there is absolutely no material either in the complaint petition or in the statements on solemn affirmation of the complainant and the witnesses, which make out any criminal misconduct worth being considered as grounds, let alone, sufficient ground for proceeding within the meaning of Section 204 of the Code.

16. This leaves me to examine whether on the basis of first phase allegations, learned Magistrate was required to proceed against the Opposite Parties, even without sanction required under Section 197 of the Code.

17. So far as this part is concerned, whereas it is the case of the petitioner that he was kidnapped on 05.01.2011, it is the case of the Opposite Parties that the petitioner was arrested in connection with the concerned K. Hat Police Station Case No. 04 of 2011, in which he was named. There cannot be any gainsaying that the petitioner was produced before the learned Chief Judicial Magistrate, Purnea, in connection with the said case on 07.01.2011 by the Police after his arrest in connection with a cognizable offence. The petitioner did not allege any act of ill-treatment, misbehavior or misconduct on the part of the Police Officials/ personnel, who had arrested him, on his production before the learned Magistrate. The story of kidnapping, as narrated by him in his complaint petition, came to be introduced for



the first time with the filing of the complaint petition, nearly two-and-a-half years thereafter, on 20.06.2013.

18. In the circumstance, as noted above, the question which has arisen in the present case is as to whether the Opposite Parties are entitled for statutory protection under Section 197 of the Code or not?

19. I would proceed first to consider the question as to whether the Opposite parties, who are police officials, are entitled for protection under Section 197 of the Code or not, before dealing with the question as to whether there alleged act can be described as act committed by them while acting or purporting to act in discharge of their official duties.

20. The Opposite Party Nos. 5, 7 and 10 are police personnel. The fact that they enjoy protection of statutory protection under Section 197 of the Code is no more *res integra* in view of the Supreme Court decision, in the case of **Om Prakash v. State of Jharkhand**, reported in **(2012) 12 SCC 72** and Full Bench decision of this Court, in the case of **Sri Ram Rekha Pandey v. The State of Bihar and Another**, reported in **2016 (3) PLJR 296**.

21. In the case of **Om Prakash** (supra), the effect of the same notification, dated 16.05.1980, reliance on which has been placed on behalf of the Opposite Parties, had fallen for consideration before the Supreme Court. The Court



has clearly held in the said case that the notification extends protection to all officers and men of the police force of the State of Bihar. Relying on Supreme Court decision, a Full Bench of this Court has held, in the case of **Sri Ram Rekha Pandey** (supra), that in view of the said notification, dated 16.05.1980, previous sanction for prosecution of the police officers and personnel for offences alleged to have been committed in discharge of their official duty is a condition precedent.

22. So far as other police officers, who are Opposite Parties in the present proceeding and have been made accused in the complaint case, are concerned, there is no dispute that they also enjoy the said protection under Section 197 of the Code, being members of the Indian Police Service.

23. I, now, come to the next question as to whether in the present undisputed facts and circumstances of the case, the said protection could be said to be available to the Opposite Parties or not.

24. It is true that the protection under Section 197 of the Code is available only when the alleged act is done by a public servant or police personnel, reasonably acting in discharge of his official duty and is not merely a cloak for doing an act, which is otherwise legally impermissible and



unlawful.

25. As has been noticed, the petitioner was named as an accused in the First Information Report of K. Hat Police Station Case No. 04 of 2011. The informant of the said case alleged, *inter alia*, in his fardbayan that on the date of occurrence, when the Purnea Sadar M. L. A. was having discussions and interactions with the local people at his residence, a white coloured vehicle stopped near the gate from which a lady descended. She sat in front of the M. L. A. and gave a sudden hard blow by means of *khanjar* (dagger) on the M. L. A, which she had concealed beneath her *shawl*. The said lady was subsequently overpowered by the persons present there. It is specifically alleged in the First Information Report that in the mean while, the petitioner, who was sitting in the said vehicle in which the accused had come and the driver of the vehicle, fled away. It was also alleged in the First Information Report that the slain M. L. A. too had taken the name of the petitioner on his way to hospital, as the person responsible for the attack. The petitioner having been named in the First Information Report, which disclosed an offence punishable under Section 302 of the Indian Penal Code, it was the statutory duty of the Officer-in-Charge of the Police Station and the Investigating Officer to arrest him. The arrest of the petitioner and his production before the learned



Magistrate thereafter is not in dispute. The petitioner is describing the arrest made by the concerned Opposite Parties as an act of kidnapping. Evidently, the duties which the concerned Opposite Parties were discharging in their official capacity in effecting arrest of the petitioner in connection with a sensational murder case and the allegation made by the petitioner is definitely integrally connected and inseparably inter-linked, in course of the same transaction.

26. It is true that Section 197 of the Code does not extend its protective cover to every act or omission of a public servant and it is confined in its scope of operation to only such acts or omissions which are performed in discharge of official duty.

27. Referring to various judicial pronouncement, the Supreme Court, in the case of **General Officer Commanding v. CBI and Another (AIR 2012 SC 1890)**, observed, in paragraph 22, that if on facts, it is *prima facie* found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty, then it must be held to be official to which the applicability of Section 197 of the Code cannot be disputed.

28. The Supreme Court further held, in the case of **General Officer Commanding** (supra), that the issue of sanction gains a question of paramount importance when a



public servant is alleged to have acted beyond his authority or his acts complained of are in dereliction of his duty. If the offence is alleged to have been committed by him, while acting or purporting to act in discharge of his official duty, grant of prior sanction becomes imperative.

29. Explaining the reason for such protection having been made available to the public servants, the Supreme Court remarked, in the case of **General Officer Commanding** (supra), that power of the State is performed by an executive authority authorized in this behalf in terms of the Rules of Executive Business framed under Article 166 of the Constitution of India insofar as such a power is to be exercised in terms of Article 166 thereof.

30. In the present case, such protection has been extended to the police personnel by a conscious decision of the State Government since they have been considered to be performing and exercising powers of the State in relation to maintenance of public order.

31. The Supreme Court, in the case of **State of Orissa and Others v. Ganesh Chandra Jew (AIR 2004 SC 2179)**, in paragraph 8, has held thus:-

"It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule



to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty, if the answer to his question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case."

32. In the case of **Prakash Singh Badal and Another v. State of Punjab and Others (AIR 2007 SC 1274)**, the Supreme Court, while interpreting the phrase "*official duty*", laid down that it implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The provisions making available protection of prior sanction should be construed strictly while



determining its applicability to any act or omission in course of service and its operation must be limited to those acts only which were discharged in course of the official duty. The Supreme Court further held, in **Prakash Singh Badal** (supra), that once any act or omission has been found to be committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned.

33. In the case of **General Officer Commanding** (supra), the Supreme Court observed, in paragraph 23, that the sanction of the appropriate authority is necessary to protect a public servant from unnecessary harassment or prosecution. Such protection is necessary, observed the Supreme Court, in the case of **General Officer Commanding** (supra), as an assurance to an honest and sincere officer to perform his public duty honestly and to the best of his ability. The threat of prosecution demoralizes the honest officer, the Supreme Court said, in the case of **General Officer Commanding** (supra), highlighting the purpose behind the protection in the shape of prior sanction by appropriate authority for criminal prosecution.

34. Unless unimpeachable evidence is on record to establish that action of police personnel is indefensible, *mala fide* and vindictive, they cannot be subjected to criminal



prosecution without prior sanction, which affords necessary protection to them. [See, **Om Prakash** (supra)]

35. Applying the ratio and principles laid down by the Supreme Court, as noted above, I have no iota of doubt in my mind that the deeds alleged against the private Opposite Parties herein is integrally connected with their acts performed in discharge of their official duties and in the absence of sanction, the learned Magistrate could not have taken cognizance on the basis of the said complaint case and he has rightly refused to do so.

36. Secondly, it is evident that the petitioner was produced before the Court of learned Chief Judicial Magistrate, Purnea, on 07.01.2011, by the police after his arrest in connection with K. Hat Police Station Case No. 04 of 2011, registered on 06.01.2011.

37. Thirdly, to me, lodging of the complaint case appears to be malicious and revengeful as a consequence of the petitioner's arrest by the police in connection with a murder case.

38. Lastly, the complaint case came to be filed two-and-a-half years after the alleged kidnapping of the petitioner, for which I do not find any cogent explanation and which is an additional reason why criminal prosecution launched by the petitioner appears to be attended with *mala*



fide.

39. In the background of the facts, as discussed above, dismissal of the complaint petition by the learned Judicial Magistrate, 1st Class, Purnea, by the impugned order, dated 26.03.2015, is justified. The impugned order does not require any interference. This application is dismissed.

40. However, there shall be no order as to costs.

41. Since the petitioner had appeared in person and is not present today in Court, let a copy of this order be sent to him at his address through speed post.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	13.12.2016
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