

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.2614 of 2015

Arising Out of PS.Case No. -776 Year- 2013 Thana -SAHARSA COMPLAINT CASE District-
SAHARSA

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Birendra Lal Das, son of Late Madhusudan Lal Das, resident of village -
Pratapganj, P.S. - Pratapganj, District - Supaul.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Maheshwar Sada, son of Late Pancha Sada, resident of village - Sardiha, P.S. -
Bakhtiyarpur, District - Saharsa; presently residing at village - Shonpura, P.S. -
Bakhtiyarpur, District - Saharsa.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Pramod Mishra, Advocate
Ms. Rashmi Jha, Advocate.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 02-08-2017

Heard learned counsel for the petitioner as well as learned
counsel for the O.P. No. 2 and the State.

2. Petitioner has filed this application, under Section 482
of the Cr.P.C., for quashing order dated 14.03.2014 passed by Sri
A.K.Manjhi, Judicial Magistrate, 1st Class, Saharsa in Complaint Case
No. 776 of 2013 whereby he has taken cognizance under Sections
420/34 of the Indian Penal Code.

3. The allegation as stated in the complaint, in brief, is that
one of the accused, namely, Krishna Rai filed an application before
the Circle Officer upon which a report was called for from the Anchal
Amin and Circle Inspector and in connivance with the accused



Krishna Rai, a false report was submitted.

4. It is submitted by learned counsel for the petitioner that the allegation is not specific against the petitioner as to the nature of report submitted by him, moreover, there is no question of submitting any report by this petitioner because he had retired from service on 31.07.2012. In this regard, copy of the order of the Circle Officer, Simari, Bhakhtiarpur (Annexure-2) by which the petitioner was required to hand over the charge to his successor is an unimpeachable document showing petitioner's date of retirement and the alleged date of occurrence, as mentioned in the complaint petition, is 01.12.2012 till the filing of the complaint on 10.05.2013. So obviously, on 01.12.2012, the petitioner was not in service. Moreover, in view of Section 197 Cr.P.C., no court can take cognizance of an offence alleged to have been committed by a public servant accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Government. Admittedly, no such sanction has been obtained.

5. Having considered rival submissions and on perusal of record and in view of sterling document filed by the petitioner showing that he had already retired on 31.07.2012, much prior to alleged date of occurrence, rules out his involvement in the alleged



occurrence. Besides this, there is no sanction order by the State Government under Section 197 of the Cr.P.C., 1973 for prosecuting the petitioner. So order taking cognizance dated 14.03.2014 passed by Sri A.K.Manjhi, Judicial Magistrate, 1st Class, Saharsa in Complaint Case No. 776 of 2013 and subsequent criminal proceeding only with respect to this petitioner is hereby set aside. Accordingly, this application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.08.2017
Transmission Date	04.08.2017

