

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.53535 of 2013

Arising Out of PS.Case No. -25 Year- 2013 Thana -AURANGABAD COMPLAINT CASE District-
AURANGABAD

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1. Virendra Kumar Son Of Late S.N. Pandey Resident Of Mohalla - R.M.S.
Colony, Road No. 5, P.O. + P.S. - Kankarbagh, District - Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. Upendra Paswan Son Of Lal Deo Paswan Resident Of Village - Simaria, P.O. -
Ram C Handra Nagar, P.S. + District - Aurangabad

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rana Sanjay Kumar Singh
For the Opposite Party/s : Mr. Tapeswar Sharma

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

C.A.V. JUDGMENT

Date: 25-07-2017

Heard learned counsel for the parties.

Petitioner, by means of these applications under section
482 of the Code of Criminal Procedure, has invoked the inherent
jurisdiction of this Court with prayer to quash the order dated
31.10.2013, passed by Chief Judicial Magistrate, Aurangabad in
connection with C.R. No. 25 of 2013,
T.R. No. 2473 of 2013, whereby finding prima facie case has been
found against the petitioner under section 323, 504, 506 I.P.C. and
the case was transferred for trial.

Facts of the case, in short, is that the present first
information report was lodged alleging therein that petitioner being



the Circle Officer pushed and threw out the complainant and called him by his caste name. Complainant was examined on solemn affirmation and two witnesses were examined. Learned Magistrate considering the above passed the order impugned.

The contention of the learned counsel for the petitioner is that in view of Section 197 of the Code of Criminal Procedure, prior sanction of the Government is needed to launch prosecution against the petitioner, who is a Public Servant. The occurrence is alleged to have taken place in course of discharge of official duty by the petitioner as a Public Servant.

From perusal of the materials available on record, the facts of the case and the law laid down by the Hon'ble Supreme Court, this Court finds that the arguments advanced by the learned counsel for the petitioner has no force. The Hon'ble Supreme Court in the case of *State of H.P. Vs. M.P. Gupta*, reported in *A.I.R. 2004 S.C. 730* has held that an Official is not expected to commit offence of assault and if it is found that the offence alleged is not under the cover of official duty then the official gets his due according to law. In the present case the complainant was examined on solemn affirmation, wherein he corroborated the prosecution case. Witnesses namely, Pramod Singh and Ram Swaroop Mistri supported the prosecution case. There is a prima facie case against the petitioner.



The order passed by the Magistrate cannot be faulted in law.

In view of the above, this Court finds that there is no error in the order passed by the Magistrate. The prayer for quashing the same is refused.

The application accordingly stands dismissed.

(Arvind Srivastava, J)

Manish/-

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CAV DATE	01.05.2017
Uploading Date	
Transmission Date	

