

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35933 of 2014

Arising Out of PS.Case No. -244 Year- 2012 Thana -JEHANABAD COMPLAINT CASE District-
JEHANABAD

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1. Parmila Sinha W/o Ashok Sharma R/o village- Kalanaur, P.O.- Kalanaur, P.S.- Mukhdumpur, District- Jehanabad (Anganbari Sevika))
 2. Sangita Kumari W/o Paritosh Kumar R/o Mohalla- Machharhatta, (near Prasad Enterprises), Patna City, P.S.- Khajekala, District- Patna at Present C.D.P.O. Makhdumpur (Jehanabad)
 3. Lal Mohan Das S/o Kishan Prasad Das R/o village- Sajour, P.S.- Sahkund, District- Bhagalpur, at present posted as Junior Engineer at Makhdumpur Block.
 4. Ashok Sharma S/o Late Ram Nandan Prasad R/o village- Kalanaur, P.O.- Kalanaur, P.S.- Makhdumpur, District- Jehanabad
 5. Prem Kumar S/o Vimal Kishore Prasad Sinha R/o Mohalla- Bhutnath Road, Patna, P.S.- Agam Kuan, District- Patna at Present C.I. (Circle Inspector), Makhdumpur, Block Jehanabad.
 6. Munder Lal S/o Laljee Lal R/o Mohalla- Horilganj, P.S. + District- Jehanabad, at Present posted as Amin Makhdumpur Block (Jehanabad)

.... Petitioner/s

Versus

1. The State of Bihar
2. Suresh Sharma S/o Late Ram Nandan Sharma R/o village + P.O.- Kalanaur, P.S.- Makhdumpur, District- Jehanabad

.... Opposite Party/s

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Appearance :

For the Petitioner : Mr. Jharkhandi Upadhyaya, Advocate.
For the Opposite Party : Mr. Sanjay Kumar, Advocate.
For the State : Mr. Jagdhar Prasad, APP.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 29-01-2018

Heard the learned counsels for the petitioner and the
State.

2. The petitioners are government servants who have challenged the order dated 03.04.2013 passed by the learned Judicial Magistrate, 1st Class, Jehanabad in connection with Complaint Case No. 244 of 2012 whereby cognizance has been taken under Sections 323, 341, 504/34 of the Indian Penal Code.

3. In the complaint, it has been alleged that all the



accused persons (the petitioners) informed the opposite party no. 2 that on the land on which crops had been sown by opposite party no. 2, a Anganwari Centre has to be constructed. The opposite party no. 2, on her protest, was assaulted by fists and slaps and was also divested of a gold chain.

4. Learned counsel for the petitioners has submitted that the land in question is a government land and the opposite party no. 2 had been occupying the same in an authorized manner. The opposite party no. 2 was asked by the petitioners in their capacity as government servants to vacate the land so that the Anganwari Centre could be constructed. Irked by the aforesaid information, the present complaint has been lodged. That apart, it has been argued that assuming but not admitting some of the allegations in the complaint case to be true, the cognizance could not have been taken by the court below without sanction as *prima facie* it appears that the act complained of was in discharge of official duty.

5. Mr. Sanjay Kumar, the learned advocate for opposite party no. 2 however has opposed the aforesaid contentions of the petitioner and has submitted that the petitioners have exceeded their jurisdiction and the issue of sanction was never raised by the petitioners.

If from the records of the case, it would appear that the act complained of is in discharge of official duty, it may not be necessary for the court to await the issue of sanction to be taken by



the concerned party. The non-obstante clause of 197 Cr.P.C. makes it imperative that in such cases, proceeding against the accused persons cannot be started and the issue could be seen at the inception of the case only.

6. Learned counsel for the petitioners has also submitted that a title suit with respect to possession of the portion of land where the occurrence is said to have taken place has also been filed by the opposite party no. 2.

7. For the facts aforesaid, the order dated 03.04.2013 passed by the learned Judicial Magistrate, 1st Class, Jehanabad in connection with Complaint Case No. 244 of 2012 whereby cognizance has been taken against the petitioners as well as all further proceedings emanating from the aforesaid order, are set aside.

8. The application stands allowed.

9. However the result of this case would not be read/construed in any prejudicial manner so far as the opposite party no. 2 is concerned, in any other proceeding before any court of law.

(Ashutosh Kumar, J)

KKSINHA/-

AFR/NAFR	NAFR
CAV DATE	NA
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