

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38749 of 2012

Arising Out of PS.Case No. -1172 Year- 2010 Thana -null District- BEGUSARAI

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1. Shiv Kumar Singh @ Sheo Kumar Singh, son of late Ram Bhajan Singh, resident of village + Mohalla- Mugalkuan, Biharsharif, P.S.- Bihar, District- Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Dr. Ashok Kumar, son of late Karamchand Mahto, resident of Mohalla- Surdih, P.S.- Sohasarai, District- Nalanda, at present Principal K.S.T. College, Salempur, Sohasarai, District Nalanda.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Singh, Advocate
Mr. Krishna Narayan Jha, Advocate

For the Opposite Party/s : Mr. APP
Mr. Sanjeet Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 04-01-2018

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 03.01.2012 passed by the Judicial Magistrate, 1st class, Nalanda at Biharsharif, in Complaint Case No.1172-C of 2010 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioner for the offence under Section(s) 504 Indian Penal Code.

2. Counsel for the petitioner has submitted that the petitioner was appointed as Investigating Officer of Noorsarai P.S. Case No.177 of 2007, which was lodged by one Pankaj Kumar,



Executive Magistrate, on the instruction of the District Magistrate, Nalanda, against the Opposite Party No.2, who was the Principal of KST College, Salempur, Sohsarai, Nalanda. In connection with investigation of that case, the petitioner had gone in the College where the petitioner was Principal and on account of such visit of the petitioner in the College of the Complainant, instant Complaint Case has been filed.

3. Counsel for the petitioner has further submitted that the petitioner was performing his duty as government official in discharge of his official duty and, therefore, taking of cognizance by the learned Magistrate without obtaining prior sanction under Section 197 Cr. P.C. is illegal. Counsel for the petitioner has relied on the decision in the case of *Krishna Mohan Prasad vs. State of Bihar and another* reported in 2013(1) PLJR 248 in support of his submission.

4. Counsel for the Opposite Party No.2 has submitted that in para 6 of the Complaint Petition there is specific allegation against this petitioner that he made demand of rupees one lac from the Complainant in the college on 09.09.2010 and gave threat of sending the Complainant and his son to jail in aforesaid case if the money is not paid and also abused the Complainant.

5. Counsel for the Opposite Party No.2 has relied on



the decision in the case of *Rajib Ranjan & Ors. Vs. R. Vijaykumar* reported in (2015) 1 SCC 513 and has argued that provision of Section 197 Cr. P.C. will not be attracted if the acts of the public servant cannot be treated as part of his official duty.

6. In the instant case, the Complainant has alleged that on the order of the District Magistrate, Nalanda, examination of secondary school was cancelled. Aforesaid order was challenged in Hon'ble Court in CWJC No.4041 of 2006. The Hon'ble Court has quashed the order of the District Magistrate on 02.03.2006 and directed the District Magistrate to pay compensation of rupees twenty thousand to the College. LPA No.686 of 2006 was filed by the District Magistrate, Nalanda, which was also dismissed. Thereafter, the Complainant filed MJC No.451 of 2007 in the Hon'ble Court for initiation of contempt proceeding against the District Magistrate due to non-compliance of the order. The Complainant has alleged that District Magistrate, Nalanda, in sheer annoyance constituted a Committee to enquire about the college matter. The Enquiry Committee prepared the report as per the wish of the District Magistrate alleging irregularities against the Opposite Party No.2 in the College and one Pankaj Kumar, Executive Magistrate on the instruction of the District Magistrate lodged Noorsarai P.S. Case No.177 of 2007 under Section 409 and 420



Indian Penal Code. The matter was entrusted to the CID on the instruction of Hon'ble Court and one Uday Singh was appointed as Investigating Officer of the case. Later on, this petitioner was appointed as Investigating Officer.

7. In this manner, as per averment made in the Complaint Petition itself, the petitioner was appointed as Investigating Officer in the case i.e. Noorsarai P.S. Case No.177 of 2007 lodged against Opposite Party No.2 by Pankaj Kumar, Executive Magistrate for the offence under Section(s) 409 and 420 Indian Penal Code.

8. Supplementary Affidavit has been filed on behalf of the petitioner. From Annexure-B of the Supplementary Affidavit, it appears that a petition was filed by petitioner on 16.06.2010, as Investigating Officer, before the Chief Judicial Magistrate, Nalanda, for issuance of warrant of arrest against the Opposite Party No.2 as there was sufficient material against him in Noorsarai P.S. Case No.177 of 2007. Thereafter, he had visited the College of the Complainant-Opposite Party No.2 and just in annoyance and retaliation Complainant has filed the instant case against the petitioner on 13.09.2010 mentioning date of occurrence as 09.09.2010. As such, even if the petitioner had visited the College of the Opposite Party No.2 as per averment made in para 6 of the



Complaint Petition, he had visited the College in discharge of his official duty as the Investigating Officer of the aforesaid case.

9. Therefore, in terms of Section 197 Cr. P. C., learned Magistrate should not have taken cognizance against the petitioner without prior sanction of the competent authority as required under the provision of Section 197 Cr. P.C.

10. Therefore, this Court is of the view that the impugned order is not in accordance with law.

11. Accordingly, order dated 03.01.2012 passed by the Judicial Magistrate, 1st class, Nalanda at Biharsharif, in Complaint Case No.1172-C of 2010 along with entire criminal proceeding against the petitioner is hereby quashed.

12. This application is, accordingly, **allowed**.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	18-01-2018
Transmission Date	18-01-2018

