

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.47956 of 2012

Arising Out of PS.Case No. -943 Year- 2007 Thana -null District- KATIHAR

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Sunil Kumar Singh, son of Shri Ram Naresh Singh, r/o village Govindchak, P.S. Sonepur, Distt. Saran.

.... Petitioner/s

Versus

1. The State of Bihar
2. Amar Nath Choubey, son of Gupteshwar Nath Choubey, r/o village Soharadangi, P.S. Manihari, Distt. Katihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Jagarnath Singh, Advocate.

For the Opposite Party/s : Mr. S.M. Rahman, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 05-03-2018

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 7.6.2008 passed by learned Judicial Magistrate, Katihar, in Complaint Case No. 943 of 2007 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioner and other accused persons for the offences under Sections 195, 197, 469, 387 and 120(B) of the Indian Penal Code.

2. Heard learned counsel for the petitioner and learned counsel for the State.

3. Learned counsel for the petitioner has submitted that petitioner was posted as SHO Manihari Police Station, Katihar. He was Government servant and discharging his official duty. It has further been submitted that learned Magistrate has committed



illegality in taking cognizance against this petitioner and other accused persons by the impugned order dated 7.6.2008 without proper sanction as described in Section 197 Cr. P.C. It has further been submitted that order of cognizance with regard to one of the co-accused Ram Krishna Poddar has already been quashed by a coordinate Bench of this Court vide judgment dated 15.01.2012 passed in Cr. Misc. 24488 of 2009 on the ground that there was no sanction under Section 197 Cr. P.C.

4. Learned A.P.P. has submitted that there is no illegality in the impugned order.

5. From bare perusal of Section 197 Cr. P.C. it is clear that if a Public Servant who is an accused of any offence alleged to have been committed by him, while acting or purporting to act in discharging of his official duty, no court shall take cognizance of such offence except with the previous sanction of the State Government if he is employee of the State Government.

6. It was mandatory on the part of the learned Magistrate to demand sanction order at the time of taking cognizance itself. From the impugned order it appears that learned Magistrate has mentioned that necessary permission petition has been forwarded to Director General of Police, Patna, through Pleader Notice with reminder.



7. In this manner, from the impugned order itself it is apparent that there was no sanction as required under Section 197 Cr. P.C. at the time of passing the impugned order. In this respect, the *Hon'ble Supreme Court in a decision* reported in *AIR 1998 SC 2379 (State of Bihar Vrs. Kamla Prasad and Ors.)* has held that no cognizance of the alleged offences could be taken without a proper sanction of the Government.

8. Therefore, the impugned order passed by the Court below is not in accordance with law.

9. Accordingly, the impugned order dated 7.6.2008 passed by learned Judicial Magistrate, Katihar, in Complaint Case No. 943 of 2007 along with the entire criminal proceeding against the petitioner is hereby quashed.

10. This Criminal Miscellaneous application is accordingly allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	26/03/2018
Transmission Date	26/03/2018

