

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.44814 of 2012**

Arising Out of PS.Case No. -1675 Year- 2003 Thana -null District-  
EASTCHAMPARAN(MOTIHARI)

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Ramendra Kumar Sinha (Ranger), S/O Rameshwar Prasad Sinha, resident of  
Mohalla - Beur Flat, Quarter No. 1, P.S. - Beur, Distt. - Patna

.... .... Petitioner/s

Versus

1. The State Of Bihar
2. Rama Shankar Prasad, S/O Badari Prasad, R/O Village - Katwa, P.S. - Katwa,  
Distt. - East Champaran

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Vijay Anand, Advocate.  
For the Opposite Party No.2: Mr. Sandeep Kumar, Advocate.  
Mr. Rohit Raj, Advocate.  
Mr. Neeraj Kumar, Advocate.  
For the State : Dr. Rabindra Kumar, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA**

**ORAL JUDGMENT**

**Date: 29-03-2018**

**1.** This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 20.06.2012 passed by Sri R.K. Rajak, learned Judicial Magistrate, Motihari, in Trial No. 2312 of 2012 arising out of Complaint Case No. 1675(C) of 2003 by which the learned Magistrate has rejected the petition of the petitioner filed under Section 245 Cr. P.C.

**2.** Learned counsel for the petitioner has submitted that prior to lodging of the instant complaint by the informant, the First Information Report was filed for illegal act against the complainant and his three supporters on 5.9.2003 at about 3:00 p.m.



before the Officer Incharge of Kotwa P.S. vide Kotwa P.S. Case No. 111 of 2003 by Pramod Thakur, Forest Range Officer against the complainant and others.

3. Learned counsel for the petitioner has further submitted that for illegal running of shop and for keeping illegal produce, the Official Complaint No. 645 of 2003 was also filed by the Forest Department under the Bihar Saw Mills (Regulation) Act, 1990. The copy of the aforesaid complaint has been enclosed as Annexure-6. The instant case has been filed by the complainant just as counter blast to harass this petitioner who is Ranger at the relevant time by making false allegation.

4. The case of the complainant is that on the date of occurrence, this petitioner with other accused persons broke the lock of Saw Mill of the complainant which was locked since 1999. The complainant reached at the place of occurrence on getting information and produced papers related to Saw Mill but petitioner and other accused persons became angry and forcibly took away the machine from the Saw Mill after breaking the lock and also abused the complainant and gave threat.

5. Learned counsel for the petitioner has submitted that earlier there were large number of unauthorized Saw Mills in the country and, therefore, Forest Department, took action throughout the



country. The Hon'ble Supreme Court in T.N. Goda Verman's case vide WP (C) No. 202 of 1995, has laid down several guidelines by order dated 12.12.1996 in which one of the guidelines was that "No State or Union Territory shall permit any unlicensed Saw Mills to operate and they were directed to close all such unlicensed Saw Mills forthwith". The aforesaid order of the Hon'ble Supreme Court has been enclosed as Annexure-2 series. Thereafter, general order was issued to the Forest Department by the State Government through Circular No. 6 (E) dated 6.01.2003 for taking stern action against the illegal Saw Mills. The aforesaid circular has been enclosed as Annexure-3 to this petition.

6. Learned counsel for the petitioner has submitted that as per complaint petition itself it would appear that complainant was running Saw Mill which was not licensed under Bihar Saw Mills (Regulation) Act, 1990. There was ban to operate such unlicensed Saw Mill in terms of direction of the Hon'ble Supreme Court, and the Circular of the Government as stated above. The Department received information regarding illegal storage of timber and illegal running of Saw Mill by the complainant and accordingly, in the light of the direction of the Hon'ble Supreme Court and the circular of the State Government, the Forest Department who is the informant of Kotwa P.S. Case No. 111 of 2003, has requisitioned for deputation of Police



Force and Magistrate, and after constituting raiding party, raid was conducted in the illegal Saw Mill premises of the complainant on 5.9.2003 at 1:45 p.m. In the raid of illegal Saw Mill premises of the complainant, it was found that complainant has installed illegal Saw Mill and has stored illegally cut timber from the Tirhut main canal which is a protected forest and the same is cognizable offence. The Saw Mill and forest produce were seized but in the meantime, a crowd of more than 100 persons along with the complainant arrived and looted the seized item. They all also misbehaved with the Government Officials.

7. The First Information Report was filed for aforesaid illegal Act against the complainant and his three supporters on 5.8.2003 at 3.00 p.m. with the Officer-in-charge of Kotwa Police Station vide Kotwa P.S. Case No. 111 of 2003 which has been enclosed as Annexure-5. The case was also filed against the complainant for illegal running of Saw Mill and for keeping illegal forest produce vide Complaint Case No. 645 of 2003 by the Forest Department under the Bihar Saw Mills (Regulation) Act, 1990 (Annexure-6).

8. The instant case has been filed as counter blast and to create defence to harass the petitioner. The police earlier investigated Kotwa P.S. Case No. 111 of 2003 and found the



allegation true. Police submitted charge sheet in that case against the complainant of the instant case and three others and cognizance has also been taken against them in that case. The Xerox copy of the charge sheet submitted in Kotwa P.S. Case No. 111 of 2003 has been enclosed as Annexure-7. A discharge petition was filed before the learned Magistrate by the petitioner on the aforesaid ground which was rejected by the impugned order.

9. Section 21 of the Bihar Saw Mills (Regulation) Act, 1990 speaks as follows:

***“21. Protection of action taken in good faith. –***  
*No suit, prosecution or other legal proceedings shall lie against the State Government or any officer or person or authority for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act or any rules or order made thereunder”.*

10. Learned counsel for the informant has appeared and submitted that the protection is only provided to the Officer who has taken action in good faith. In the instant case the raid was conducted with illegal motive. Learned counsel for petitioner has further submitted that there is no seizure list of articles which is alleged to have been seized by the forest department.

11. This Court after looking into the complaint petition



finds that there is no mention anywhere that the complainant was having valid license for running Saw Mill in question. The complainant has merely mentioned that he has deposited appropriate money for issuance of license. Annexure-5 and 6 clearly shows that earlier to the filing of the instant case by the complainant, the petitioner has conducted raid in the Saw Mill of the complainant in pursuance of the direction of the Hon'ble Supreme Court as given in T.N. Goda Verman's case vide WP(C) No. 171 of 1996 and also Government circular No. 6 (E) dated 6.1.2003 which has been enclosed as Annexure 2 and 3/1 and seized the timber as well as machinery from the Saw Mill of the complainant for which case was lodged vide Official Complaint Case No. 645 of 2003. The First Information Report was also lodged earlier against the complainant on 5.9.2003, by the Ranger namely, Pramod Thakur, leveling allegation against the complainant, that they caused misbehaviour and obstruction, when the complainant had gone to the saw mill of the complainant for search and seizure and they also assaulted them. The First Information Report of the aforesaid Kotwa P.S. Case No. 111 of 2003 has been enclosed as Annexure-5.

**12.** The learned Magistrate by the impugned order rejected the petition for discharge on the ground that *prima facie* offence is made out against this petitioner for the offence under



Sections 147, 323, 379, 384, 427, 452, 504 and 506 of the Indian Penal Code.

**13.** This Court after going through the impugned order finds that none of the points taken on behalf of the petitioner, as mentioned in the impugned order, was considered by the court below, while passing the order.

**14.** Learned counsel for the petitioner has placed reliance on the decision of Hon'ble Supreme Court reported *in 2002 (2) SCC Page 135 (Dilawar Balu Kurane Vrs. State of Maharashtra)* wherein the Hon'ble Supreme Court has held that in exercising jurisdiction under Section 227 Cr. P.C. of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

**15.** In the instant case this Court finds that the impugned order has been passed by the court below in mechanical manner without considering the material available on the record.

**16.** Section 21 of the Bihar Saw Mills (Regulation) Act, 1990 provides protection of action taken by Government Servant



in good faith.

**17.** Therefore, the impugned order dated 20.06.2012 passed by Sri R.K. Rajak, learned Judicial Magistrate, Motihari, in Trial No. 2312 of 2012 arising out of Complaint Case No. 1675(C) of 2003 against the petitioner is hereby quashed.

**18.** This Criminal Miscellaneous application is accordingly allowed.

**(Sanjay Priya, J)**

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