

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1015 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

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1. Kumar Mithilesh Prasad Singh Son of Mathura Prasad Singh resident of Qr. No. M/2, Rajbanshi Nagar, P.S.: Shastri Nagar, District : Patna at present Land Reforms Deputy Collector, Patna Sadar, District : Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Home Department.
2. The Divisional Commissioner, Patna Division, Patna.
3. The District Magistrate-cum-Collector, Patna.
4. Sri Manoj Kumar Jha, Senior Additional Collector-cum-Member of three men Committee, Patna.
5. Sri Shashank Shekhar, Additional Collector-cum-Member of three Men Committee, Patna.
6. Sushil Kumar, the Secretary, Regional Transport Authority, Patna-cum-Member of Three men Committee, Patna.
7. The Superintendent of Police, Patna.
8. The Additional Superintendent of Police cum Investigating Officer of Patrakar Nagar P.S. Case No. 319/17, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vindhya Keshari Kumar, Sr. Advocate
Mr. Neeraj Kumar @ Sanidh, Advocate
Mr. Ravi Shankar Pathak, Advocate
For the Respondent/s : Mr. Suman Kumar Jha, AC to AAG-3
For the Vigilance : Mr. Arvind Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
CAV JUDGMENT

Date: 31-01-2018

Heard learned counsel for the parties.

2. The petitioner has invoked the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India for quashment of the F.I.R. of Patrakar Nagar P.S. Case No.319 of 2017 dated 22.06.2017, registered under Sections



406/409/419/420/467/468/471/120B of the Indian Penal Code as well as under Sections 7/8/9/13(1)(c)(d)/13(2) of the Prevention of Corruption Act, 1988 against the petitioner and others.

3. The prayer is on the ground that the criminal act has been alleged in connection with an official and judicial act performed by the petitioner in his official capacity, as such, the protection under the Judges Protection Act, 1985 is applicable in the matter of the petitioner also and secondly on the ground that the F.I.R. discloses no offence against the petitioner.

4. A brief background leading to institution of the aforesaid F.I.R. is that one Devendra Kumar filed petition before co-accused, the Circle Officer, Patna Sadar, praying therein for fixation of rent in his name as well as in the name of the referred family members in respect of Plot Nos.62, 65, 71 and 73 under Khata No.16 and Plot No.63, 64 and 72 under Khata No.22, all situated in Mohalla Hanuman Nagar, P.S. Patrakar Nagar, District- Patna. The prayer was on the ground that the lands are ancestral lands of the applicant and are recorded in the survey record of rights in the name of Daljit Mahto son of Bulaki Mahto, the ancestor of the applicant. The applicant enclosed an affidavit supporting the aforesaid statement as well as a genealogy of the descendents of Daljit Mahto. The application and the supporting affidavit are at page-49 to 53 of the



writ application. At page-54, the applicant had enclosed a copy of the continuous khatian, which would reveal that only plots of Khata No.16 were in the name of Daljit Mahto and the referred plots of Khata No.22 were in the name of Nirmal son of Rup Chandra (not the ancestors of the applicant). For the reasons best known to the authorities, who are co-accused in this case, Rent Fixation Case No.24 of 2016-2017 was started only in respect of the plots of Khata No.22, which was not the ancestral property of the applicant Devendra Kumar. The order sheet of the rent fixation proceeding is at page-29 of the writ application. The orders dated 13.07.2016 and 20.07.2016 would reveal that supporting the possession of applicant report of Circle Inspector was received though the reality was that no inspection report of Circle Inspector was ever received on the record. The order dated 20.07.2016 of co-accused Circle Officer would reveal that the rent of the land was never fixed whereas the facts on record would reveal that the rent of the aforesaid land was already fixed. Co-accused, the Local Karmchari wrongly submitted a report that lands of Khata No.22 are in possession of applicant Devendra Kumar, whereas the fact is that the land was possessed by South Bihar Power Distribution Company surrounded under a boundary wall with office and Electric Supply Installation standing thereon. By the same order dated 20.07.2016, the Circle Officer placed the matter



for fixation of rent before the petitioner, who was DCLR, Patna Sadar at that time. The petitioner allowed the prayer for fixation of rent in favour of Devendra Kumar by order dated 19.08.2016 at page-41. By the same order the petitioner, after fixation of rent in favour of Devendra Kumar, directed to the co-accused, who was Circle Officer, to ensure undisputed possession of Devendra Kumar on the land aforesaid and also to ensure that the mutation in respect of the said land is not in the name of any other person. It was further ordered that the rent was fixed for the purpose of realization of rent only and not to create any title in favour of anyone.

5. It is worth to mention here that the petitioner should not have fixed the rent without ensuring by supporting document that rent of the land is not fixed, the land is in fact in possession of Devendra Kumar and the mutation of the land is in favour of Devendra Kumar because rent cannot be realized in favour of anyone in respect of any land.

6. Being emboldened by the aforesaid order, Devendra Kumar started demolishing the boundary wall of the said land claiming his title and possession over that. Thereafter, the Executive Engineer of the electricity department wrote a letter to the Chief Engineer (Civil), South Bihar Power Distribution Company Limited.

7. Simultaneously, a news flashed in the daily newspaper



Dainik Jagaran dated 22.06.2017 that land of Power Sub-Station of Kankarbagh has been sold away. Thereafter, the Commissioner, Patna, constituted a Committee of three members, i.e., Secretary Regional Transport Authority, Additional Collector, Disaster Management and Additional Collector, Revenue Department, Patna Collectorate to enquire into the matter and submit report vide his order dated 22.06.2017 at page 19. The Committee submitted its report stating therein that the referred land is in possession of the Bihar State Electricity Board since long and at present in possession of the Company of the erstwhile Board known as South Bihar Power Distribution Company Limited. The Committee further found that no step for fixation of rent was taken in respect of the plots of Khata No.16, which was in fact recorded in the name of Daljit Mahto and a table work was done in the matter by issuance of public notice for fixation of rent in respect of Khata No.22. The Committee further noticed that there was no report of the Circle Inspector on the prayer of Devendra Kumar and everything was collusive act of co-accused Anil Kumar Lal, the Karmchari, the Circle Officer, Mr. Samim Akhtar Majhiria and the petitioner to facilitate wrongful gain to Devendra Kumar putting claim over the land of others, for extraneous consideration of the accused persons.

8. On receipt of the inquiry report aforesaid, the F.I.R.



was lodged with allegation that by adopting extraneous manner and means, the rent was fixed and land possession certificate was issued by the accused persons in the name of Devendra Kumar. Hence, prayer was made to prosecute Devendra Kumar and others including the petitioner under the appropriate provisions of law. It is informed that after investigation of the case the police has already submitted charge sheet in the case.

9. On bare narration of the facts of this case aforesaid, I do not find any merit in the submission of the learned counsel for the petitioner that the F.I.R. discloses no offence. When the official act of the accused persons is alleged to have suffered from malice and for extraneous consideration to provide undue help to co-accused Devendra Kumar so that he may put a claim on the land of others. The collusive criminal act of the accused persons including the petitioner is apparent for the purpose of consideration of this application for quashment of F.I.R. In case, the responsible persons, who processed the file without proper verification and corroboration through material on the record, would have not been arrayed as accused in the case it might have been argued that the petitioner was swayed away by misdeed of other accused. In the present case, the prima facie material is that entire thing was under a conspiracy and collusive act of the accused persons including the petitioner. The



petitioner fixed rent in favour of a person in whose name the land was not mutated nor there was any evidence of his possession of that land. Moreover, the rent was refixed in the name of Devendra Kumar in respect of a land of which rent was already fixed.

10. Reference may be made to the case of **Deelip Bhikaji Sonawane v. State of Maharashtra & Ors.** reported in 2003 Criminal Law Journal 4008.

11. Contention of the learned counsel for the petitioner is that the petitioner is a person empowered by law to give in any legal proceeding, a definitive judgment and he has given the disputed judgment under that authority. Therefore, the protection to the Judges provided in the Judges Protection Act, 1985 is applicable in favour of the petitioner and the petitioner is not liable for any criminal prosecution.

12. Section 3 of the Judges (Protection) Act, 1985 reads as follows:

“(1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-section (2), no Court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when,



or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.

(2) Nothing in sub-section (1) shall debar or affect in any manner the power of the Central or the State Government or the Supreme Court of India or any High Court or any other authority under any law for the time being in force to take such action whether by way of civil, criminal or departmental proceedings or otherwise against any person who is or was a Judge.”

Section 2 defines the word “Judge”:

“In this Act “Judge” means not only every person who is officially designated as a Judge, but also every person (a) who is empowered by law to give in any legal proceeding a definitive judgment, or a judgment which, if not appealed against, would be definitive or a judgment which, if confirmed by some other authority, would be definitive; or (b) who is one of a body of persons which body of persons is empowered by law to give such a judgment as is referred to in Clause (a)”

13. In view of the provisions of sub-section (2) of Section 3 above the State Government is not powerless to take a criminal



action against a prima facie offender only for the reason that he is a Judge. In the present case, criminal action has been taken by the State through a Senior Deputy Collector, who is informant of the case. Hence, the protection under the Act cannot be said to be so absolute as to warrant quashing of the F.I.R.

14. Moreover, the Judges Protection Act, 1985 or the General Clauses Act, 1897 does not define the term “Legal Proceeding” appearing in Section 2(a) of the Judges Protection Act nor any statutory definition of the said term has been brought to the notice of the Court. In Oxford Advance Learners’ Dictionary “legal proceedings” have been interpreted as the act of using the legal system to settle a disagreement. The term is synonymous to a “Judicial Proceeding” which is defined in Section 2(i) of the Code of Criminal Procedure, 1973.

“judicial proceeding” includes any proceeding in the course of which evidence is or may be legally taken on oath”

15. There is no dispute that in rent fixation matter the evidence is not taken on oath nor the opponent has opportunity to cross-examine the person who has given his statement or evidence on oath. Therefore, the power exercised by the petitioner was not a power to give a definitive judgment which necessarily implies



recording of finding after hearing the parties and considering the materials on the record. Therefore, in my view, the petitioner does not come within the definition of Judge as defined in Section 2 of the Act as referred above. For this reason also the petitioner is not entitled to get any protection.

16. In the result, I do not find any merit in this application. Accordingly, it stands dismissed.

(Birendra Kumar, J)

Mkr./-

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