

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.2556 of 2017

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

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Chandeshwari Prasad Yadav S/o Late Dahu Prasad Yadav, R/o Village- Gudia,
P.S.- Jadia, District- Supaul, Presently Posted as Deputy Superintendent of Police
(Administration), office of DIG, Saharsa, P.S. & District- Saharsa.

.... Petitioner/s

Versus

1. The State of Bihar, through the District Magistrate Bhagalpur,
2. The District Magistrate, Bhagalpur.
3. The Superintendent of Police, Bhagalpur.
4. Rajesh Singh S/o Awadh Bihari Singh, R/o Village- Parsurampur, P.S.- Pirpanti, District- Bhagalpur.
5. Saurabh Tiwari @ Chandan Tiwari S/o Baliram Tiwari,
6. Baliram Tiwari @ Bhutal Tiwari S/o Gorakh Tiwari, Both R/o Village- Bakharpur, P.S.- Pirpanti, District- Bhagalpur.
7. Raj Bihari Singh, S/o Jaimangal Singh,
8. Manoj Singh S/o Raj Bihari Singh, Both R/o Topara, P.S.- Pirpanti, District- Bhagalpur.
9. Dhurandhar Singh, parentage not known, SI of Police, Pirpanti, P.S.- Bhagalpur.
10. Abdullah Khan, parentage not known, ASI of Police, Pirpanti, P.S.- Bhagalpur.
11. Ajit Kumar Singh SAP/0689.
12. Nagendra Sharma, SAP/7998.
13. Ramesh Kumar Sahani, SAP/8004.
14. Puran Bahadur Shahi, SAP/5163.
15. Rameshwar Prasad, SAP/0566.
16. Jagdish Singh, S/o Not Known, Jeep Driver of Pirpanti, P.S.- Sl. 6 to 13, Posted at Pirpanti P.S., District- Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sandeep Kumar, Advocate
Mr. V.K. Sharma, Advocate
Mr. Sanjeev Kumar, Advocate
For the Respondent/s : Mr. Abhay Kuamr Singh, Advocate
Mr. Bharat Bhushan, Advocate
Mr. Shidharth Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 03-07-2018

Heard learned counsel for the petitioner and learned



counsel representing the State as well as learned counsel representing the informant.

Challenge in the present writ application is to Annexure-P/5 by which the learned 1st Additional Sessions Judge, Bhagalpur has refused to discharge the petitioner under Section 227 of the Code of Criminal Procedure on the ground that no sanction to prosecute the petitioner has been obtained in terms of Section 197(3) Cr.P.C.

Learned counsel for the petitioner has drawn attention of this Court towards paragraph-4 of the impugned order wherein the submission of the petitioner based on a Full Bench judgment of this Court in the case of **Sri Ram Rekha Pandey vs. The State of Bihar and another** reported in **2016(2) PCCR 448 (Full Bench)** has been taken note of. Learned counsel submits that in terms of the full Bench judgment of this Court, the petitioner would be entitled to get protection under Section 197(3) Cr.P.C. at this stage because the materials available on the records would not disclose even his prima facie involvement. In the present case, it is submitted that the petitioner was acting in discharge of his official duty and there are ample materials to conclude a finding that in the nature of evidence available on the record sanction would be required at this stage itself



to proceed further with the trial.

On the other hand, learned counsel representing the informant and the State are unanimous in their submissions that the impugned order does not suffer from any illegality or infirmity. Learned counsel representing the informant has drawn attention of this Court towards the part of paragraph-9 of the impugned order wherein the learned Additional Sessions Judge, Bhagalpur has categorically recorded that there are two cases, one of the cases has been registered by the present petitioner and what the reality is, may be revealed only after a full-fledged trial hence at this stage the protection under Section 197(3) Cr.P.C. cannot be given to the petitioner. Learned counsel has further taken this Court through the judgment of the learned Apex Court in the case of **Om Prakash and others vs. State of Jharkhand and another** reported in **2012(12)SCC72**. The latter part of paragraph-34 of the judgment may be quoted herein below for ready reference :

“ The other learned Judge also states: (**Hori Ram Singh case v. Emperor, AIR 1939 FC 43 : (1939)1 FCR 159, AIR p.55 : FCR p.185**)

‘ ... At this stage, we have only to see whether the case alleged against the appellant or sought to be proved against him relates to acts done or purporting to be done by



him in the execution of his duty.’

It must be so. The question may arise at any stage of the proceedings. The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for sanction.

Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case.”

The legal position is thus settled by the Constitution Bench in the above paragraph. Whether sanction is necessary or not may have to be determined from stage to stage. If, at the outset, the defence establishes that the act purported to be done is in execution of official duty, the complaint will have to be dismissed on that ground.”

Learned counsel further informs this Court that earlier the petitioner had moved this Court challenging the order taking cognizance but failed to persuade this Court and as a result thereof now no question may be raised as to legality and validity of the order taking cognizance on any ground whatsoever.

Having heard learned counsel for the parties and on



perusal of the impugned order as also on going through the judgment of this Hon’ble Apex Court, this Court is of the considered opinion that in terms of the judgment of the Hon’ble Apex Court, the question as to whether sanction is necessary or not may be determined in the context of the present case only after evidence are adduced in course of trial and the defence establishes that the Act purported to be done by the petitioner of this case was in execution of his official duties. Petitioner has earlier lost his challenge to the order taking cognizance. The impugned order does not suffer from any illegality or infirmity.

The writ petition has, thus, no merit. It is dismissed accordingly but with liberty to the petitioner to raise this issue in course of trial before the court below.

(Rajeev Ranjan Prasad, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	09-07-2018
Transmission Date	09-07-2018

