

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 46116 of 2013

Arising Out of Complaint Case No.-666 Year-2013 Thana- SIWAN COMPLAINT CASE
District- Siwan

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Anil Kumar, S/o Bhola Nath Sahai, Resident of C 2067/i, Indira Nagar,
Lucknow (Uttar Pradesh).

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Vijay Shukla, S/o Kuldip Shukla, Resident of Goushala Road, P.S.- Siwan,
District- Siwan.
3. Senior Superintendent of Police Lucknow, Lucknow U.P.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Brajesh Kumar, Advocate
For the State	:	Ms. Renu Kumari, A.P.P.
For the Opposite party No. 2	:	Mr. Choubey Jawahar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 04-02-2019

Heard learned counsel for the petitioner; learned A.P.P.
for the State and learned counsel for the opposite party no. 2.



2. The petitioner has moved the Court under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') for the following relief:

“That the present application is being filed for quashing the cognizance order in Complaint Case no. 666/13 and entire proceeding of the case i.e. order dtd. 4.6.13 passed by R. K. Singh, Judicial Magistrate, 1st Class, Siwan whereby and whereunder he has taken cognizance against the petitioner and another under section 323,341,427,379,504/34 I.P.C. and also issued summons.”

3. Pursuant to order dated 15.01.2019, the petitioner is also present. Upon a query of the Court as to why initially he had instructed his counsel that he was ready to apologize to the opposite party no. 2, but on the next date, he resiled from the position, the stand was that later on he had decided that he would contest the case. The Court finds such stand to lack *bona fide* and further, that the petitioner has not been fair to the Court. A litigant cannot play with the Court by conveying a stand through his counsel and when the Court proceeds on such premise, on the next date, a stand is taken totally contrary to the initial stand. The Court, thus, deprecates such conduct of the petitioner in the strongest terms.

4. Further, with regard to him not appearing on the last occasion, despite there being a specific direction for the same, the



stand taken in the show cause filed on behalf of the petitioner is that there was some communication gap and that he has no net connection at his home. The same is a lame excuse and the further stand that learned counsel for the petitioner could not inform him about his physical presence is equally not worthy of reliance. However, the Court, giving him the benefit of doubt does not propose to proceed against him for such conduct of him not appearing before the Court despite there being a specific order to the same.

5. Be that as it may, the Court has proceeded to hear the matter on merits.

6. The allegation against the petitioner is that he, in the capacity of the then Principal of the Kendriya Vidyalaya in question, along with the librarian, had abused and assaulted the petitioner who had gone to the school to make inquiry with regard to vacancy for admission in Standard-V.

7. Learned counsel for the petitioner submitted that the allegations are false and frivolous. It was submitted that the petitioner being a public servant at the relevant time, cognizance could not have been taken against him without due sanction from the Competent Authority under Section 197 of the Code. For such proposition, learned counsel referred to the decision of the



Hon'ble Supreme Court in **Army Headquarters v. CBI** reported as **(2012) 6 SCC 228**, the relevant being at paragraphs no. 42 and 45. Learned counsel submitted that the opposite party no. 2 claiming that he had gone for enquiry with regard to vacancy for admission, any response from the petitioner was obviously in his initial capacity and, thus, he would be protected under Section 197 of the Code. Learned counsel further submitted that the allegations also are unbelievable and malicious and the proceeding itself is *mala fide*. He submitted that the Hon'ble Supreme Court in the case of **State of Haryana vs. Bhajan Lal** reported as **1992 Supp (1) SCC 335**, at category no. 7 of the judgment at paragraph no. 102, has held that where a criminal proceeding is manifestly attended with *mala fide* and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the Court should exercise its inherent jurisdiction under Section 482 of the Code.

8. Learned A.P.P. and learned counsel for the opposite party no. 2 submitted that the Court has rightly taken cognizance and that the protection under Section 197 of the Code is not available to the petitioner in the present case as the misconduct is



clearly not part of his official duty for which such safeguard has been incorporated in the Statute/Code.

9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the application. The thrust of the submissions of learned counsel for the petitioner before the Court was the protection under Section 197 of the Code. The same reads as under:

“197. Prosecution of Judges and public servants.—(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction —

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression “State Government” occurring therein, the expression “Central Government” were substituted.



Explanation.—For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, section 376A, section 376C, section 376D or section 509 of the Indian Penal Code (45 of 1860).

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

(3A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the Contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a



court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991 receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.”

10. From the aforesaid, it is clear that the fundamental criteria for protection under the aforesaid provision is that the person who is being proceeded against for any alleged offence did so while acting or purporting to act in the discharge of official duty. In the present case, the allegation is that while the opposite party no. 2 was making query, with regard to vacancy in Standard-V, the petitioner and another co-accused became enraged, abused and even assaulted him. This, by no stretch of imagination, can be said to be an act in discharge of official duty. First and foremost, in the considered opinion of the Court, the reaction was totally disproportionate and further, no Statute or law gives right to any person to abuse, much less, assault anyone. The law by now is



well settled that the test for protection under Section 197 of the Code is the nexus of the action alleged as compared to the scope of official duty of the accused. In the present case, the Court finds that no such nexus or even remote connection exists between the offence alleged and the discharge of official duty by the petitioner. As far as the case of **Army Headquarters** (supra) is concerned, the Court finds that the foundational facts in the said case are totally different from the present case. In the said case before the Hon'ble Supreme Court, terrorists had been killed by the Army and in that context, the Hon'ble Supreme Court has held that the action taken by the Army has direct nexus with the incident which occurred leading to killing of such terrorists and, thus, the protection under Section 197 of the Code was held to be applicable in their case. In the present case, there is absolutely no similarity on facts. As far as the case of **Bhajan Lal** (supra) is concerned, the Court finds that in the same also, category-7 at paragraph no. 102 relied upon by learned counsel for the petitioner deals with a situation where a criminal proceeding is manifestly attended with *mala fide* and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.



11. In the present case, there is absolutely no private or personal grudge either reflected or contended on behalf of the petitioner. Thus, the Court does not find that the present case is covered by the aforesaid category-7 of the judgment of the Hon'ble Supreme Court in the case of **Bhajan Lal** (supra) at paragraph no. 102.

12. For reasons aforesaid, the application stands dismissed.

(Ahsanuddin Amanullah, J)

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