

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18443 of 2015

Arising Out of PS. Case No.-1695 Year-2013 Thana- BHOJPUR COMPLAINT CASE
District- Bhojpur

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Raghubansh Kumar son of Krishna Murari Sharma resident of Sherpur, Post Office - Sherpur, Police Station- Maner, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Sneha Srivastava, daughter of Pashupati Nath Srivastava resident of Mohalla- Professor Colony, K.G. Road, Ara , Post Office Ara, Police Station- Ara Nawada, District- Bhojpur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Syed Masleh-Uddin Ashraf, Advocate
For the Opposite Party/s : Mr.Atul Chandra, APP

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 12-07-2019

Notice has already been served on Opposite Party

No.2. However, no one appears on behalf of Opposite Party

No.2 though Vakalatnama has been filed.

2. Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State.

3. Petitioner has been arrayed as accused by Opposite Party No.2 in Complaint Case No. 1695(C) of 2013 wherein cognizance has been taken against the petitioner for the offences under Sections 417 and 471 of the Indian Penal Code by the impugned order dated 14.01.2015.

4. According to complaint petition, the complainant



and some others joined as Block Teacher on 03.01.2011. The complainant was working at Middle School, Kori Sandesh. The complainant and other 44 teachers were not getting their salary. Thereafter, they approached this Court in CWJC No.14791 of 2012 and by order dated 20.09.2012, this Court directed the authorities to examine the matter and ensure payment of salary to the complainant and other appointed teachers. Thereafter, the petitioner, who was posted as District Education Officer, Bhojpur, issued an order that since the complainant and other teachers were not appointed according to rules, there is no justification to make payment of their salary. The petitioner referred to a letter of the Principal Secretary of Education Department wherein direction was issued that these teachers who were not appointed according to the Rules cannot get salary. Thereafter, the complainant gathered that the letter of the Principal Secretary was a forged one and that was just to harass the complainant and other teachers.

5. Submission of learned counsel for the petitioner is that the entire complaint petition would reveal that whatever the petitioner did was in discharge of his official duty as he was competent to issue direction for non-payment of salary to the teachers not appointed according to the rules. Therefore, the



prosecution of the petitioner should have been only after sanction of the competent authority and in absence of sanction cognizance is bad-in-law. Moreover, the letter of Principal Secretary has already been verified and that was a genuine one. Further the petitioner cannot be prosecuted for his official act. Whether the order issue by the petitioner was correct or not correct was subject matter of review by the competent authority. The prosecution of the petitioner amounts to an abuse of the process of the Court and suffers from mala fides.

6. After going through the records, I find substance in the submission of the learned counsel for the petitioner. The act of the petitioner was within his competence in the official capacity and the same was in pursuance of direction issued by the official. Hence, criminal prosecution of the petitioner is bad-in-law. Moreover, the offences alleged are not made out against the petitioner. There is no allegation of fraudulent or dishonest intention nor there is any question of cheating to the complainant by the petitioner because the salary money was to be paid from the government exchequer and not from the pocket of the petitioner. There is no direct material that any document was created by the petitioner. Hence, offences under Section 471 of the Indian Penal Code was also not made out.



7. In view of the conclusion aforesaid, the criminal prosecution of the petitioner is not sustainable. Accordingly, the same stands quashed and the application stands allowed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
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