

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.24185 of 2022

Arising Out of PS. Case No.-125 Year-2019 Thana- CHAUSA District- Madhepura

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Raj Kumar Sah, Son of Har Govind Sah, Resident of Village - Tulsipur Tola
Ward No. 02, P.S. - Chausa, District - Madhepura.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Manoj Kumar Ram, Son of Dinanath Ram, Resident of Village - Salempur,
P.O.- Salempur, P.S. - Muffasil, District - Bhojpur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar, Advocate

For the Opposite Party/s : Mr. Binay Krishna, Spl.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL JUDGMENT

Date : 10-11-2022

Heard learned counsel for the petitioner and
learned Spl.P.P for the State.

2. In the present case, the petitioner is challenging
the cognizance order dated 07.12.2020 passed by learned
Additional Sessions Judge-1-cum-Special Judge, SC/ST,
Madhepura in SC/ST Case No. 109 of 2019 arising out of
Chausa P.S. Case No. 125 of 2019, by which cognizance has
been taken against the petitioner for the alleged offences under
Sections 341, 323, 353, 504, 506/34 of the Indian Penal Code,
Sections 3 (1) (S) of Scheduled Castes and Scheduled Tribes
(Prevention of Atrocities) Act and Sections 37 (d), 45 of Bihar
Prohibition and Excise Act.



3. The FIR was registered on the basis of written report of one Manoj Kumar Ram, Block Welfare Officer, Chausa against the petitioner, the co-accused persons Rajesh Paswan, Renu Ji and computer operator Arvind Kumar and two unknown persons. The allegations against the accused persons including the petitioner, as made out in the written report are that, they, under drunken condition, threatened the informant and used abusive language against him. He was asked to stop the enquiry he was conducting. The accused persons also consumed liquor in the office of the Block Education Officer, Chausa and also tried to forcibly make the informant drink. They repeatedly asked his name and caste and used abusive language taking his caste name. The informant has further stated that he belongs to the *Chamar* caste.

4. The learned counsel for the petitioner has submitted that during investigation, the co-accused Renu Ji has filed an affidavit before the Investigation Officer that he has not disclosed the name of the petitioner rather the writer of the police station has written his name on his own sweet will. The matter was inquired by the D.I.G., Koshi Region, Saharasa and action has been taken against the writer of the FIR and the Investigating Officer was directed to investigate the matter fairly and properly. Based on the investigation, the Investigating



Officer submitted final form and did not send the petitioner for facing trial. However, learned Additional Sessions Judge-1-cum-Special Judge, SC/ST, Madhepura, differing with the final report, has taken cognizance under Sections 341, 323, 353, 504, 506/34 of the Indian Penal Code, Sections 3 (1) (S) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and Sections 37 (d), 45 of Bihar Prohibition and Excise Act. The said order has been challenged in this petition. The learned counsel has further submitted that no offence under the provisions of SC/ST (POA) Act would be made out as it is not clear who used the disparaging terms and general and omnibus allegations have been levelled against all the accused persons. The mode of identification of the petitioner was on saying of co-accused Renu Ji but he denied giving such statement during investigation. All the witnesses mentioned in the cognizance order are hearsay witnesses and the learned trial court without taking these facts into consideration has passed the cognizance order which is bad in the eyes of law. The learned counsel has also submitted that sanction for prosecution has not been taken from authorities against the petitioner before taking cognizance, though the petitioner is a government servant and employed as teacher in government school.

5. Learned Spl.P.P. has opposed the prayer made on



behalf of the petitioner submitting that there is no illegality or any perversity in the order taking cognizance and hence no interference is required by this Court.

6. I have given my thoughtful consideration to the matter at hand and having considered the material, I am of the opinion that the present petition of the petitioner would fail on a number of counts.

7. Cognizance in this case has been taken under Sections 3 (1) (s) of SC/ST (POA) Act apart from other provisions of the Indian Penal Code and Bihar Prohibition of Excise Act. Now, Section 14 (A) of SC/ST (POA) Act provides that an appeal would lie, from any judgement, sentence or order, not being an interlocutory order, of a Special Court or any Exclusive Special Court, to the High Court both on facts and on law. But the petitioner did not choose to file an appeal and has come before this Court by filing a criminal misc. petition under Section 482 Cr.P.C. which, in my opinion, is not maintainable. The fact of maintainability of the petition was not brought to my notice initially but after full length hearing, I do not think it would be proper to dismiss the appeal only on the ground of maintainability.

8. From the facts of the present petition and submissions made on behalf of the parties, it is apparent that the



petitioner has challenged the order of cognizance on the basis of facts of the case, but the learned trial court, after consideration of the facts brought on record during investigation in the police report, has taken cognizance in the matter and unless any glaring infirmity could be shown, there is no occasion for this Court to interfere with an order taking cognizance.

At the stage of cognizance, the learned trial court is only supposed to look into the material as to what has come in the investigation and the police report and it has duly considered the same. Though it is true the police did not send the petitioner as an accused for facing the trial, but the learned trial court differed from the closure report against the petitioner and thereafter, taking into account the statement of witnesses as mentioned in the cognizance order, proceeded to take cognizance in the matter. I cannot fault the cognizance order on this ground.

9. Even on merits, I do not find anything of substance in the contention of the petitioner. The petitioner has tried to contest one set of facts with another set of facts of his own and the veracity of the facts could not be checked at the stage of cognizance when the learned trial court is expected to see whether a *prima facie* case is made out against the petitioner. Moreover, any defence of the petitioner could not be



taken into consideration at this stage and it is the settled law that the petitioner could raise this issue at the time of discharge/framing of charge.

10. Furthermore, on the aspect of lack of sanction, it would be beneficial if we look into Section 197(1) Cr.P.C. which provides :

“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”.

11. No doubt sanction is required before prosecuting any government servant but it is not essential in each and every case. The Supreme Court has considered this issue in a number of cases and has held on a number of occasions that sanction is required if the act complained of has been done towards the discharge of the official business. To decide whether sanction is necessary, the test is whether the act



is totally unconnected with the official duty or whether there is reasonable connection with the official duty. In another words, the act complained of against the official must be an offence. There must be a reasonable connection between the act complained of and the duty of the officer as a public servant, so that, if questioned, the officer can reasonably profess to have done the act in exercise or in purported exercise of his official duty. So there would be no requirement of obtaining prior sanction before prosecuting a government official if the offence complained of is not towards the discharge of official duty. In this regard, reliance could be placed on the decision of the Supreme Court in the case of ***Pukhraj v. State of Rajasthan, (1973) 2 SCC 701*** wherein it has been held that the offence must be in respect of an act done or purported to be done in the discharge of an official duty. It does not apply to acts done purely in a private capacity by a public servant. It would be relevant to quote paragraph 2 of the said judgement :-

“2. ...While the law is well settled the difficulty really arises in applying the law to the facts of any particular case. The intention behind the section is to prevent public servants from being unnecessarily harassed. The section is not restricted only to cases of anything purported to be done in good faith, for a person who ostensibly acts in execution of his duty still purports so to act, although he may have a dishonest intention. Nor is it confined to cases where the act, which constitutes the offence, is the official duty of the



official concerned. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. The offence should have been committed when an act is done in the execution of duty or when an act purports to be done in execution of duty. The test appears to be not that the offence is capable of being committed only by a public servant and not by anyone else, but that it is committed by a public servant in an act done or purporting to be done in the execution of duty. The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor need the act constituting the offence be so inseparably connected with the official duty as to form part and parcel of the same transaction. What is necessary is that the offence must be in respect of an act done or purported to be done in the discharge of an official duty. It does not apply to acts done purely in a private capacity by a public servant. Expressions such as the “capacity in which the act is performed”, “cloak of office” and “professed exercise of the office” may not always be appropriate to describe or delimit the scope of section. An act merely because it was done negligently does not cease to be one done or purporting to be done in execution of a duty”.

(Emphasis is mine)

12. Further reliance could be made on the decision rendered in the case of *Om Prakash Vs. State of Jharkhand, [(2012) 12 SCC 72]* wherein the law on this point has been authoritatively settled while also considering the case of *Pukhraj (supra)*.

13. Obviously, the act of the petitioner was not of such nature that could be said by any stretch of imagination that



it was towards discharge of his official business. So, the impugned order could not be said to be bad for want of sanction.

14. In the light of aforesaid discussion, I do not find any merit in the case of the petitioner. At the same time, it is also made clear whatever the defence of the petitioner may be, the petitioner is at liberty to raise all these issues at the time of discharge/framing of charge and it is expected that the learned trial court would consider the contention of the petitioner without being prejudiced by the present order if the matter is raised before it.

15. Hence, this petition is dismissed being devoid of any merit.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
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