

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9625 of 2022

Arising Out of PS. Case No.-156 Year-2021 Thana- SASARAM NAGAR District- Rohtas

KUMARI HIMANI, W/o Prashant Kumar Prasoon, Resident of Bagaha, P.S.-
Bagaha, District- West Champaran

... .. Petitioner

Versus

1. The State of Bihar
2. Nagar Parishad Sasaram

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. Kushagra Raj, Advocate
		Mr. Ashok Kumar, Advocate
For the State	:	Mr. Satyendra Narayan Singh
For the Opp. Party No.2	:	MR. Bajarangi Lal, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 24-08-2023

This application has been filed for quashing of the orders dated 17.08.2021 and 03.11.2021 passed by learned Chief Judicial Magistrate (incharge), Sasaram, in Sasaram Town P.S. Case No.156 of 2021, by which the learned Magistrate has cognizance against the petitioner for the offence under Sections 409, 420, 467, 468, 471, 477-A and 120-B of the Indian Penal Code.

2. The prosecution case is that pursuant to the letter of the Executive Officer, Nagar Parishad, Sasaram, the District Magistrate constituted a Committee headed by Additional District Magistrate, Rohtas to conduct an enquiry



regarding seven departmental projects executed in Ward No.11. Accordingly, the said committee enquired and submitted its report. Pursuant to the said report, the District Magistrate vide letter dated 19.02.2021 directed that in the enquiry it has come that the concerned projects have been shown to be executed few years ago under different funds but in the measurement book, it has been shown that the projects have been completed in the year 2019-20, which appears to be a case of siphoning off Government fund. Accordingly, the present F.I.R. has been lodged against the petitioner and other accused persons.

3. Learned counsel for the petitioner submits that the petitioner was posted as Executive Officer, Nagar Parishad, Sasaram on 07.11.2017 and remained there till 25.03.2020. He further submits that the Empowered Standing Committee, Nagar Parishad, Sasaram, under the Chairmanship of the Chief Councilor, took decision for executing seven projects in ward no.11 at the level of the department itself and Sri Arun Kumar Singh, Junior Engineer, was appointed as executing agent for all the seven projects and thereafter, he prepared the estimate of all the seven projects. Thereafter, Sri Jitendra Kumar, Assistant Engineer, gave technical approval to the estimates of all the projects and accordingly, the work orders



were issued. The Assistant Engineer was assigned the duty to inspect all the projects on regular basis and monitor the progress as per the estimates. However, the Junior Engineer without making physical inspection submitted the measurement book indicating that all the seven projects have been completed as per the approval of the Assistant Engineer, who was responsible for monitoring the actual physical progress of the work.

4. Learned counsel for the petitioner further submits that Junior Engineer and Assistant Engineer were responsible for physical inspection of the work but they have submitted false work completion certificate and measurement book. Thereafter, the Chief Councilor recommended for payment of work and accordingly the payments were made by the petitioner being the Executive Officer of Nagar Parishad. He further submits that since the approval with respect to all the projects of ward no.11 were given in the files by the Chief Councilor and the Empowered Standing committee, the petitioner being the Executive Officer has no reason to doubt on the same as no such complaint was ever received by the petitioner either from the Ward Councilor of ward no.11 or any local resident and he simply followed the orders and made payment for the work.



5. Learned counsel for the petitioner further submits that the selection of schemes/projects and implementation of the same comes within the ambit of Chief Councilor and the Empowered Standing Committee and the petitioner being the Executive Officer has no role either in selection or implementation of scheme/projects. He further submits that the function and duties of the Executive Officer of Urban local bodies through the Bihar Municipal Act has also been clarified by the State Government vide letter dated 06.10.2017 in compliance of order and direction of this Court passed in C.W.J.C. No.4662 of 2017 wherein specifically it has been mentioned that every resolution taken in the meeting of the Municipal bodies has to carry out by the Executive Officer and to ensure the compliance of every decision. He also submits that the police has not collected any evidence to suggest that the petitioner being Executive Officer is responsible for any omission and commission in discharge of her official duty by issuing cheque in favour of departmental contractor.

6. Learned counsel for the petitioner also submits that the offence, as alleged against the petitioner, is directly concerned with the official duty and therefore, prior sanction from the competent authority as provided under



Section 197 of the Cr.P.C. is mandatory, but in the present case, no such sanction for prosecuting the petitioner has been obtained and in absence of the sanction order, the cognizance has been taken against the petitioner, which is not sustainable in the eye of law.

7. Learned counsel for the petitioner has relied upon a judgment dated 29.09.2022 passed by a coordinate Bench of this Court in the case of the petitioner i.e Criminal Miscellaneous No.14401 of 2022 (Kumari Himani vs. The State of Bihar & Anr.). He has also relied upon the decision of the Hon'ble Supreme Court in the case of ***D. Devaraja vs. Owais Sabeer Hussain*** reported in ***(2020) 7 SCC 695*** and in the case of ***Indra Devi vs. State of Rajasthan and Another*** reported in ***(2021) 8 SCC 768***.

8. Learned counsel for the opposite party no.2 has filed his counter affidavit and has submitted that since the offences under Sections 409, 420, 467, 468, 471, 477-A and 120-B of the Indian Penal Code are made out, the learned Magistrate has taken cognizance against the petitioner.

9. On the point of sanction, he has submitted that no sanction has been granted to prosecute the petitioner but it has to be tested during the course of the trial as to whether any



sanction order is required to prosecute the petitioner or not.

10. I have considered the submissions of the parties and also perused the materials available on record including the impugned order taking cognizance against the petitioner. Section 197 of the Criminal Procedure Code reads as follows:-

“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 [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)]

(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 section 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.”

11. From reading of the aforesaid Section, it is clear that the sanction to prosecute a Government servant has to be obtained before filing a complaint or F.I.R. According to Section 197 Cr.P.C. two conditions are to be fulfilled; (i) accused should be a public servant that too removal from the office either by the Union Government or the State Government and (ii) such public servant has been made an accused of an offence alleged to have been committed while acting or purporting to act in discharge of this official duty.

12. During investigation, no material has come to suggest that the petitioner as an Executive Officer is responsible for any omission or commission in discharge of her official duty save and except for signing in the cheque. It appears that the cheques have been signed by the petitioner in favour of the departmental contractor after receiving measurement book, work completion certificate, approval of the



Chairman and the decision of the Empowered Standing Committee.

13. Similar issued came for consideration before the Hon'ble Supreme Court in the case of ***D. Devaraja vs. Owais Sabeer Hussain (supra)***. Relevant paragraphs of the aforesaid decision reads as follower:-

"30. The object of sanction for prosecution, whether under Section 197 of the Code of Criminal Procedure, or under Section 170 of the Karnataka Police Act, is to protect a public servant / police officer discharging official duties and functions from harassment by initiation of frivolous retaliatory criminal proceedings. As held by a Constitution Bench of this Court in Matajog Dobey v. H.C. Bihari (AIR p. 48, para 15)

"15.....Public servants have to be protected from harassment in the discharge of official duties while ordinary citizens not so engaged do not require this safeguard....."

There is no question of any discrimination between one person and another in the matter of taking proceedings against a public servant for an act done or purporting to be done by the public servant in the discharge of his official duties. No one can take such proceedings without such sanction."



32. *In Amrik Singh vs State of PEPSU this Court referred to the judgments of the Federal Court in Hori Ram Singh v. Crown, H.H.B. Gill v. King Emperor and the judgment of the Privy Council in Gill v. R and held: (Amrik Singh case, AIR p- 312. Para 8)*

“8. The result of the authorities may thus be summed up: It is not every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Code of Criminal Procedure; nor even every act done by him while he is actually engaged in the performance of his official duties: but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary; and that would be so, irrespective of whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits, which would have to be investigated at the trial, and could not arise at the stage of the grant of sanction, which must precede the institution of the prosecution.”

35. *In State of Orissa v. Ganesh Chandra Jew this Court interpreted the use of the expression "official duty" to imply that the act or omission must have been done by the public servant in course of his service and that it should have*



been in discharge of his duty. Section 197 of the Code of Criminal Procedure does not extend its protective cover to every act or omission done by a public servant while in service. The scope of operation of the section is restricted to only those acts or omissions which are done by a public servant in discharge of official duty.

53. *This Court in Virupakshappa case held that the whole allegation of police excess in connection with the investigation of the criminal case, was reasonably connected with the performance of the official duty of the appellant. The learned Magistrate could not have, therefore, taken cognizance of the case, without previous sanction of the State Government. This Court found that the High Court had missed this crucial point in passing the impugned order, dismissing the application of the policeman concerned under Section 482 of the Code of Criminal Procedure.*

61. *In Om Prakash v. State of Jharkhand this Court held: (SCC pp. 90-91 & 95, paras 34 & 42-43)*

“34. In Matajog Dobey the Constitution Bench of this Court was considering what is the scope and meaning of a somewhat similar expression 'any offence 12.alleged to have been committed by him while acting or purporting to act in the discharge of his official duty' occurring in Section 197 of the Criminal Procedure Code (5 of 1898). The Constitution Bench observed that no



question of sanction can arise under Section 197 unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. On the question as to which act falls within the ambit of above quoted expression, the Constitution Bench concluded that there must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim that he did it in the course of performance of his duty. While dealing with the question whether the need for sanction has to be considered as soon as the complaint is lodged and on the allegations contained therein, the Constitution Bench referred to Hori Ram Singh and observed that at first sight, it seems as though there is some support for this view in Hori Ram Singh because Sulaiman, J. has observed in the said Judgment that as the prohibition is against the institution itself, its applicability must be judged in the first instance at the earliest stage of institution and Varadachariar, J. has also stated that (Matajog Dobey case, AIR p.49, para 20)

20..... the question must be



determined with reference to the nature of the allegations made against the public servant in the criminal proceedings.

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 established that the act purported to be done is in execution of official duty, the complaint will have to be dismissed on that ground.

42. It is not the duty of the police officers to kill the accused merely because he is a dreaded criminal. Undoubtedly, the police have to arrest the accused and put them up for trial. This Court has repeatedly admonished trigger-happy police personnel, who liquidate criminals and project the incident as an encounter. Such killings must be deprecated. They are not recognised as legal by our criminal justice administration system. They amount to State-sponsored terrorism. But, one cannot be oblivious of the fact that there are cases where the police, who are performing their duty, are attacked and killed. There is a rise in such incidents and judicial notice must be taken of this fact. In such circumstances, while the police have to



do their legal duty of arresting the criminals, they have also to protect themselves. The requirement of sanction to prosecute affords protection to the policemen, who are sometimes required to take drastic action against criminals to protect life and property of the people and to protect themselves against attack. Unless unimpeachable evidence is on record to establish that their action is indefensible, mala fide and vindictive, they cannot be subjected to prosecution. Sanction must be a precondition to their prosecution. It affords necessary protection to such police personnel. The plea regarding sanction can be raised at the inception.

*43. In our considered opinion, in view of the facts which we have discussed hereinabove, no inference can be drawn in this case that the police action is indefensible or vindictive or that the police were not acting in discharge of their official duty. In *Zandu Pharmaceutical Works Ltd.* [(2005) 1 SCC 122] this Court has held that the power under Section 482 of the Code should be used sparingly and with circumspection to prevent abuse of process of court but not to stifle legitimate prosecution. There can be no two opinions on this, but, if it appears to*



the trained judicial mind that continuation of a prosecution would lead to abuse of process of court, the power under Section 482 of the Code must be exercised and proceedings must be quashed. Indeed, the instant case is one of such cases where the proceedings initiated against the police personnel need to be quashed.”

66. *Sanction of the Government, to prosecute a police officer, for any act related to the discharge of an official duty, is imperative to protect the police officer from facing harassive, retaliatory, revengeful and frivolous proceedings. The requirement of sanction from the Government to prosecute would give an upright police officer the confidence to discharge his official duties efficiently, without fear of vindictive retaliation by initiation of criminal action, from which he would be protected under Section 197 of the Code of Criminal Procedure, read with Section 170 of the Karnataka Police Act. At the same time, if the policeman has committed a wrong, which constitutes a criminal offence and renders him liable for prosecution, he can be prosecuted with sanction from the appropriate Government.*

71. *If the act alleged in a complaint purported to be filed against the policeman is reasonably connected to discharge of some official duty, cognizance thereof cannot be taken unless requisite sanction of the appropriate*



Government is obtained under Section 197 of the Code of Criminal Procedure and/or Section 170 of the Karnataka Police Act.

74. *It is well settled that an application under Section 482 of the Criminal Procedure Code is maintainable to quash proceeding which are ex facie bad for want of sanction, frivolous or in abuse of process of court. If, on the face of the complaint, the act alleged appears to have a reasonable relationship with official duty, where the criminal proceeding is apparently prompted by mala fides and instituted with ulterior motive, power under Section 482 of the Criminal Procedure Code would have to be exercised to quash the proceedings, to prevent abuse of process of court.*
77. *In our considered opinion, the High Court clearly erred in law in refusing to exercise its jurisdiction under Section 482 of the Criminal Procedure Code to set aside the order of the Magistrate impugned taking cognizance of the complaint, after having held that it was a recognized principle of law that sanction was a legal requirement which empowers the court to take cognizance. The Court ought to have exercised its power to quash the complaint instead of remitting the appellant to an application under Section 245 of the Criminal Procedure Code to seek discharge”*

14. Applying the principle laid down by the Hon’ble Supreme Court in the aforesaid decisions coupled with



the fact that the alleged offence said to have been committed by the petitioner is directly concerned with the official duty of the petitioner and signing of cheque in favour of the departmental contractor by the petitioner is the official duty of the petitioner, for which she cannot be prosecuted without obtaining prior sanction from the competent authority.

15. In view of the aforesaid discussions, in the opinion of this Court, the petitioner cannot be prosecuted without prior sanction and therefore, the prosecution of the petitioner is illegal.

16. Accordingly, this application is allowed. The orders dated 17.08.2021 and 03.11.2021 passed by learned Chief Judicial Magistrate (incharge), Sasaram, in Sasaram Town P.S. Case No.156 of 2021, by which the learned Magistrate has cognizance against the petitioner for the offence under Sections 409, 420, 467, 468, 471, 477-A and 120-B of the Indian Penal Code are hereby quashed.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	AFR
CAV DATE	N/A
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