

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22599 of 2017

Arising Out of PS. Case No.-1017 Year-2003 Thana- DARBHANGA COMPLAINT CASE
District- Darbhanga

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Obais Nadaf, son of Late Md. Ismail Nadaf, resident of Village and Post
Nainaghat, P.s.- Sadar Darbhanga, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Ragnath Prasad, son of Late Chalitar Mahto, Erst white S.D.O. Darbhanga,
resident of Village- Hrishankarpur, P.O. and P.S.- Tajpur, District-
Samastipur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Durga Nand Jha
For the State	:	Smt. Asha Kumari

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT

27-09-2023

1. Heard learned counsel for the petitioner
and learned APP for the State.

2. The present quashing application has been
filed seeking quashing of the order dated 20.08.2016 passed
by the learned Sessions Judge, Darbhanga in Cr. Revision
No.308 of 2016, whereby the order dated 02.05.2016
passed by the learned A.C.J.M., Darbhanga in CR No.1017
of 2003/Tr. No.508 of 2016, whereby cognizance was taken
under Sections 323, 341, 304(II), 504, 34 of the I.P.C. was
set aside.

3. The learned counsel for the petitioner



submits that the opposite party no.2 is Sub-Divisional Officer and he along with the officials had gone for removing encroachment in terms of the order of the Superior Authorities, when it is alleged that the son of the petitioner, who runs a hotel, despite showing all the documentary evidence that there was no encroachment, still certain portion of the hotel was broken on the ground that the same encroached the government land. Further, when the son of the petitioner protested, it is alleged that the opposite party no.2 along with other officials forcefully threw him on a live wire causing his death. Accordingly, a complaint case was instituted and the learned A.C.J.M. after recording the evidences of the petitioner and his witnesses in inquiry took cognizance of the offences under Sections 336, 304-A of the I.P.C.

4. The opposite party no.2, being aggrieved by the order of cognizance dated 26.08.2010, moved in Revision before the learned Sessions Judge. It is next submitted that the said cognizance was taken after taking into consideration the police report with respect to the U.D.



Case No.03 of 2003, which was instituted after the death of the son of the petitioner. It is next submitted that the opposite party no.2 against the order taking cognizance dated 26.08.2010 under Sections 336 and 304-A of the I.P.C. moved in Revision before the learned Additional Sessions Judge, Darbhanga by filing Revision Case No.61 of 2012, the said revision application was allowed by order dated 27.08.2014 and the case was remanded back to the learned Magistrate for passing a fresh order. It is pointed out by the learned counsel that the learned Revisional Court in its order dated 27.08.2014 had also observed that the learned Chief Judicial Magistrate took cognizance and summoned the opposite party no.2 without having obtained sanction by the State Government as incorporated under Section 197 of the Cr.P.C.

5. The learned counsel submits that on remand, the learned Chief Judicial Magistrate against took cognizance of the offences as recorded herein above against which the opposite party no.2 again moved in revision before the learned District and Sessions Judge, Darbhanga by filing



Cr. Revision No.308 of 2016. The learned counsel next submits that since cognizance was taken by the learned Magistrate on remand, as such, the order in favour of the petitioner was passed and if the learned Sessions Judge in revision had to interfere with the order, in that event, the petitioner ought to have been noticed and heard, but without noticing and hearing the petitioner, the impugned order came to be passed which is impugned in the present quashing application whereby the order of the learned Magistrate taking cognizance has been set aside on the ground that cognizance could not have been taken in absence of sanction under Section 197 of the Cr.P.C.

6. The learned Additional P. P. Ms. Asha Kumari vehemently opposes the submission of the learned counsel for the petitioner and submits that principle of natural justice is not in a straight jacket formula. It is next submitted that prejudice has to be shown that is if the petitioner was not heard what prejudice has been caused to him. It is next submitted that the issue was legal and it is not in dispute that opposite party no.2 is a government



servant. Though the occurrence which took place was unfortunate, but then, the allegation came to be foisted on the opposite party no.2 that he along with other officials deliberately pushed the son of the informant on account of which, he touched the live-wire and got electrocuted. It is next submitted that the opposite party no.2 was not known to the son of the petitioner nor he had any enmity rather he had gone to perform his legal duty in terms of the orders of his superior for removing encroachment, as such, whatever happened, happened during the course of discharge of official duty and the law mandates that if any occurrence takes place while discharging official duty, then sanction under Section 197 of the Cr.P.C. is mandated in absence of which cognizance could not be taken.

7. The learned Additional P. P. next submits that the issues was purely legal and as such, there was absolutely no necessity for the Sessions Judge to issue notice to the petitioner giving him an opportunity of hearing. It is also submitted that from pleadings made in the quashing application, it does not even remotely manifest or



suggest that sanction was accorded by the authorities in
favour of the opposite party no.2.

8. Considering the submission made by the
learned Additional P. P., the Court finds no merit in the
quashing application.

9. Accordingly, the quashing application is
dismissed.

(Satyavrat Verma, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	27.09.2023
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