

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10169 of 2018**

Arising Out of PS. Case No.-830 Year-2016 Thana- PATNA COMPLAINT CASE District-
Patna

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Sunit Kumar Singh @ Sumit Kumar Son of Sri Subhash Prasad Singh,
Resident of- B/110, Buddha Colony, Police Station-Buddha Colony, District-
Patna.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Sanjay KUMar, Son of Late Rajendra Sharma, Resident of Village-Pali P.S.-
Naubatpur, Dist.-Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Amit Kumar, Advocate
For the Opposite Party/s : Smt. Sucheta Yadav, APP

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

5 19-10-2023 1. Heard learned counsel for the petitioner and
learned APP for the State.

2. Today, also no one appears on behalf of the O.P.
No. 2.

3. The case was taken up on 16.10.2023 when no
one had appeared on behalf of the O.P. No. 2, thereafter the
case was taken up on 17.10.2023, again no one had appeared
on behalf of the O.P. No. 2, thereafter again the case was taken
up on 18.10.2023 when no one had appeared on behalf of the
O.P. No. 2, as such, the Court will not wait for the learned
counsel appearing on behalf of the O.P. No. 2 endlessly, hence,



the Court proceeds to decide the case on merits.

4. Heard learned counsel for the petitioner and learned A.P.P. for the State.

5. The present application has been filed seeking quashing of the order dated 13.01.2017 passed by the learned Additional Chief Judicial Magistrate, Danapur, Patna in Complaint Case No. 830(C) of 2016 whereby cognizance of the offences under Sections 323, 363, 298, 385 and 504 of the Indian Penal Code has been taken against the petitioner.

6. Learned counsel for the petitioner submits that the petitioner, at the relevant time when the occurrence is alleged to have taken place, was Sub-Inspector of Police and now the petitioner has been promoted as the Inspector of Police and is aggrieved by the fact that cognizance has been taken in absence of sanction for prosecution under Section 197 Cr.P.C.

7. Learned counsel further submits that Section 197 Cr.P.C. was enacted to protect government servant from malicious and vexatious prosecution who is accused of an offence committed while purporting to act in discharge of his official duty and thus prohibits the Court from taking cognizance of such offence except with the previous sanction of the competent authority. It is next submitted that the



Hon'ble Supreme Court in the case of **Subramanian Swamy vs. Manmohan Singh & Anr. (2012) 3 SCC 64** had held that the shield of Section 197 Cr.P.C. cannot protect corrupt officer and the provision must be construed in such a manner as to advance the cause of honesty, justice and good governance. It is submitted that relying on a judgment of the Hon'ble Supreme Court in the case of **State of Maharashtra vs Dr. Budhikota Subbarao** reported in **(1993) 3 SCC 339** that yardstick followed is to form a prima facie opinion whether the act of omission the accused was charged had a reasonable connection with the discharge of his official duty. It is further submitted that Section 197 Cr.P.C. be construed in a liberal sense for grant of protection to the public servant with respect to action, which though constitute an offence is directly and reasonably connected with their official duty relying on the case of **B. Saha And Ors vs M. S. Kochar** reported in **(1979) 4 SCC 177** and **State of Maharashtra vs Dr. Budhikota Subharao** (supra).

8. Learned counsel relying on the case of **D. Devaraja Vs. Owais Sabeer Hussain** decided in Cr. Appeal No. 458 of 2020 by a judgment dated 18.06.2020, submitted that the Hon'ble Supreme Court has held that while dealing



with a matter concerning sanction, an application under Section 482 Cr.P.C. is maintainable to quash the proceedings which are ex facie bad for want of sanction, frivolous or in abuse of the process of the Court. It has been further held that to decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or there was a reasonable nexus with the official duty. It is submitted that the Hon'ble Supreme Court concluded that if the act alleged against the policemen is reasonably connected with the discharge of his official duty, it does not matter if he has exceeded the scope of his power or acted beyond four corners of law.

9. Learned counsel thus submits that in this background the facts of the present case be appreciated.

10. Learned counsel submits that the opposite party no. 2 filed the aforesaid complaint case alleging therein that he is a farmer, social worker and a property dealer and on 06.08.2016, he was picked up on point of pistol by the police officials including the petitioner thinking that he is Ganga Singh and thereafter he was made to sit forcibly in a Scorpio vehicle and was taken to the police station where he was assaulted and was threatened that if he will not confess that he



is Ganga Singh in that event he will be shot but when his family members on 07.08.2016 came to know about the occurrence they along with villagers went to the police station when the opposite party no. 2 after taking his signature on paper was released.

11. Learned counsel thus submits that what transpires from the allegation is that the opposite party no. 2 was apprehended by the police on a mistaken identity that he was accused Ganga Singh but later when it was realized that opposite party no. 2 was not Ganga Singh he was released. It is next submitted that Bihta P.S. Case No. 206 of 1981 was registered under Sections 302 and 34 of the Indian Penal Code and Bihta P.S. Case No. 115 of 2013 was registered under the provisions of the Indian Penal Code and the SC/ST Act against Suresh Singh and Ganga Singh. It is further submitted that Suresh Singh and Ganga Singh were awarded life imprisonment in Bihta P.S. Case No. 206 of 1981 by this Court and were directed to surrender but they were absconding to avoid arrest as such letter dated 03.05.2016 (Annexure-3) was issued by the Director General of Police, Bihar addressed to the Senior Superintendent of Police, Patna to arrest Suresh Singh and Ganga Singh. It is next submitted that accordingly



the police were in search of Suresh Singh and Ganga Singh and when they received secret information that Suresh Singh and Ganga Singh were seen near a hotel at Naubatpur, the petitioner along with the police force reached the place of occurrence and on questioning the two suspects they did not answer satisfactorily and hence they were brought to the police station and when their identity was established they were released after executing a personal bond.

12. Learned counsel submits that since opposite party no. 2 along with Asgar Ali were apprehended by the police on mistaken identity and were brought to the concerned police station from where they were released but then the opposite party no. 2 was apprehended as the police got information that Suresh Singh and Ganga Singh who were absconding were seen near a hotel at Naubatpur and thus they rushed and apprehended the accused who were present there. It is next submitted that whatever the petitioner did, did in official discharge of his duty as there was specific direction of the Director General of Police, Bihar to the Senior Superintendent of Police, Patna to apprehend both the absconding accused. It is next submitted that apprehending opposite party no. 2 cannot be construed that the petitioner



apprehended him for some ulterior reason or for reasons not connected with the official discharge of his duty, hence, sanction was necessary.

13. The learned APP for the State is not in a position to rebut the submission of the learned counsel for the petitioners.

14. Considering the submissions made by the learned counsel for the petitioner, order dated 13.01.2017 passed by the learned Additional Chief Judicial Magistrate, Danapur, Patna in Complaint Case No. 830(C) of 2016 whereby cognizance of the offences under Sections 323, 363, 298, 385 and 504 of the Indian Penal Code has been taken against the petitioner, **is hereby quashed.**

15. Accordingly, the present quashing application stands allowed.

(Satyavrat Verma, J)

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