

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.19945 of 2015

Arising Out of PS. Case No.-360 Year-2006 Thana- PATNA GRP CASE District- Patna

1. Ram Nath Prasad S/o late Satya Narayan Prasad Resident of Village- Samsara, P.o- Sadisopur, P.s Bihta, District Patna,
2. Wahid Hussain S/o Late M. Rehman, Resident of Village- Dhanchuaha, P.OP.s-Maharajaganj, District- Siwan.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. S.D. Sanjay, Sr. Advocate
Mr.Alok Kumar Agrawal
For the Opposite Party/s : Mr.Md.Nazir Ansari, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

3 04-04-2023 Heard learned counsel for the parties.

2. That the Present Application is being filed for quashing the order dated 18.03.2015 passed by the learned Additional Sessions Judge XIV, Patna in Cr. Revision no. 625/2012/2165/2014 whereby and where under the order dated 26.07.2012 passed by the Railway Judicial Magistrate, Patna in connection with G.R.P. Patna P.S. case no. 360/2006 has been affirmed without appreciating the law as well as facts.

3. On the basis of a Written Report of the Officer In-charge, GRP Police Station, Patna, the First Information Report giving rise to Rail P.S. Patna Junction Case M: 360/06 was registered alleging *interalia* as follows:-

i) The Informant stated to be Officer In-charge of Rail



Police Station, Patna, and it was alleged that on the basis of rumor, he learnt that the car parking at Patna Junction was being managed by a Private Contractor, however, after the term of the contract expired, it was the Rail Administration who was realizing the parking charges from the vehicles;

ii) It was further alleged that the employees involved in the recovery of parking charges from the vehicles, the receipt was not granted to the car owners nor the number of the vehicles was mentioned on the receipt, although as per Rule, three copies of same number of EFT (Excess Fare Ticket) was issued as Receipt out of which one used to be kept on the parked vehicle, one copy was delivered to the driver and one was kept in the register but the employees of the railway those were deputed for this purpose neither used to enter the number of the vehicle nor used to hand it over to the driver but the other copy of the receipt was given to other vehicle, and thereby, parking was realized illegally from one receipt more than once;

iii) It is further alleged that after making Station Diary Entry, the Informant alleged to have proceeded towards parking on 14.10.2006 at 10:30 and alleged to have made the inspection, and alleged that in most of the vehicles, the receipt was not found to have been granted, and only on few vehicles, the



receipt was pasted, and on enquiry from the deputed employees who disclosed that they were Ticket Collectors, namely Ram Nath Prasad and other was Wahid Hussain. Ram Nath Prasad produced the EFT Book and some vehicle number was mentioned on it but it did not contain his signature. On interrogation that they have got Rs. 70/- as pocket money, whereas Rs. 180/- was recovered from his pocket. From the possession of Ram Nath Prasad, Rs. 360/- was recovered who had stated that he had Rs. 250/- left as balance. Thereafter, a seizure list was prepared, and it has been alleged that the deputed railway staff were allowing illegally parking of the vehicles and realizing cash for parking charges and they were levying parking fees without issuing receipt and as the such they were pocketing the money for their personal gain and causing wrongful loss of revenue to the railway by entering into conspiracy;

iv) It is further alleged that it also transpired that the Private Agent used to deposit Rs. 3,000/- to the Railway but when it was collected through employees only Rs. 500/- to Rs. 600/- could be realized which is quite less;

v) It is further alleged that the Railway Employees were getting more parking charges but in conspiracy with



others, they were depositing lesser amount, and it is also alleged that in this criminal conspiracy Senior Officers, like CIT, ACM, Sr. DCM.& DCM, Danapur were also parties and therefore the FIR was lodged.

4. It has been submitted by learned Senior Counsel for the petitioners that the petitioners are Ticket Collectors employed in the Railways and they were authorized to collect parking charges at Patna Junction. The authority letter has been annexed with the petition.

5. It is submitted that the reason to authorize the petitioners to collect the parking charges only because there was a dispute between the Railways and the contractor over parking contract and the matter was pending in this Court. The Railways decide to collect parking charges through their own officers and for that the petitioners were appointed and authorized to collect the parking charges. It has been further submitted that the F.I.R. has been filed at the instance of the contractor who is having a dispute with the Railways and the prosecution of the petitioners is bad in law in view of the protection granted to them under Section 197 of the Cr. P.C.

6. Learned counsel for the petitioners has relied upon the recent judgment of the Hon'ble Supreme Court passed in the



case of ***Indra Devi Vs. State of Rajasthan and Ors.*** reported in ***(2021) 8 SCC 768***. Paragraphs No. 9 and 10 of the judgment read as follows:-

“9. The learned counsel for the respondent relied upon the judgments of this Court in B. Saha v. M.S. Kochar [B. Saha v. M.S. Kochar, (1979) 4 SCC 177 : 1979 SCC (Cri) 939] and State of Maharashtra v. Budhikota Subbarao [State of Maharashtra v. Budhikota Subbarao, (1993) 3 SCC 339 : 1993 SCC (Cri) 901] to contend that Section 197 CrPC ought to be read in a liberal sense for grant of protection to the public servant with respect to actions, which though constitute an offence, are “directly and reasonably” connected with their official duties.

10. We have given our thought to the submissions of the learned counsel for the parties. Section 197 CrPC seeks to protect an officer from unnecessary harassment, who is accused of an offence committed while acting or purporting to act in the discharge of his official duties and, thus, prohibits the court from taking cognizance of such offence except with the previous sanction of the competent authority. Public servants have been treated as a special category in order to protect them from malicious or vexatious prosecution. At the same time, the shield cannot protect corrupt officers and the provisions must be construed in such a manner as to advance the cause of honesty, justice and good governance. (See Subramanian Swamy v. Manmohan Singh [Subramanian Swamy v. Manmohan Singh, (2012) 3 SCC 64 : (2012) 1 SCC (Cri) 1041 : (2012) 2 SCC (L&S) 666] .) The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. However, such sanction is necessary if the offence alleged against the public servant is committed by him “while acting or purporting to act in the discharge of his official duty” and in order to find out whether the alleged offence is committed “while acting or purporting to act in the discharge of his official duty”, the yardstick to be followed is to form a prima facie view whether the act of omission for which the accused was charged had a reasonable connection with the discharge of his duties. (See State of Maharashtra v. Budhikota Subbarao [State of Maharashtra v. Budhikota Subbarao, (1993) 3 SCC 339 :



1993 SCC (Cri) 901] .) The real question, therefore, is whether the act committed is directly concerned with the official duty.”

7. The only question which has to be considered in the present case is whether the act alleged to have been done by the petitioners is directly concerned with the official duty and if the Act is directly connected with the official duty, the petitioners cannot be prosecuted without prior sanction.

8. From the facts of the case, it is clear that the petitioners were officially authorized to collect the parking charges and there was no complaint whatsoever with the superior authorities about the acts of the petitioners and it is the G.R.P. who *suo motu* registered a case against the petitioners and other higher officials. The quashing application of co-accused Sharad Verma & Ors has been allowed by this Court vide Cr. Misc. No. 4796 of 2009 (Annexure-3 to the application). The application of one Madan Kumar has also been allowed by the Court of learned A.D.J., XIII, Patna vide order dated 23.12.2008 passed in Cr. Revision No. 116/09/51/09.

9. Considering the law laid down by the Supreme Court in the case of ***Indra Devi Vs. State of Rajasthan and Ors.*** (supra), I find that the prosecution of the petitioners cannot continue in view of the fact that no prior sanction has been taken for prosecuting the petitioners who are Railways employees i.e.,



Government Servant.

10. In view of the discussions above, this application is allowed.

11. Accordingly, the order dated 18.03.2015 passed by the learned Additional Sessions Judge XIV, Patna in Cr. Revision no. 625/2012/2165/2014 whereby and where under the order dated 26.07.2012 passed by the Railway Judicial Magistrate, Patna in connection with G.R.P. Patna P.S. case no. 360/2006 is hereby quashed.

(Sandeep Kumar, J)

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