

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3941 of 2018**

Arising Out of PS. Case No.-261 Year-2018 Thana- PATNA COMPLAINT CASE District-
Patna

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DURAG SINGH RAJPUROHIT S/o Guman Singh Rajpurohit, resident of
Village- Langer, P.S.- Barmer Rural, District- Barmer, presently residing at
Plot No. 89, Langer, Barmer, Rajasthan.

... .. Appellant/s

Versus

1. State Of Bihar
2. Rakesh Paswan, S/o Dasrath Paswan, R/o Village Tetua Par Dumrao, P.S.-
Asthawan, District- Nalanda, presently residing at Digha Ghat, Gate No. 90,
P.S.- Digha, District- Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Saket Tiwary
Mr. Animesh Gupta
Mr.Anurag Singh

For the Respondent/s : Mr. Ajay Kumar Singh
Mr.Smt Usha Kumari No-1

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**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

CAV JUDGMENT

Date : 05-08-2024

I have already heard the learned counsel for the
parties.

2. This appeal is preferred against the order dated
18.06.2018 passed by the learned special Judge SC/ST cum
ADJ-V, Patna in Complaint being Special Case No. 261 of 2018,
whereby the learned Special Judge, has taken cognizance
against the appellant for the offence punishable under Sections
406 of the Indian Penal Code and Sections 3(1)(h)(r)(s) of the
SC/ST (Prevention of Atrocities) Act, 1989.



3. The complainant made allegation that the appellant deals in stone business in Rajasthan. The complainant was working under him and when the father of the complainant fell sick, he returned to his native village in Bihar. The appellant, as per the allegation, came to Patna on 15.04.2018 and requested the complainant to come back to Rajasthan with him, to which the complainant refused. Again the appellant came to Patna on 07.05.2018 with four persons and assaulted the complainant and made scurrilous remarks by taking his caste name and in course of fleeing away he was apprehended by the persons present there.

4. The learned counsel for the appellant submitted that the entire allegations are false. The name of the appellant is Durag Singh Rajpurohit, and not Durgesh Singh. He is a Press Reporter in India News at Barmer, Rajasthan. He never visited Patna in his entire life. Further submission of the learned counsel is that the complainant is a driver of J.C.B. belonging to one Sanjy Singh and a news report dated 21.08.2018 shows that the complainant himself told the media persons that he did not file any complaint. It has also been submitted by the learned counsel that this case is nothing, but an abuse of the process of the court and made prayer to set aside the impugned order.



5. Further submission of the learned counsel for the appellant is that as per the mandate of Section 202(1) of the CrPC, an inquiry is essential if the accused is the resident of another place, which is not in territorial jurisdiction of that Magistrate.

6. The learned counsel for the appellant by relying upon a decision of the coordinate Bench of this Court in ***Gora Chand Basu and another Vs. The State of Bihar and another, passed in Cr.Misc. No. 18554 of 2014, dated 31.07.2017,*** submitted that in similar case the cognizance was set aside by this Court, as no inquiry was conducted as per the mandate of Section 202(1) of the CrPC. In that case also, the accused was the resident of another place, not within the territorial jurisdiction of that court.

7. On the other hand, the learned counsel for the complainant opposed the submission of the learned counsel for the appellant by stating that the witnesses, examined during the course of inquiry, supported the prosecution case, on the basis whereof cognizance was taken, vide impugned order.

8. In the case of ***Gora Chand Basu*** (supra), the accused was the resident of New Delhi. The learned trial court, in that case, took cognizance against the accused on the basis of



recitals of the complaint, the solemn affirmation of the complainant, and two witnesses examined on behalf of the complainant. This Court set aside the cognizance order, as it was passed in utter disregard of the mandate of Section 202(1) of the CrPC. Paragraph nos. 8 and 11 of the said decision is quoted hereunder:-

“8. Complainant Shankar Singh and two other witnesses, namely, Navin Kumar Singh and Rajnish Kumar were subsequently examined in this case on 08.10.2012, 26.11.2012 and 17.12.2012 respectively and thereafter process was issued by order dated 22.01.2013. It is explicit that the issuance of process was not suspended for making enquiry under Section 202 Cr.P.C. as the petitioners were not resident of the territorial jurisdiction of the court concerned. The Supreme Court in the case of Udai Shankar Awasthi v. State of Uttar Pradesh and Another; (2013) 2 SCC 435 has held that suspension of issuance of process is commendatory where the accused resides in an area beyond the territorial jurisdiction of the Magistrate concerned. The relevant paragraph is 40 which reads as follows:

“The Magistrate had issued summons without meeting the mandatory requirement of Section 202 CrPC, though the appellants



were outside his territorial jurisdiction. The provisions of Section 202 CrPC were amended vide the Amendment Act, 2005, making it mandatory to postpone the issue of process where the accused resides in an area beyond the territorial jurisdiction of the magistrate concerned. The same was found necessary in order to protect innocent persons from being harassed by unscrupulous persons and making it obligatory upon the Magistrate to enquire into the case himself, or to direct investigation to be made by a police officer, or by such other person as he thinks fit for the purpose of finding out whether or not, there was sufficient ground for proceeding against the accused before issuing summons in such cases.”

11. Having considered the rival submissions of the both sides as well as on perusal of the records, it is an admitted position that the complainant had no agreement with Punj Liyod Limited with respect to any kind of work relating to laying of pipelines and fabrication work in Barauni Refinery rather there was an agreement with M/s Venus Erectors so in such background of fact no criminal liability of breach of trust can be fastened to the petitioners. Moreover, it is also an admitted position that Punj Liyod Limited a registered company under the



Company Act having juristic person in status was not implicated as party in this case. In view of already settled proposition of law, as laid down by the Apex Court in Aneeta Hada case (supra) there cannot be any vicarious criminal liability to its Managers or Directors unless the company is impleaded and prosecuted. Moreover the impugned order dated 22.01.2013 explicitly shows that enquiry was not conducted as per procedure laid down in Section 202 Cr.P.C., which was amended in the year 2006 specially with reference to such accused persons who reside outside the territorial jurisdiction of the court concerned, therefore, for the reasons aforesaid, no prima facie case against the petitioners is made out even taking into account the entire facts alleged in the complaint so continuation of the present proceeding would be abuse of the process of the Court hence, the entire criminal proceeding including the impugned order of cognizance dated 22.01.2013, passed in Complaint Case No.2014C of 2012, pending in the court of learned Judicial Magistrate, Ist Class, Begusarai is hereby set aside.”

9. From perusal of the materials available with the record, it appears that the learned court below has passed the



impugned order ignoring the magnate of Section 202(1) of the CrPC.

10. For the aforesaid noted observation, order dated 18.06.2018 passed by the learned Special Judge SC/ST-cum- ADJ-V, Patna in Complaint being Special Case N0. 261 of 2018 is set aside.

11. Consequently, the appeal is allowed.

(Nawneet Kumar Pandey, J)

HR/-

AFR/NAFR	NAFR
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