

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32637 of 2015

Arising Out of PS. Case No.-3503 Year-2010 Thana- PURNIA COMPLAINT CASE District-
Purnia

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Rajesh Jha 'Raja', Son of Shri Radha Ballabh Jha, R/o Village P.O P.S-
Bangaon, District Sasaram (Bihar)

... .. Petitioner

Versus

1. The State of Bihar
2. Md. Nasim S/o late Sk. Ismail Resident of village- Kakarjan, P.S.-K Nagar,
Disriect Purnia.

... .. Opposite Parties

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Appearance :

For the Petitioner	:	Mr. P.N. Shahi, Sr. Advocate Mr. Nishant Kumar Jha, Advocate
For the State	:	Ms. Madhuri Lata, APP
For the O.P. No. 2	:	None

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

8 13-12-2024 The present petition has been preferred by the

petitioner under Section 482 Cr.PC against the impugned order

dated 29.10.2012 passed by Ld. Judicial Magistrate, Purnia in

Criminal Complaint Case No. 3503 of 2010, whereby Ld.

Magistrate has taken cognizance of offence punishable under

Sections 468, 471, 480 and 120B of the Indian Penal Code

against the petitioner along with ten other co-accused.

2. As per the complaint the Petitioner was a Circle
Officer and passed Mutation Order dated 24.09.2004 in
Mutation Case No. 703 of 2004-05 in regard to the land in
question on the application of accused nos. 1, 2, 3 and 4 and
accused nos. 7, 8, 9, 10 and 11 were employees in the Block
Revenue Department.

3. I heard Ld. counsel for the petitioner and Ld. APP



for the State. However, nobody is present on behalf of the Opposite Party No.2 despite valid service of notice.

4. Ld. counsel for the petitioner submits that the petitioner is innocent and has falsely been implicated in this case. He further submits that the relevant facts shorn of necessary details is that initially, one Criminal Complaint was filed by the Complainant and as per which learned Magistrate directed the police to lodge FIR and investigate the matter under Section 156(3) Cr.PC. Subsequently, FIR was lodged by the police and Final Form was submitted against all the accused persons including the Petitioner finding no truth in the allegation. However, in the said proceeding, the protest petition was filed and the said protest petition was treated as complaint, wherein the impugned order has been passed taking cognizance against the Petitioner as well as other co-accused.

5. Ld. counsel for the petitioner further submits that the Magistrate has passed the Mutation Order in good faith after giving notice to the Opposite Parties in the Mutation Proceeding and the same Mutation order has been upheld in Mutation Appeal No. 10 of 2006 vide order dated 08.07.2006. The Mutation Revision filed by the Complainant is still pending consideration.



6. Learned counsel for the petitioner further submits that petitioner has passed the Mutation Order in discharge of his official duty as a Circle Officer. Hence, he can not be prosecuted for his order without sanction of the Bihar Government as required under Section 197 of Cr.PC. He further submits that while passing Mutation Order, he was acting as *quasi-judicial* body. Hence, he is also protected under the Judges Protection Act, 1985 as per which Court is debarred from entertaining or continuing any Civil or Criminal proceeding against any person who has acted in discharge of his judicial duty.

7. However, Ld. APP for the State defends the impugned order submitting that there is no illegality or impropriety in the impugned order.

8. I considered the submissions advanced by both the parties and perused the material on record.

9. Here, it would be relevant to refer to Section 197 Cr.PC which provides for protection to a Judge, Magistrate or a Public Servant from prosecution for any offence which has been allegedly committed by him while acting or purporting to act in the discharge of his official duty unless previous sanction by the appropriate Government for his prosecution is granted. Without such previous sanction, no Court can take cognizance of such



offence. A trial without a valid sanction, where one is necessary, is a trial without jurisdiction rendering the criminal proceeding *void ab initio*. In this regard, one may refer to the following judicial precedents:

(i) R.R. Chari Vs. State of U.P., AIR 1962 SC 1573

(ii) S.N. Bose Vs. State of Bihar, AIR 1968 SC 1292

(iii) Md. Iqbal Ahmed Vs. State of A.P., AIR 1979 SC 677

(iv) R.S. Nayak Vs. A.R. Antulay, AIR 1984 SC 684

10. Section 197 Cr.PC 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-

(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 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.

Explanation. - For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B,



section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB,] [Inserted by Criminal Law (Amendment) Act, 2013] or section 509 of the Indian Penal Code(45 of 1860).

.....”

11. The object and purpose underlying this Section is to afford protection to public servants against frivolous, vexatious or false prosecution for offences alleged to have been committed by them while acting or purporting to act in the discharge of their official duty. The larger interest of efficiency of State administration demands that public servants should be free to perform their official duty fearlessly and undeterred by apprehension of their possible prosecution at the instance of private parties to whom annoyance or injury may have been caused by their legitimate acts done in the discharge of their official duty. This Section is designed to facilitate effective and unhampered performance of their official duty by public servant by providing for scrutiny into the allegations of commission of offence by them by their superior authorities and prior sanction for their prosecution as a condition precedent to the cognizance of the cases against them by the Courts. In this regard, the following judicial precedents may be referred to:

- (i) Bhagwan Prasad Srivastava v. N.P. Mishra**
(1970) 2 SCC 56
- (ii) Pukhraj Vs. State of Rajasthan**



- (1973) 2 SCC 701
(iii) Lakshmansingh Himatsingh Vaghela (Dr) Vs. Naresh Kumar Chandrashanker Jah
(1990) 4 SCC 169
(iv) Centre for Public Interest Litigation Vs. U.O.I.
(2005) 8 SCC 202
(v) Choudhury Parveen Sultana Vs. State of W.B.,
(2009) 3 SCC 398
(vi) State of Bihar Vs. Rajmangal Ram
(2014) 11 SCC 388

12. Explaining the meaning and scope of Section 197 Cr.PC, **Hon'ble Supreme Court in Pukhraj Vs. State of Rajasthan, (1973) 2 SCC 701** has held that what is necessary is that the offence must be in respect of an act done or purported to be done in the discharge of an official duty. It does not apply to acts done purely in a private capacity by a public servant.

13. Interpreting the meaning of the expression "official duty", **Hon'ble Supreme Court in State of Orissa Vs. Ganesh Chandra Jew, (2004) 8 SCC 40** has held that the official duty implies the Act or omission done by the public servant in course of his service and it has been done in discharge of his duty. It has further held that Section 197 Cr.PC 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 his official duty.

14. In **Shreekantiah Ramayya Munipalli Vs. State**



of Bombay, (1954) 2 SCC 992, Hon'ble Supreme Court has held if Section 197 Cr.PC is construed too narrowly, it can never be applied, for of course it is no part of an official's duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it.

15. In P. Arulswami Vs. State of Madras, AIR 1967 SC 776, Hon'ble Supreme Court has held that it is the quality of the Act that is important and if it falls within the scope and range of his official duties, the protection contemplated by Section 197 Cr.PC would be attracted. But, if the Act is totally unconnected with the official duty, there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable.

16. In B. Saha Vs. M.S. Kochar, (1979) 4 SCC 177, Hon'ble Supreme Court has held that *sine qua non* for the applicability of section 197 Cr.PC is that the offence charged must be one which has been committed by the public servant either in his official capacity or under colour of the office held by him.

17. In Om Prakash Vs. State of Jharkhand, (2012)



12 SCC 72, Hon'ble Supreme Court has held that the true test as to whether a public servant was acting or purporting to act in discharge of his duties would be whether the act complained of was directly connected with his official duties or it was done in the discharge of his official duties or it was so integrally connected with or attached to his office as to be inseparable from it. It has been further held that protection given under Section 197 Cr.PC has certain limits and is available only when the alleged Act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable Act.

18. Hon'ble Supreme Court in D. Devaraja Vs. Owais Sabeer Hussain, (2020) 7 SCC 695 has held that to decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty. In the case of an act of a policeman or any other public servant unconnected with the official duty there can be no question of sanction. Hon'ble Apex Court further held that if the act alleged in a complaint purported to be filed against the public servant is reasonably connected to discharge of his official duty, the cognizance thereof cannot be taken unless requisite sanction of the



appropriate Government is obtained under Section 197 Cr.PC.

19. Hon'ble Supreme Court has also held in para 74 of **D. Devaraja case (supra)** that it is well settled that an application under Section 482 of the Criminal Procedure Code is maintainable to quash proceedings 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.

20. In a celebrated judgment of **State of Haryana Vs. Bhajan Lal [1992 Suppl (1) SCC 335]**, Hon'ble Supreme Court has held, amongst other things, that in case of any bar of institution or continuation of prosecution under any provisions of law, the Court can invoke inherent power under Section 482 Cr.PC to prevent the abuse of the process of the Court and secure the ends of justice.

21. Coming to the case on hand, I find that the alleged offence is connected with Mutation Order dated 19.10.2004 passed by the Petitioner in Mutation Case No. 703 of 2004-05



and there is no dispute that Mutation Order has been passed by the Petitioner officiating as Circle Officer in discharge of his official duty upon the application filed by co-accused. The Petitioner has also followed the procedure while passing the Mutation Order and this order passed by the Petitioner has been upheld by the Appellate Authority and even the Revision preferred by the Complainant against the Appellate Order is pending consideration. But admittedly, there is no sanction obtained by the Complainant for prosecution of the petitioner from the Government of Bihar who is the employer of the Petitioner. Hence, Ld. Magistrate was not competent to take cognizance of the alleged offence against the Petitioner. As such, the impugned order is not sustainable and liable to be quashed under Section 482 Cr.PC.

22. I also find that the complaint and the subsequent impugned order against the Petitioner is not maintainable/sustainable even in the light of the Judges (Protection) Act, 1985 which provides additional protection to Judges. The definition of Judge under Section 2 of the Act of 1985 is very wide which includes *quasi-judicial* authority or body like Circle Officer while passing order in Mutation proceedings. Section 2 of the Judges (Protection) Act, 1985,



reads as follows:-

“2. Definition.—In this Act, “Judge” means not only every person who is officially designated as a Judge, but also every person-

(a) who is empowered by law to give in any legal proceeding a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive; or

(b) who is one of a body of persons which body of persons is empowered by law to give such a judgment as is referred to in clause (a).”

23. Madhya Pradesh High Court in similar situations has held in the following judgments that Tehsildar/Naib Tehsildar is entitled to get the protection as provided in the Judges (Protection) Act, 1985 while exercising powers under the M.P. Land Revenue Code including the Mutation proceedings.

(i) Mahesh Kumar Badole Vs. The State of M.P.

Station House Officer, Manu/MP/1769/2023

(ii) S.K. Jamra and Ors. Vs. Rajaram and Ors. in

Cr. Appeal No. 2017/2016 dated 15.03.2019.

(iii) Balram & Anr. Vs. Ashwani Kumar Yadav &

Anr., 2001 (2) MPHCT 330.

(iv) Om Prakash Vs. Surjan Singh, 2004 RN 31

(v) S.S. Trivedi Vs. State of M.P.,

MANU/MP/0954/2007

24. Section 3 of the Act of 1985 clearly provides that no civil or criminal proceeding can be entertained or continued against any judge in regard to any act allegedly committed while



acting or purporting to Act in discharge of his official or judicial duty or function. Hence, complaint itself was not maintainable before the Ld. Magistrate. The Magistrate should not have entertained or continued the complaint proceeding, because the same is barred under Section 3 of the Judges (Protection) Act, 1985. Section 3 of the Act reads as follows:-

“3. Additional protection to Judges. — (1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-section (2), no court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.
(2) Nothing in sub-section (1) shall debar or affect in any manner the power of the Central Government or the State Government or the Supreme Court of India or any High Court or any other authority under any law for the time being in force to take such action (whether by way of civil, criminal, or departmental proceedings or otherwise) against any person who is or was a Judge.”

25. Accordingly, the present petition is allowed, quashing the entire criminal proceedings arising out of the Criminal Complaint No. 3503 of 2010, including the impugned order dated 29.10.2012, passed by Ld. Judicial Magistrate, Purnia, in the Complaint *qua* the Petitioner.

(Jitendra Kumar, J.)

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