

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20943 of 2016

Arising Out of PS. Case No.-299 Year-2014 Thana- COMPLAINT CASE District- Supaul

Kumar Arun Prakash Son of Late S.N. Pandey, Resident of Upadhaya Lane
Lohanipur, P.S.- Kadam Kuan, Patna, District-Patna

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Vinesh Purbe Son of Late Hari Nandan Purbe, South Bhawanipur, P.S.-
Pratapganj, District- Supaul

... .. Opposite Parties

Appearance :

For the Petitioner/s	:	Mr. Aftab Alam Siddiqui, Advocate
For the State	:	Mr. Chandra Sen Pd. Singh, APP
For the O. P. No. 2	:	None

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

11 12-08-2024 The present petition has been preferred by the petitioner under Section 482 Cr.PC against the impugned order dated 10.09.2014 passed by Ld. Judicial Magistrate Ist Class, Birpur in Complaint Case No. 299C of 2014 whereby Ld. Magistrate has taken cognizance of offence punishable under Sections 420, 467, 468, 471 and 120B of the Indian Penal Code against the petitioner along with other co-accused, namely, Anant Lal Purbey, Ramjee Mandal and Umesh Kumar and directed issuance of summons after filing of the requisites by the Complainant.

2. As per the complaint filed by way of protest petition, the complainant has alleged that the accused Anant Lal



Purbey conspired with the co-accused including the petitioner, to get the land of the complainant mutated in his name. As per averment made in the complaint, the land in question was self acquired property of his father and it was already mutated in name of his father. After death of his father, the complainant was in possession of the land. However, the accused Anant Lal Purbey in connivance with the accused persons, including the petitioner, has got the land mutated in his own name.

3. 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 the notice.

4. Ld. counsel for the petitioner submits that the petitioner is innocent and has falsely been implicated in this case. To substantiate his claim, he submits that initially the complainant had lodged Pratapganj P.S. case No. 25 of 2013. However, after investigation, police filed final form bearing No. 21 of 2014 dated 30.04.2014, whereby the police had closed the case against all the accused persons finding no offence having been committed. However, Protest Petition was filed by the complainant against the closure of the case. The Protest Petition was treated as complaint in which the complainant and two witnesses were examined during inquiry under Section 200 of



Cr.PC, whereupon the impugned order has been passed.

5. Ld. counsel for the petitioner further submits that the land in question was jointly in the names of the father of the complainant and co-accused Anant Lal Purbey and the land in question came in the share of accused Anant Lal Purbey on partition. Hence, the accused Anant Lal Purbey applied for mutation of the land in his name. Hence, Partition Mutation Case No. 151 of 2004/2005 was initiated and after receiving report from Halka Karamchari and Circle Officer and inviting objection, the land in question was mutated *vide* order dated 19.10.2004 in the name of co-accused Anant Lal Purbey by the Petitioner who was officiating as Circle Officer at that time. Being aggrieved by the Mutation Order, the Complainant preferred Mutation Appeal bearing no. 44 of 2011 in the Court of Land Reforms Deputy Collector, Birpur. However, the Mutation Appeal was also dismissed, holding that before the Mutation Order dated 19.10.2004, passed by the Petitioner, the land in question was mutated jointly in the name of the accused Anant Lal Purbey and his brother Harendra Purbey who was father of the Complainant and hence, after partition of the land between the accused Anant Lal Purbey and legal heirs of his brother Harendra Purbey, the land came in the share of the



accused Anant Lal Purbey and hence, has been rightly mutated in the name of accused Anant Lal Purbey. Learned Appellate Authority also held that if any party has any grievance, he can prefer Partition Suit. Accordingly, the Mutation Appeal was dismissed on 10.09.2014. Being aggrieved by the Appellate Order, the Complainant further preferred revision in the Court of Collector, Supaul bearing Mutation Revision No. 42 of 2014. However, the Revision was later on withdrawn *vide* order dated 11.09.2018 to file Title Suit bearing No. 08 of 2017 in the Civil Court, Supaul which is pending adjudication.

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 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 Anant Lal Purbey. 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 has been withdrawn to file a suit in a Civil Court in regard to dispute with co-accused Anant Lal Purbey. 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. 299C of 2014, including the impugned order dated 10.09.2014, passed by Ld. Judicial Magistrate-Ist Class, Birpur, in the Complaint with reference to the Petitioner.

(Jitendra Kumar, J.)

ravishankar/shoaib
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