

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28470 of 2024

Arising Out of PS. Case No.-1180 Year-2022 Thana- PURNIA COMPLAINT CASE District-
Purnia

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1. Arjun Kumar Bishwas son of Late Nagendra Prasad Biswas Resident of Village- Circle Officer Banmankhi Block Ps- Banmankhi Dist- Purnea
 2. Satyanarayan Sorin son of Late Meghraj Soren Village- Dhamaili Kadam Tola P.S.- Mirganj Dist- Purnea P/A Revenue karamchari, Circle Officer Banmankhi Block Ps- Banmankhi Dist- Purnea

... .. Petitioner/s

Versus

1. The State of Bihar
2. Md. Ilyas son of Late Alibudh Miyan Village- Majhua Premram P.S.- Sarsi Dist- Purnea

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Neeraj Kumar, Advocate
For the O.P. No. 2	:	Mr. Manish Kumar, Advocate
For the Opposite Party/s	:	Mr. Madan Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL ORDER

2 04-08-2025 Heard the learned counsel for the petitioners, learned
counsel for the O.P. No.2 and the learned A.P.P. for the State

2. The present application has been preferred against the order dated 10.01.2024, passed by learned Sessions Judge, Purnea in Criminal Revision No. 116 of 2023/C.I.S. No. 116/2023, whereby and whereunder the learned Sessions Judge, Purnea has rejected the Criminal Revision Application filed by the petitioners which was preferred challenging the cognizance taking order dated 21.12.2022 passed by the learned Chief Judicial Magistrate, Purnea in Complaint Case No. 1180 of 2022



which is also impugned in the present application.

3. The facts leading to the present application is to the effect that the complainant, Md. Ilyas has stated that he is a landless person and the Accused No. 1 to 4 including the petitioners are government officials while the Accused No. 5 to 14 named in the complaint are private respondents. It is alleged in the complaint that all the accused persons in connivance with the government officials i.e., the petitioners have prepared purcha of homestead land of the complainant and on the basis of which the accused persons tried to capture the land forcefully and even assaulted the complainant for which one Sarsi P.S. Case No. 08 of 2003/GR Case No. 131 of 2003 was lodged. It is further alleged that the petitioners being the government officials in collusion of the other accused persons have violated the order of the learned Collector, Purnea whereby the construction work being made by the rest of the private accused persons, was stayed. The complainant has further alleged that he had informed the Circle Officer, Banmankhi and the S.H.O. of Sarsi P.S., however, they did not take any action against the private accused persons and permitted the said accused persons to construct the *pucca* house over the said land.

4. The learned counsel for the petitioners submit that



on plain reading of the complaint petition, it would be evident that the allegations against the petitioners are that they are in connivance with the private accused persons and have allowed the construction work over the land over which the complainant has possession. The learned counsel submits that the Basgit Purcha was issued in the year 1981-82, 1993-94, 1999-2000 and 2000-2001 while the Petitioner No. 1 has joined Banmankhi Anchal in the year 2019 and Petitioner No. 2 has joined the Banmankhi office on 10.07.2021 and for any act of preparing purcha cannot be saddled with the petitioners. The learned counsel further submits that allegation that the Petitioner No. 1 did not take any action to the complaint made by the complainant with regard to construction of the work, it is submitted that any action being taken by the other co-accused persons on the basis of a certain document could not have possibly been stopped by the petitioners. It has next been submitted that from the averment made in the complaint, it could at best be inferred that the petitioners had not followed the orders of the collector and for which no criminal offence would be made out and therefore none of the offences as alleged under Sections 147, 323, 504 and 506 of the Indian Penal Code is made out against the petitioners. The learned counsel for the



petitioners raises a question of law that this is a case where the petitioners have been alleged to be in connivance with the other accused persons by virtue of them being the Circle Officer and the Revenue Karmchari, meaning thereby, they are public servant and therefore, any action done by them in discharge of their official duty, would attract the provisions of Section 197 of Cr.P.C. which provides for obtaining sanction from the Government, if the acts committed by the petitioners were purporting to be during the discharge of their official duty.

5. The learned counsel for the petitioners at this juncture, refers to the judgment delivered in the case of ***Devinder Singh Vs. State of Punjab through C.B.I. reported in (2016) 12 SCC 87***, wherein Paragraph '39' of the judgment, the Hon'ble Supreme Court has summarized the opportunities emerging from all the decisions on the point of sanction and is summarized as under:-

"39. The principles emerging from the aforesaid decisions are summarised hereunder:

39.1. Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.

39.2. Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and



wide construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197 CrPC has to be construed narrowly and in a restricted manner.

39.3. Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under Section 197 CrPC. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor is it possible to lay down such rule.

39.4. In case the assault made is intrinsically connected with or related to performance of official duties, sanction would be necessary under Section 197 CrPC, but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 CrPC would apply.”

6. The Hon'ble Supreme Court in Criminal Appeal No. 257/2011 in the case of General Officer, Commanding versus C.B.I. has opined as follows:-

“ Thus, in view of the above, the law on the issue of sanction can be summarized to the effect that the question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duty. In order that the public servant may not be unnecessarily harassed on a



complaint of an unscrupulous person, it is obligatory on the part of the executive authority to protect him..... If the law requires sanction, and the court proceeds against a public servant without sanction, the public servant has a right to raise the issue of jurisdiction as the entire action may be rendered void ab-initio."

7. The learned counsel for the petitioners has thus submitted that the learned Court below have miserably failed to consider the legal proposition especially for the fact that the petitioners were government servants and the allegations are primarily on account of the discharge of their official duty. The learned counsel for the petitioners submit that the learned Courts below have not taken into account that as far as the creation of false or fabricated Basgit Purcha is concerned, the same is upon the predecessors of the petitioners' office and the petitioners had joined very recently in the year 2019 and 2021 respectively. It has further been submitted that the petitioners cannot be treated at par with the other private accused persons against whom the complainant had alleged of forceful construction of their houses. The learned counsel for the petitioners thus submit that in view of the aforesaid submissions, the order taking cognizance as well as the revisional order is bad in law and thus, fit to be set aside.

8. Per contra, the learned counsel for the O.P. No. 2 submits that the petitioners have illegally made forged



documents (purchas) and kept it secretly and were trying to forcibly dispossess the complainant since 2003 for which a criminal case was also lodged. The learned counsel for the O.P. No. 2 further submits that the Petitioner No. 1 being the Circle Officer has openly disobeyed the orders of District Magistrate, Purnea passed in Revenue Revision Case No. 118 of 2019 and allowed the construction to be carried out on the land of the complainant. The learned counsel for the O.P. No. 2 has stated that during the inquiry, the witnesses supported the case of the complainant and the challenge to the order taking cognizance before the Revisional Court, has also failed and the Revision Application filed by the petitioners, have been dismissed, finding no merits in the claim of the petitioners. It is lastly submitted that the orders impugned are completely legal and based on the facts of the case and thus needs no interference.

9. Having heard learned counsel for the parties, this Court finds that from perusal of the complaint as well as the statements of the witnesses during the course of inquiry, it is clear that the petitioners have been admittedly shown to be government officials and the primary thrust was that it was the petitioners who had permitted the private accused persons to carry on the construction work despite there being an order of



stay passed by the learned Collector. In view of such evidence, it is clear that the petitioners were carrying out work as the Circle Officer and Revenue Karmchari respectively and even the allegations levelled against them, was with regard to their inaction while discharging their duty. This Court has also observed that there is general and omnibus allegations with the use of the word 'accused persons' throughout the complaint petition without specific attribution to any of the accused persons including the petitioners and therefore, in view of the provisions as contained in Section 197 of Cr.P.C., as discussed hereinabove, in absence of any sanction order, the complaint case against the petitioner would amount to abuse of the process of law and being in teeth of the various judicial pronouncements of the Hon'ble Supreme Court and thus the impugned orders are fit to be quashed.

10. In view of the discussions made hereinabove, this Court finds the impugned orders to have been passed without appreciating the fact that the petitioners were government servants and the allegations are primarily based against them of inaction while discharging their official duty. Therefore, it was incumbent upon the learned Court below to proceed only after proper sanction against the petitioners and hence, the impugned



order dated 10.01.2024, passed by learned Sessions Judge, Purnea in Criminal Revision No. 116 of 2023/C.I.S. No. 116/2023 as well as order taking cognizance dated 21.12.2022, passed by learned Chief Judicial Magistrate, Purnea in Complaint Case No. 1180 of 2022 , is hereby set aside.

11. The application stands allowed.

(Sourendra Pandey, J)

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