

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23940 of 2019

Arising Out of PS. Case No.-160 Year-2019 Thana- KHAJANCHI HAT District- Purnia

Amitesh Mishra Son Of Suresh Mishra Resident Of Village - 86-A
Gandhipath, Nehru Nagar, P.S.- Patliputra, Distt.- Patna.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Uma Shanker Verma, Advocate Mr. Binod Kumar Mishra, Advocate Ms. Kumari Anjali, Advocate
For the Opposite Party/s	:	Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

7 07-07-2025 Heard the learned counsel for the petitioner and the
learned APP for the State, Sri Jharkhandi Upadhyay.

2. A supplementary affidavit has been filed by the
petitioner and the same is taken on record.

3. This is an application for quashing of the order
dated 18.03.2019 passed by the learned Chief Judicial
Magistrate, Purnia in K. Hat P.S. Case No. 160 of 2019 which
was registered under Section 353 of the IPC and also for
quashing of the order dated 04.04.2019 passed by the learned
Chief Judicial Magistrate, Purnia in connection with K. Hat P.S.
Case No. 160 of 2019.

4. The allegation against the accused Amitesh Mishra
in the written application filed by Narendra Kumar Nirala, Child



Protection Officer, District Child Protection Unit, Purnea, was that despite the order of District Magistrate, Purnea vide memo no. 822/C dated 15.02.2019 whereby the accused, who was earlier working as Asst. Director in the aforesaid office, was relieved from the said office and was directed to hand over the charge to other official, namely, Smt. Mona Jha and was further directed to immediately join Social Welfare Department, Patna, and he did not obey the aforesaid order. It was reasonable apprehension that by not obeying the said orders, the accused might manipulate the records by entering the aforesaid office in an unauthorized manner and might also wipe out the evidence related with his alleged misconduct committed by him during his official capacity earlier and due to this apprehension, the said office was sealed vide order dated 16.02.2019 of District Magistrate, Purnia and when the sealed office was reopened on 8.3.2019, the accused entered into the office in an unauthorized manner and he was sent to the police station on 08.03.2019 in light of the order passed by the Executive Magistrate-Sadar, Purnea. On 09.03.2019 at about 11:30 A.M, he once again entered into the official chambers in violation of the departmental orders and started passing orders to office staff against the spirit of the express orders of the District Magistrate,



Purnea and Department.

5. It has been submitted by the learned counsel for the petitioner that the Collector is not the competent authority to take any action against the petitioner *suo-moto* without approval from the parent department. In spite of that the Collector *vide* his letter dated 15.02.2019 relieved the petitioner without issuing any show-cause or any letter and asked the petitioner to hand over the charge to one Mona Jha and go back to parent department. He further submits that from the F.I.R., it appears that the petitioner disobeyed the order of the Collector because the petitioner himself is a gazetted officer and drawing disbursing officer, so without any order of the Parent Department, the Collector asked the subordinate to institute a criminal case against the petitioner which is a violation of the guidelines of the Government. In fact, when the petitioner came to know about the relieving order dated 15.02.2019, he sent a reply through e-mail to Collector, whereas the petitioner was posted at Purnea by Notification No. 627 dated 30.01.2018 of the department concerned, so he is unable to handover the charge without any allegation made in the FIR.

6. The learned counsel for the petitioner has further submitted that on 16.02.2019, the Collector closed the office but



reopened it on 08.03.2019. The informant claimed the petitioner was in the office, which led to the Executive Magistrate calling the police, resulting in the petitioner's detention. The petitioner was released after providing a P.R. Bond. On 09.03.2019, the petitioner returned to the office, which was deemed a violation of the Collector's order and an FIR was registered against the petitioner. He further submits that this situation did not violate Section 353 Cr.P.C., pursuant to a State Government notification, criminal cases should only be filed after proper consideration and approval.

7. The learned counsel for the State has opposed the application of the petitioner.

8. I have considered the submissions of the parties.

9. By supplementary affidavit, the petitioner has brought on record the order dated 17.12.2020 passed by the Special Secretary, Social Welfare Department from which it appears in the departmental proceeding the petitioner was held guilty and a punishment of stoppage of three increments without cumulative effect was imposed upon him.

10. From the reading of the FIR it appears that the petitioner is said to have violated certain directions of the superior officers for which an FIR was registered.



11. In view of the Circular bearing No. 01-4 to 5/07-6211 dated 09.02.2018, the authorities before registration of FIR should have obtained permission from the Head of the Department of the petitioner and this has not been done in the case. Moreover for the alleged act of indiscipline, the petitioner was proceeded departmentally and he was punished as discussed above.

12. Section 353 of the IPC reads as follows:

353. Assault or criminal force to deter public servant from discharge of his duty.—Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

13. In my opinion, the ingredients of the offence under Section 353 of the IPC are missing in the present case and it appears that the petitioner has been proceeded wrongly. No offence is made out against the petitioner.



14. In view of the above discussions, the application is allowed.

15. Accordingly, the order dated 18.03.2019 passed by the learned Chief Judicial Magistrate, Purnia in K. Hat P.S. Case No. 160 of 2019 and the order dated 04.04.2019 passed by the learned Chief Judicial Magistrate, Purnia in connection with K. Hat P.S. Case No. 160 of 2019 are hereby quashed.

(Sandeep Kumar, J)

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