

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32582 of 2024

Arising Out of PS. Case No.-77 Year-2011 Thana- SALAKHUA District- Saharsa

Sandeep Kumar son of Mahesh Prasad Resident of Village/Mohalla- G-110
PC Colony Kankarbagh, Patna, P.S.- Kankarbagh, District- Patna, Bihar-
820020

... .. Petitioner/s

Versus

1. The State of Bihar Patna
2. Hadisha Khatoon W/o Md. Mohdeem R/o Vill.- Laxminiya, P.S.- Salkhua,
District- Saharsa

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Ravinder Kumar, Advocate Mr.Munish Kumar, Advocate
For the Opposite Party/s	:	Ms.Anita Kumari, APP

CORAM: HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL JUDGMENT

Date : 05-08-2025

Heard learned counsel for the petitioner, learned counsel
for the informant and learned APP for the State.

2. The present application has been filed for quashing of
the order dated 25.10.2016 passed by learned A.C.J.M. II, Saharsa
in connection with Salkhua P.S. Case No. 77/2011 corresponding
to G.R. No. 862/2011, whereby and whereunder the learned
ACJM-II, Saharsa has taken cognizance for the offences
punishable under Sections 420, 467, 468, 120B, 323, 354, 504/34
of I.P.C.



Brief facts of the case

3. Initially, a complaint was filed which was forwarded by the Ld. Court under U/S 156(3) Cr.PC, subsequently F.I.R was registered. The informant purchased lands through deeds dated 15/12/2005 (Khata No-498, Khasra No-4303, area 2 Kattha; and Khata No-298, Khasra No-4303, area 2-1/2 Kattha). Accused persons forcefully took possession for constructing Kasturba Madhya Vidhyalaya building. When the informant objected, accused no.1 abused her, and the land was forcibly taken for the construction of the school.

Submissions made on behalf of the petitioner

4. Learned counsel for the petitioner submits that the incident allegedly occurred between 24/2/2008 to 13/7/2009, but the F.I.R. was registered only on 4/6/2011 after an inordinate delay of 3 years. During this period, the petitioner/accused person was not even posted in the district and was transferred on 13/3/2009 when the school was under construction. Such unexplained delay in lodging the F.I.R. raises serious questions about the genuineness and credibility of the allegations, suggesting that the case has been instituted with malafide intentions.

5. Learned counsel further submits that the petitioner is completely innocent and has committed no offence whatsoever. He



has been falsely implicated in this case purely due to dirty politics and personal vendetta. The timing of the F.I.R. registration, long after the alleged incident and after the petitioner's transfer, clearly indicates that this is a motivated case filed to settle personal scores and harass the petitioner through abuse of the legal process.

6. Learned counsel further submits that upon perusal of the F.I.R. and materials collected during investigation, it is evident that no *prima facie* case is made out against the petitioner under sections 402, 467, 468, 120(B), 323, 354, 504/34 of the Indian Penal Code. The allegations are general, vague, and omnibus in nature without any specific role attributed to the petitioner. The charge-sheet dated 30.11.2015 bearing final report no.184/2015 fails to establish any concrete evidence against the petitioner, making the continuation of proceedings a sheer abuse of the process of law.

7. Learned counsel for the petitioner next submits that the complaint case was initially filed in the Learned court below and later sent by the Court of Magistrate to investigate under Section 156(3) Cr.P.C. However, this was done illegally without proper support of an affidavit of the complainant, which constitutes a clear violation of law as established by the Hon'ble Supreme Court in **Priyanka Srivastava and Others vs State of**



Uttar Pradesh reported in **(2015) 6 SCC 287**. The Hon'ble Supreme Court has categorically held that Section 156(3) applications must be supported by a duly sworn affidavit to prevent misuse of the provision and ensure responsible filing of cases. The relevant part is quoted hereunder:-

“27. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India.....”

8. In light of the Hon'ble Supreme Court's observations in **Priyanka Srivastava** (*supra*) case and **Anil Kumar v. M.K. Aiyappa** reported in **(2013) 10 SCC 705**, where the Court emphasized the need for proper procedures and noted that cases in



fiscal sphere, matrimonial disputes, commercial offences, medical negligence cases and corruption cases with abnormal delays in initiating prosecution are being filed routinely to harass individuals. It has been submitted that this Hon'ble Court may be pleased to quash the entire proceedings being devoid of merit and constituting an abuse of the process of law. The continuation of such proceedings would only result in harassment of an innocent person and wastage of judicial time and resources.

9. Learned counsel next submits that as per the principles laid down by the Hon'ble Supreme Court in **Devinder Singh vs. State of Punjab through CBI** reported in (2016) 12 SCC 87 and subsequent judgments in **N.K. Ganguly vs. C.B.I.** reported in 2016 (2) SCC 143 and **A. Srinivasa Reddy vs. State of Karnataka & Anr.** reported in (2002) 3 SCC 397, 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.

10. Learned counsel further submits that the Hon'ble High Court of Delhi vide order dated 29.07.2013 passed in **CrI. M.C. 1077/2012 (Rakesh Bhatnagar vs C.B.I.)** has observed that judgments of the Supreme Court have categorically laid down the law in respect of sanction under Section 197 Cr.P.C. It is submitted



that it is a settled law that before taking cognizance of any offence, a Magistrate must not only be said to have applied his mind to the contents of the petition, but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections but for taking action like ordering investigation under Section 156(3), he cannot be said to have taken cognizance of the offence. In the present case, since the allegations against the petitioner is of offences committed during discharge of his official duty and hence, it was imperative for the learned court below to seek sanction prior to taking cognizance of the offences against the petitioner. In the present case, the learned court failed to consider these mandatory legal requirements, thereby violating established judicial precedents and rendering the entire proceedings legally infirm and liable to be quashed.

Submissions made on behalf of the State

11. Learned A.P.P. for the State has submitted that the complainant had made a categorical allegation against the petitioner that he in connivance with the accused no. 1, i.e. Md. Zafar had submitted a false inquiry report on the basis of the forged documents and granted permission for the construction of



the schools. It has been further submitted that the petitioner despite being asked for information under the R.T.I. never supplied the same and thereby he had been helping the main accused and got the construction of the school done forcefully after illegally dispossessing the informant.

12. Learned A.P.P. for the State has further submitted that even during the course of investigation the police had found that the petitioner who was the then Block Development Officer had not taken due steps pursuant to the complaint made by the informant and hence, was found to be in connivance with the main accused and therefore, charge-sheet was submitted by the police in the year 2015 and after perusing the same along with the materials on record the learned court below has rightly taken cognizance against the petitioner and others and therefore, no interference is required in the present matter.

13. Learned A.P.P. for the State on the point of sanction has stated that the conduct of the petitioner and the allegations against him does not fall within the parameters of “discharge of his duty” and hence, there was no occasion to take sanction as prescribed under Section 197 Cr.P.C. Learned A.P.P. for the State has stated that various case laws referred to by the learned counsel for the petitioner would not be applicable in the present facts and



circumstances of the case as there is a private complaint against the petitioner of conniving with the main accused and helping him by illegal means and therefore, there was no requirement of sanction in the present case.

14. Learned A.P.P. for the State has, thus submitted that in view of the aforesaid the present application is completely misconceived and fit to be dismissed and there is no illegality in the order taking cognizance.

Consideration

15. Having heard the parties and upon perusal of the materials available, this Court would like to go on the point of sanction to ascertain as to whether the sanction was required to be taken under Section 197 Cr.P.C.. From perusal of the FIR, it would be evident that the complainant has alleged that a report has been prepared by the petitioner based on forged documents which prima facie comes out to the fact that the petitioner being the Block Development Officer was submitting a report while discharging his duty as the B.D.O. and not otherwise. Even if the allegations are taken on its face value, even then the submission of an inquiry report, may be on a forged document, the same would fall under the acts committed while discharge of official duty thus, even if the allegations are taken to be true the provisions with regard to



previous sanction as mentioned under Section 197 Cr.P.C. needed to be followed and since the petitioner was a serving B.D.O., therefore, it was mandatory to get sanction from the government before taking cognizance. At this juncture, this Court would like to refer to Paragraph '39' of the judgment passed in the case of Devinder Singh (supra) wherein 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."

16. 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." "

17. Thus, from the aforesaid discussions and the opportunities emerging, it is clear that the learned court below prior to taking cognizance had to obtain previous sanction from the



appropriate government under Section 197 Cr.P.C. especially when it is found that the alleged offence has been committed in discharge of official duty by the accused like in the present case the petitioner was posted as the B.D.O. and he had submitted a report by virtue of him being the B.D.O.

18. The other pertinent question which has been raised was with regard to the provisions as contained under Section 156(3) Cr.P.C. wherein it was mandatory for the complainant to support the complaint with an affidavit. It is an admitted fact that the present case arises from a complaint case which was specifically sent to the police to investigate under the provisions of Section 156(3) of the Cr.P.C. but the said complaint was filed without support of any affidavit of the complainant which was ultimately sent to the police for investigation and for registration of FIR and the same is in the teeth of the judgment passed by the Hon'ble Supreme Court in the case of **Priyanka Srivastava** (*supra*).

19. This Court would like to refer to the judgment passed in the case of **Anil Kumar** (*supra*) wherein in Paragraph '8' of the judgment the Hon'ble Supreme Court has observed as under:-

*“ We may first examine whether the
Magistrate, while exercising his powers under*



Section 156(3) Cr.P.C., could act in a mechanical or casual manner and go on with the complaint after getting the report. The scope of the above mentioned provision came up for consideration before this Court in several cases. This Court in Maksud Saiyed case (supra) examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where a jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 Cr.P.C., the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) Cr.P.C., should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation.”

20. From the judgments referred to above and the principles laid down by the Hon’ble Supreme Court the same



squarely applies to the facts of the present case as have already been discussed hereinabove and therefore, in the opinion of this Court the order dated 25.10.2016 passed by the learned A.C.J.M.-II, Saharsa whereby cognizance has been taken against the petitioner is not tenable in law and fit to be set aside.

21. In view of the aforesaid, this application is allowed and order taking cognizance dated 25.10.2016 passed by learned A.C.J.M.-II, Saharsa in the connection with Salkhua P.S. Case No. 77/2011 corresponding to G.R. No. 862/2011 is set aside.

(Sourendra Pandey, J)

tusharika/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.08.2025
Transmission Date	25.08.2025

