

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48578 of 2023

Arising Out of PS. Case No.-535 Year-2019 Thana- DIGHA District- Patna

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KANHAIYA SAMRAT son of Late Brij Bilsah Singh R/o- Brij Niwas North
Awadhpuri Colony Digha Ghat Ps- Digha Dist- patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Tribhuwan Prasad @ Tribhuwan Prasad Yadav S/o Shri Arjun Singh, R/o
Yaduvanshi (Akhada Road), P.S.- Digha, District-Patna

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Madan Mohan, Advocate

For the Opposite Party/s : Mr. Pramod Kumar Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE SOURENDRA PANDEY

ORAL JUDGMENT

Date : 23-07-2025

Heard learned counsel for the parties.

2. The present application has been filed for quashing the entire criminal proceeding of GR No. 7976 of 2019 arising out of Complaint case no. 1345 of 2019 dated 30.08.2019 which was forwarded to the SSP Patna under section 156(3) and registered as Digha P.S Case no. 535 of 2019 dated 21.09.2019 under sections 379, 411, 414, 420 and 120(B) of IPC initiated against the Petitioner, pending in the Court of SDJM, Patna including the order dated 01.02.2022 whereby cognizance has been taken against the petitioner under aforesaid sections.

3. The prosecution case in short is that the complainant



who is an RTI activist got an information via Dainik Jagaran newspaper dated 27.05.2016 wherein it was reported that based on a secret information received by the police and senior officials of Digha Police Station, a raid was conducted on 25.05.2016 at the residence of the Petitioner whereby a Bajaj Platina Motorcycle bearing registration No. BR 01BA 7787 was seized from the possession of the Petitioner. It is further alleged that the said motorcycle was stolen by the Petitioner from the store house of the Rail Police Station, Patna and was being regularly used by the Petitioner by changing its registration number. It is further alleged that the Petitioner removed the original number plate of the said motorcycle and used a forged number plate bearing registration no. BR 01BA 7787 which was actually removed from the Honda Twister Motorcycle belonging to one Shashi Ranjan. The Petitioner in connivance with another accused/Shashi Ranjan continued to make use of the said motorcycle by concealing its actual identification. The present complaint petition was filed after the failure of the police officials to lodge an FIR against the petitioner in lieu of the said incident.

4. Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in the



present case with ulterior motive. The complainant is the friend of one Rakesh Kumar Singh who happens to be the neighbour of the petitioner. The petitioner and Rakesh Kumar Singh was engaged in some personal conflict related to property dispute from last many years and now the complainant in connivance with Rakesh Kumar Singh is using the legal loopholes and legal technicalities with a motive to suppress the petitioner eventually forcing him to compromise and relinquish his property rights in favour of the complainant and Rakesh Kumar Singh. The whole FIR has been lodged based on the newspaper reporting dated 27.05.2016. Learned counsel has further submitted that perusal of the FIR as well as the Police Report clearly shows that no enquiry/information was taken from the officials of the said department. Learned counsel for the petitioner submits that the raid was conducted in the year 2016, the motorcycle was seized in the year 2016, the report was published in the year 2016, however, the complaint was made by the complainant after a lapse of 3 years i.e in the year 2019. It has been submitted that the complainant failed to provide any substantial reason for such an inordinate delay in filing the complaint.

5. Learned counsel, in support of his contention has



relied upon the judgment of the Hon'ble Supreme Court in the case titled as **Bijoy Singh & Anr. Vs State Of Bihar, 4 (2002) 9 SCC 147** and in the case of **Hasmukhlal D. Vora vs State of Tamil Nadu, Criminal Appeal No. 2310 of 2022**. Learned counsel has next submitted that the Hon'ble Supreme Court in the said cases held that the inordinate delay, if not reasonably explained, can be fatal to the case of the prosecution.

6. Learned counsel has submitted that the FIR has been filed by a stranger/ third person who had no involvement in the present case. It has been submitted that the complainant is neither an owner/ claimant of the motorcycle, nor has he ever seen the Petitioner using the motorcycle. The complainant neither knows the Petitioner personally nor is the Petitioner acquainted with the Complainant. The only basis of the complaint was the article reported in the newspaper. It is submitted that the said complaint is an outcome of a well-planned strategy made by the complainant in connivance with Rakesh Kumar Singh neighbour of the Petitioner, in order to force the Petitioner to enter into a compromise and relinquish his property rights. Learned counsel has submitted that it is a matter of fact that vide non-cognizable report (sanha) No. 32 of 2012 dated 01.12.2012 registered before the Railway



Police Station, Patna Junction, the said motorcycle was found in an unclaimed/ abandoned condition at the Patna Junction Railway Station. It is submitted that the said motorcycle was submitted and kept in the store house of the Railway Police Station. The said motorcycle was being used by the Petitioner for the departmental/ official works on the basis of the orders/ directions given by the superior officers. Learned counsel has submitted that the said motorcycle was not only used by the Petitioner but also by the other government employees of the department for their departmental works and was later on kept back in the premises of the Rail Police Station, Patna Junction. On 25.05.2016, the Petitioner used the said motorcycle for the compliance of his official duty on the directions given by his superiors. However, in the evening, when the Petitioner was about to park the motorcycle in the premises of the Rail Police Station, Patna Junction, he received a call stating that the wife of the Petitioner is severely ill and he admitted his wife to the hospital. Since the Petitioner came back from the hospital late night, he parked the said motorcycle at his own residence with a bonafide intention to return the said motorcycle in the morning. Learned counsel submits that neither any written complaint was made by the SHO of the



Railway Police Station, Patna Junction, nor any complaint was made by the in-charge of the store house against the Petitioner for the alleged use of the said motorcycle. Learned counsel has submitted that every official in the department had knowledge that the said motorcycle was being used for the official/ departmental work and thus, no complaint was ever made by any officials against the Petitioner. Surprisingly, only the Petitioner was made accused in the alleged incident and neither the manager of the store house nor any other official was made accused in the present case. It has been submitted that the Petitioner alone can never take out the motorcycle stored in the store house, without any permission from the officials/ superiors and therefore, proceedings, if any, ought to be initiated against other officials of the department. Learned counsel has next submitted that the Petitioner has already been punished in the departmental proceedings vide order dated 19.02.2021 passed by the Superintendent of Police, Railway Department, Katihar wherein the increment of the salary of the Petitioner has been withheld for two years and now the Petitioner ought not to be prosecuted for the same offence twice. Learned counsel has submitted that the Petitioner is being made scapegoat in the alleged incident by the superiors of his department as the



alleged motorcycle was being used on the basis of oral order made by the superior officers and now other officials might also be held liable for the alleged incident.

7. Learned counsel submits that a non-cognizable report bearing no. 852 of 2016 dated 25.05.2016 was registered against the Petitioner at Digha Police Station and since, the Petitioner was innocent, no criminal proceedings were initiated against the Petitioner qua the said non-cognizable report. None of the ingredients charged against the Petitioner in the aforesaid FIR is meted out because the said motorcycle was found and seized in the unclaimed/abandoned condition from the premises of the Patna Junction and till date no person has claimed its ownership. Since, the owner of the said motorcycle is unknown, the ingredients of theft are not made out, as one of the necessary condition for any act to be considered as theft is that the said property should be taken out of the possession, without the consent of the owner of the property. The whole FIR has been lodged based on the newspaper reporting dated 27.05.2016. It is further submitted that perusal of the FIR as well as the police report clearly shows that no enquiry/information was taken from the officials of the said department qua the alleged incident.

8. Learned counsel has submitted that since, the said



motorcycle was an abandoned/unclaimed good and not a stolen property, the ingredient of Section 411 is not met out as the foremost condition to attract Section 411 is that the property should be a stolen property. Similarly, ingredients of Section 414 is also not met out as the foremost condition to attract Section 414 is also that the property should be a stolen property. Ingredients of Section 420 are also not met out as the Petitioner never induced or deceived any person to deliver any property. Learned counsel has next submitted that the said motorcycle was an unclaimed/ abandoned property being used by the Petitioner for the departmental work with the permission of the superior officers and therefore, there is no prima facie evidence to attract Section 420 of IPC.

9. The learned counsel for the petitioner further submits that during the pendency of the present application, the complainant has compromised with the petitioner and in the deposition, in the present case, he has stated and admitted that he has no concern with the said motorcycle and he is not aware as to who is the claimant of the motorcycle. It is further submitted by the learned counsel that when the complainant came to know, the fact that the motorcycle was not found from the possession of the petitioner, the complainant agreed to enter



into a compromise with the petitioner and hence the deposition of the complainant as PW 1 would suffice that there is no cognizable offence committed by the petitioner and hence continuation of the same would amount to an abuse of the process of law and has thereby submitted that the entire prosecution case has been lodged on a misconceived notion, and hence, the criminal proceedings be quashed.

10. Per contra, the learned counsel for the informant, opposite party No. 2 submits that the petitioner was found along with the motorcycle which was a police property and hence, a cognizable offence is being made out against the petitioner, which would suffice that the petitioner was one of the main accused who had been using the motorcycle along with some other accused persons who were involved in the alleged incident. The learned counsel appearing on behalf of the informant has submitted that the motorcycle was seized as an abandoned vehicle and was also duly entered in the records of Rail Thana, Patna Junction vide a 'sanha' in the year 2012. It has further been submitted that instead of remaining in lawful custody, the motorcycle was illegally and unlawfully taken out by the petitioner for his personal use, which had led to the registration of Digha PS Case No 535 of 2019. The learned



counsel for the petitioner has submitted that the petitioner has resorted to undue pressure and coercion compelling him to depose before the competent Court that he did not wish to proceed with the matter resulting in a so-called compromise petition being filed. The learned Counsel submits that the informant was deceitfully led to believe that the motorcycle had not been recovered from the accused's possession, which is contrary to the facts of the case. It has been further submitted that the petitioner was indulged in tampering of official records and had made interpolations in the 'Sanha'. It is also submitted by the learned counsel that a separate FIR was also registered as GRPS Patna Junction Case No. 451 of 2022 and such lodging of the FIR goes on to show that the petitioner was trying to obstruct justice and even falsify public records for his personal gain. The learned counsel for the informant has stated that the so-called compromise is a mere facade, procured through coercion and deceit and stands vitiated by the illegal and criminal acts of the petitioner and thus it has been submitted that the action of the petitioner accused of misleading the opposite property, fabricating and manipulating the records goes on to show that the petitioner was guilty and it was not a case where he would have only departmentally been charged but a criminal



proceeding should also have been initiated against him.

11. This Court has considered the rival submissions made on behalf of the parties and it has been noted from the facts of the case that the motorcycle was a property of the police station, which was being used by the petitioner, which may be or may not be within the knowledge of the superiors.

12. From the records, it is also evident that a case was registered only after the opposite party No. 2, who claims himself to be an RTI activist, received such information from the newspaper report that a motorcycle, which was seized by the police was found in the possession of the petitioner and wherein it has been stated that the motorcycle was stolen by the petitioner from the storehouse of the rail police station Patna, and was being regularly used by the petitioner by changing its registration number.

13. At this juncture, we need to examine the essential ingredients of theft as defined under section 378 of the IPC and from the plain reading of the said provision, it would be clear that the ingredient that of dishonest intention to take property out of another's possession without consent has to be looked into and in the present case the motorcycle, which is presumably a police property, was never out of the constructive possession of



the police department.

14. This court finds it amusing that if the store keeper was in charge of the seized materials, including the motorcycle in the present case how the same was released in favour of the petitioner and he had been using it for a long time. The court also takes into account the fact that there is nothing on record to suggest that the police had initiated any action with regard to the usage of the said motorcycle.

15. This Court taking various judicial pronouncements by the Hon'ble Supreme Court as well as the High Courts into account, wherein mere unauthorized use by an employee, in the present case the petitioner, has been held that it does not amount to theft unless there is dishonest removal out of the possession and an intention to permanently deprive the said possession.

16. This court has seen that the recovery in the present case is said to be from the petitioner, who happens to be a police officer and has stated that the motorcycle was being used for the official purposes and therefore, the allegation of the petitioner stealing the motorcycle is farfetched. The Court takes that such usage of the motorcycle by the petitioner atmost can be termed as a procedural or departmental transgression and



cannot be covered under the definition of theft.

17. The court has also taken into account that the newspaper report was published on 27.05.2016, however, there was no FIR lodged by the department against any of the erring officers, including the petitioner and it was only in the year 2019 i.e., after almost more than three years the FIR was registered, though the opposite party No. 3 who has stated that he had approached the police earlier but they had not registered the FIR. This Court finds that the opposite party No. 2, had also invoked the criminal writ jurisdiction of this Hon'ble court by filing Cr. W.J.C No. 381 of 2019 which was disposed of giving liberty to the opposite party No. 2 to move to the superior authorities as enshrined under the Code of Criminal Procedure. This court further observes that from the averments made in the FIR, the allegations, even if taken at the face value do not make out the ingredients of the alleged offence for the reason that though prosecution for theft would be possible against the petitioner, unless there is material to show he dishonestly removed the vehicle and intended to permanently deprive the department. This Court finds that if the use was known and permitted or at least not objected to by the superiors then in that case, it was a case of a departmental issue and not a criminal



one and this Court has also noted that a departmental proceeding was conducted against the petitioner and he has also been suitably punished for the same.

18. This court therefore, has analyzed the factual aspects and applying the judicial pronouncements as in the case of **State of Haryana vs. Bhajanlal** reported in **(1992) 3 SCR 735 (SC)** the ingredients would suffice that there was no offence under section 379 or 414 being made out against the petitioner, however, as I have already observed, the case might be of administrative transgression for the petitioner utilizing his position and using the said motorcycle with or without the permission of the superiors. This court also takes note that such usage by the petitioner could not have possibly been made on his own and there ought to have been other officers or personnel from the department who would have allowed such transgression or usage of the motorcycle by the petitioner and therefore, continuation of a criminal proceeding against only the petitioner in such a case would amount to an abuse of the process of law and result in miscarriage of justice. In view of the discussions made above, this court finds that the allegations made against the petitioners do not make out offences as alleged in the FIR and therefore, considering the facts and taking the



judicial pronouncements into account, the present FIR against the petitioner bearing Digha P.S. Case No. 535 of 2019 is quashed and the entire criminal proceeding, arising out of the Complaint Case No. 1345 of 2019 is hereby quashed.

19. The application is allowed.

(Sourendra Pandey, J)

Prakash/-

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CAV DATE	
Uploading Date	
Transmission Date	

