

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.52434 of 2024

Arising Out of PS. Case No.-2531 Year-2008 Thana- PATNA COMPLAINT CASE District-
Patna

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Abhay Narayan Singh Son of Shri Satya Narayan Singh R/V-House No A-17,
Police Colony, Anisabad, PO -Anisabad, PS- Gardanibagh, District - Town
-Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Anju Devi Wife of Roshan Kumar R/V-MIG 45, B-7, Sector 7, BH Colony,
26, Police Station -Agam Kuan, District -Patna, 800026, Bihar

... .. Opposite Party/s

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Appearance :	
For the Petitioner/s	: Mr. Rana Vikram Singh, Adv
	: Mr. Kumar Ravish, Adv
	: Mr. Rohit Kumar, Adv
For the Opposite Party/s	: Mr. Mithlesh Kumar Khare, APP
For the O.P. No. 2	: Mr. Sikandar, Adv
	: Mr. Pramod Kumar Yadav, Adv
	: Mr. Neeraj Kumar, Adv
	: Ms. Pinki Kumari, Adv

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
CAV JUDGMENT

Date : 18-06-2025

Heard learned counsel for the petitioner and

learned counsel for the respondents.

2. The present quashing petition has been preferred to quash the order dated 06.04.2024 passed in Complaint Case No. 2531 (C) of 2008, where learned Sub-Divisional Judicial Magistrate, Patna, rejected the application seeking discharge under Section 245 of the Criminal Procedure Code (in short, Cr.P.C.), where cognizance was



taken for the offences punishable under Sections 341, 323, 504 and 506/34 of the Indian Penal Code.

3. The prosecution story In short, as per the allegations against this petitioner in the complaint case, the complainant has alleged that *inter alia*, that the accused persons came to her residence when her husband was not available, and this petitioner called the complainant from her house and upon reluctance to the complainant, the accused persons forcefully entered into the house and this petitioner caught hold of the hands and dashed the complainant against the wall causing her injury. It is also alleged against this petitioner-accused that on his orders, other accused persons bodily lifted the complainant and in doing so, this petitioner snatched a gold chain from the neck of the complainant, and handed over the same to the accused no 2. It is also alleged that when her mother-in-law protested, she was also thrown on the ground by the accused persons, and she also sustained injuries. It is also alleged that the complainant was taken to the police station and confined to '*Hajat*' and subjected to cruelty. Ultimately, the complainant had alleged commission



of offences under Sections 147, 342, 341, 323, 354, 506, 504, 379, 337, 338, 448 and 34 of the Indian Penal Code.

4. Mr. Rana Vikram Singh, learned counsel appearing on behalf of the petitioner submitted that the petitioner was a public servant posted as the Station House Officer (SHO) of Kankarbagh Police Station during the period in question. He had no prior enmity or any personal differences with the complainant or the other accused and was merely discharging his official duties.

5. It is further submitted that a complaint was filed by the complainant in the year 2008, allegedly driven by malafide intention just to create pressure and harass the petitioner. It is submitted that the complaint was kept pending for years, and only after a superficial enquiry under Section 202 Cr.P.C., the learned Sub Divisional Judicial Magistrate, Patna, took cognizance on 19.07.2012 against the petitioner.

6. Mr. Singh further submitted that no prosecution sanction under Section 197 of Cr.P.C. was obtained either at the stage of cognizance or subsequently, despite the allegations being directly related to the discharge of his official



duties. This omission makes the cognizance itself legally unsustainable.

7. At this stage it would be appropriate to reproduce Section 197 of the Cr.P.C. for the better understanding of the case:-

"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 cognisance 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:"

8. It is further submitted that, apprehending arrest



on account of false implication, the petitioner approached the Court of learned District and Sessions Judge and was granted anticipatory bail. Subsequently, the petitioner surrendered before the learned Trial Court and has since remained compliant, participating diligently in all subsequent proceedings. It is submitted that during the pre-charge stage, the complainant examined five witnesses; however, no incriminating material emerged against the petitioner warranting the framing of charges. The evidence was ultimately closed on 06.08.2019. It is pointed out that even injury report claimed to be issued by Patna Medical College and Hospital (PMCH) does not suggest any injury upon the complainant as alleged, which itself is falsifying the case.

9. It is also submitted that in the original criminal case, a charge sheet was filed against the complainant and her husband on 30.09.2008, and they were later convicted by the learned Judicial Magistrate 1st Class, Patna, on 09.04.2014 under Sections 341 and 323 IPC and sentenced to imprisonment till the rising of the Court. It is submitted that despite the lack of any prima-facie material and the



absence of a reasoned order, the Learned Sub Divisional Judicial Magistrate rejected the discharge application filed by the petitioner, along with a similar application as filed by co-accused Dr. Ajay Kumar, in Complaint Case No. 2531(C) of 2008.

10. While concluding his argument, Mr. Singh submitted that allowing the impugned order to stand would only amount to abusing the process of law. The complaint was baseless and filed with a malicious approach and with ulterior motives, and the petitioner strongly denies the occurrence of any such incident as alleged. It is emphasized that the requirement of prior sanction under Section 197 of Cr.P.C. exists to protect public servants from harassment through vexatious and retaliatory legal proceedings. The failure to obtain such sanction renders the entire complaint and subsequent proceedings liable to be quashed in view of the legal report of the Hon'ble Supreme Court as available through **G.C. Manjunath & Others Vs. Seetaram** reported through **2025 INSC 439** and **D.T. Virupakshappa Vs. C. Subash** reported in **(2015) 12 SCC 231**.



11. Learned counsel appearing on behalf of O.P. No. 2, while opposing the quashing petition submitted that there are sufficient materials against the petitioner to frame a charge but fairly conceded that the petitioner was SHO of Kankarbagh P.S. Case No. 331 of 2008, where the complainant was one of the accused.

12. It would be apposite to reproduce the para no(s). 37 and 38 of the **G.C. Manjunath Case (supra)**, which reads as under:-

37. Turning to the case at hand, there is little doubt that the allegations levelled against the accused persons are grave in nature. Broadly classified, the accusations against the accused persons encompass the following: (1) abuse of official authority by the accused persons in allegedly implicating the complainant in fabricated criminal cases, purportedly driven by malice or vendetta; (2) physical assault and ill-treatment of the complainant by the accused persons, constituting acts of alleged police excess; (3) wrongful confinement of the complainant; and (4) criminal intimidation of the complainant.

38. In the circumstances at hand, we are of the considered opinion that the allegations levelled against the accused persons, though grave, squarely fall within the ambit of "acts done under colour of, or in excess of, such duty or authority," and "acting or purporting to act



in the discharge of his official duty,” as envisaged under Section 170 of the Police Act and Section 197 of the CrPC respectively. This Court, while adjudicating on instances of alleged police excess, has consistently held in **Virupaxappa** and **D. Devaraja**, that where a police officer, in the course of performing official duties, exceeds the bounds of such duty, the protective shield under the relevant statutory provisions continues to apply, provided there exists a reasonable nexus between the impugned act and the discharge of official functions. It has been categorically held that transgression or overstepping of authority does not, by itself, suffice to displace the statutory safeguard of requiring prior government sanction before prosecuting the public servant concerned.

13. It would further be apposite to reproduce para no(s). 5, 6, 7, 8 & 9 of **D.T. Virupakshappa case (supra)**, which reads as under:

“5. The question, whether sanction is necessary or not, may arise on any stage of the proceedings, and in a given case, it may arise at the stage of inception as held by this Court in *Om Prakash v. State of Jharkhand* [*Om Prakash v. State of Jharkhand*, (2012) 12 SCC 72 : (2013) 3 SCC (Cri) 472] . To quote: (SCC p. 94, para 41)

“41. The upshot of this discussion is that whether sanction is necessary or not has to be decided from stage to stage. This question may arise at any stage of the proceeding. In a given case, it may arise at the inception. There may



be unassailable and unimpeachable circumstances on record which may establish at the outset that the police officer or public servant was acting in performance of his official duty and is entitled to protection given under Section 197 of the Code. It is not possible for us to hold that in such a case, the court cannot look into any documents produced by the accused or the public servant concerned at the inception. The nature of the complaint may have to be kept in mind. It must be remembered that previous sanction is a precondition for taking cognizance of the offence and, therefore, there is no requirement that the accused must wait till the charges are framed to raise this plea.”

6. In the case before us, the allegation is that the appellant exceeded in exercising his power during investigation of a criminal case and assaulted the respondent in order to extract some information with regard to the death of one Sannamma, and in that connection, the respondent was detained in the police station for some time. Therefore, the alleged conduct has an essential connection with the discharge of the official duty. Under Section 197 CrPC, in case, the government servant accused of an offence, which is alleged to have been committed by him while acting or purporting to act in discharge of his official duty, the previous sanction is necessary.

7. The issue of “police excess” during investigation and requirement of sanction for prosecution in that regard, was also the subject-matter of *State of Orissa v. Ganesh Chandra Jew* [*State of Orissa v. Ganesh Chandra Jew*, (2004) 8 SCC 40 : 2004 SCC (Cri) 2104] , wherein, at para 7, it has been held as follows:



(SCC pp. 46-47)

“ 7. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection 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. *If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection.* The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the



discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty.”

(emphasis supplied)

8. In *Om Prakash [Om Prakash v. State of Jharkhand, (2012) 12 SCC 72 : (2013) 3 SCC (Cri) 472]* , this Court, after referring to various decisions, particularly pertaining to the police excess, summed up the guidelines at para 32, which reads as follows: (SCC p. 89)

“32. 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 (*K. Satwant Singh [K. Satwant Singh v. State of Punjab, AIR 1960 SC 266 : 1960 Cri LJ 410]*). *The protection given under Section 197 of the Code 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. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection (Ganesh Chandra Jew [State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40 : 2004 SCC (Cri) 2104]*). If the above tests are applied to the facts of the



present case, the police must get protection given under Section 197 of the Code because the acts complained of are so integrally connected with or attached to their office as to be inseparable from it. It is not possible for us to come to a conclusion that the protection granted under Section 197 of the Code is used by the police personnel in this case as a cloak for killing the deceased in cold blood.”

(emphasis supplied)

9. In our view, the above guidelines squarely apply in the case of the appellant herein. Going by the factual matrix, it is evident that the whole allegation is on police excess in connection with the investigation of a criminal case. The said offensive conduct is reasonably connected with the performance of the official duty of the appellant. Therefore, the learned Magistrate could not have taken cognizance of the case without the previous sanction of the State Government. The High Court missed this crucial point in the impugned order.”

Conclusion:

14. Allegation admittedly raised in the background while petitioner and his associate police personnel were discharging their official duty, and therefore, sanction for prosecution was mandatorily required in view of section 197 of the Cr.P.C. Nonetheless, the prolonged pendency of the enquiry for an inordinate period of four years in a complaint case, without substantial progress, is per-se a



matter of serious concern and raises questions regarding the propriety and fairness of the proceedings.

15. In the present case, it is evident that the acts alleged against the accused-petitioner are directly attributable to the discharge of his official duties, specifically in connection with the investigation of Kankarbagh P.S. Case No. 331 of 2008 which was pending against the complainant. It was instituted against the husband of the complainant as well as against the complainant where, after trial, they both were convicted by learned Judicial Magistrate 1st Class, Patna, on 09.04.2014 for the offence punishable under Sections 341 and 323 of the Indian Penal Code.

16. As previously observed, a mere excess or overreach in the performance of official duty does not, by itself, disentitle a public servant from the statutory protection mandated by law. The safeguard of prior sanction under Section 197 of the Cr.P.C. cannot be disregarded merely because the acts alleged may appear to go beyond the strict bounds of official duty, so long as they are reasonably connected to the discharge of official functions. The allegation



leveled against accused/petitioner also does not appear grave in nature, and the same cannot be said to exceed the limit; even the injury report does not support the allegation.

17. Accordingly, in view of aforesaid discussions, particularly by taking a guiding note of **G.C. Manjunath Case (supra) [para nos.-37 & 38]**, and also of **D.T. Virupakshappa case (supra), [para-8]**, the impugned order rejecting discharge prayer dated 06.04.2024 passed in Complaint Case No. 2531 (C) of 2008 *qua* petitioner is hereby set-aside/quashed, with all its consequential proceedings, if any.

18. Accordingly, above mentioned petition stand allowed.

19. Let a copy of this judgment be sent to the learned trial court/concerned court forthwith.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	AFR
CAV DATE	14.05.2025
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