

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.60841 of 2024

Arising Out of PS. Case No.-13373 Year-2014 Thana- BEGUSARAI COMPLAINT CASE
District- Begusarai

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Harpreet Kaur, Wife of Manavjit Singh Dhillon, R/O 17/1322 street
No ,7 Kartar Nagar, Chheharta ,District -Amritsar ,Punjab
... .. Petitioner

Versus

1. The State of Bihar
 2. Abhinav Kumar Akela, S/O Ashok Kumar, Resident of Village-
Pahsara, P.S.-Navkothi Distt-Begusarai.
... .. Opposite Party
- =====

With

CRIMINAL MISCELLANEOUS No. 62600 of 2024

Arising Out of PS. Case No.-13373 Year-2014 Thana- BEGUSARAI COMPLAINT CASE
District- Begusarai

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Rajkishor Singh S/o- Vijay Singh Resident Of Purab Sarai P.s - Kotwali
District- Munger
... .. Petitioner

Versus

1. The State of Bihar
 2. Abhinav Kumar Akela Son of Sri Ashok Kumar Village- Pahsara Ps-
Navkothi Dist- Begusarai
... .. Opposite Party
- =====

Appearance :
(In CRIMINAL MISCELLANEOUS No. 60841 of 2024 & its analogous matters)
For the Petitioner/s : Mr.Rana Vikram Singh, Advocate
Mr.Saket Tiwary, Advocate
For the Opposite Party/s : Mr.Navin Kumar Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
C.A.V. JUDGMENT

Date : 16-04-2025

Heard Mr. Rana Vikram Singh, learned counsel
appearing for the petitioner(s) and Mr. Navin Kumar Pandey,
learned A.P.P. for the State.



2. Both aforesaid petitions preferred under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the “Cr.P.C.”) for quashing the order dated 29.04.2024 passed in connection with Complaint Case No. 13373(C) of 2014, whereby learned Magistrate has been pleased to take cognizance of the offences punishable under Section 166, 323, 504 and 506/34 of the Indian Penal Code (in short the “I.P.C.”) and issued summon to all the accused persons including the petitioner(s).

3.The brief case of the prosecution, as it appears from complaint petition, is that a one day ‘Begusarai Bandh’ was called for by the ‘*Aparadh Virodhi Sangharsh Samiti*’ on 28.03.2014, as to protest the occurrence of kidnapping of three childrens in Begusarai and killing of one child namely, Piyush after his kidnapping. The aforesaid ‘Bandh/strike’ claimed to be supported by the civil societies and business organizations beside two district advocate associations of Begusarai also by getting themselves away from the court work. It appears from the complaint that aforesaid call for strike was duly informed in writing by Suman Kumar, the



convener of “*Aparadh Virodhi Sangharsh Samiti*” to the Sub-Divisional Officer, Begusarai and it was also published in various newspapers in advance. Narrating further, when the protesters on the day of strike i.e. on 28.03.2014, while marching towards Power House Chowk, Begusarai, accused A2 namely, Raj Kishore Singh (Deputy Superintendent of Police/petitioner), accused A3 namely, Satya Prakash Mishra (Sadar S.D.O.) and accused A4 namely, Niranjana Kumar (Circle Officer) came along with armed forces and took away the complainant along with fellow protesters/witnesses namely, Amrendra Kumar, Zafir Khan, Anil Kumar Anjan, Rupak Kumar, Chandradeo Verma, Sikander Rai, Pushkar Prasad Singh to the Town Thana. After half an hour of that, other protesters namely, Mukund Kumar, Sujeet Kumar and Murari Kumar were also brought to the Town Thana. At around 12:00 P.M., accused No. 1 namely, Harpreet Kaur, the then Superintendent of Police, Begusarai (petitioner) reached the Town Thana and started abusing them. When the detained protesters, as aforesaid, stated that they were only peacefully protesting against the up-coming crimes and



criminals, accused A1, A2, A3, A4 and A5 namely, Meghnath Singh, started abusing and assaulting them. Petitioner (A1) assaulted Zafir Khan and Rupak Kumar, who was physically disabled person (being differently abled) by using rod and also inflicted repeated blows on the back, buttock and legs. Subsequently, A1, Harpreet Kaur (petitioner) kicked the testicles of Zafir Khan with her boots causing bleeding from his penis. Accused A2, DySP, Raj Kishore Singh assaulted Mukund Kumar by using his police rod causing fracture of his hand. Accused A4 namely, Niranjan Kumar torn the shirt of the complainant leading to loss of Rs. 1000/-.

3.1. The complainant further alleged through complaint that at around 8:00 P.M., the detained protesters were brought before the learned Chief Judicial Magistrate, Begusarai at his residential office for remand after about eight hours of the occurrence (registered as Town P.S. Case No. 221/2014), where the accused persons including petitioners threatened protesters as not to disclose before the learned C.J.M. about the alleged assault and injuries. Despite of aforesaid threat, the detained protesters had shown their



injuries to the learned C.J.M., who instructed for proper treatment vide order dated 28.03.2014, but they were not treated, despite of direction of the learned C.J.M., Begusarai. They were only treated upon an application of jail doctor and jail superintendent, only when the medical condition of Zafir Khan, Rupak Kumar, Mukund Kumar, Sujit Kumar and Murari Kumar deteriorated and a medical board was formed on 07.04.2014 for their treatment upon direction of learned C.J.M. vide order dated 02.04.2014. The detained protesters were also threatened with their life and false implication with criminal case by the accused persons.

4. The list of date of events in the present complaint proceeding can be summarized, as to how in lethargic and mechanical manner cognizance was taken against the petitioner(s) after about ten years of the alleged occurrence, same is as under:

Date	Particulars
14.04.2014	Complaint case No. 13373 of 2014 filed by the complainant namely, Abhinav Kumar Akeka.
06.06.2014	Statement of complainant namely, Abhinav Kumar Akela was recorded.
24.06.2014	Statement of complainant's witness namely, Amrendra Kumar was recorded.
10.07.2014	Statement of complainant's witness namely, Zafir



	Khan was recorded.
25.07.2014	Statement of complainant's witness namely, Anil Kumar Anjan was recorded.
21.10.2014	Statement of complainant's witness namely, Rupak Kumar was recorded.
22.11.2014	Statement of complainant's witness namely, Sujit Kumar was recorded.
12.02.2014	Statement of complainant's witness namely, Murari Kumar was recorded.
28.07.2016	Statement of complainant's witness namely, Chandra Deo Verma was recorded.
22.12.2016	Statement of complainant's witness namely, Mukund Kumar was recorded.

5. On 20.02.2017, a petition was filed on behalf of the complainant, wherein it was prayed that medical report of some witnesses of the complaint case was attached with the records of FIR being Begusarai Town P.S. Case No. 221 of 2014, which was pending before the court of Shri Pushpendra Kumar Pandey, the then learned Judicial Magistrate 1st Class, at Begusarai, may be called for. The learned Magistrate allowed the petition filed by the complainant and called for the same from the court of Shri Pushpendra Kumar Pandey, the then learned Judicial Magistrate, 1st Class at Begusarai. The record of the complaint case was kept pending for want of said medical report till 23.03.2018. Thereafter on 13.06.2018, a petition was filed along with a list of



documents on behalf of the complainant and case was then posted for hearing on the said petition.

6. The complaint case was then kept pending for hearing from 13.06.2018 till 01.08.2018, and thereafter, the complaint case was transferred from the court of learned CJM, Begusarai to the court of Shri Ravi Ranjan, the then Judicial Magistrate, 1st Class, Begusarai for trial and disposal, but the complainant remained absent and was not taken any steps towards proceeding of the complaint case from 04.08.2018 till 19.04.2024. Subsequently, on 29.04.2024, learned Judicial Magistrate, 2nd Class, through impugned order dated 29.04.2024, ordered to take cognizance of the offences punishable under Sections 166, 323, 504 and 506/34 of the I.P.C. and issued summons to all the accused persons of the complaint including both petitioners.

7. Mr. Rana Vikram Singh, learned counsel appearing for the petitioner submitted that petitioner being the head of the district police as Superintendent of Police, Begusarai, falsely implicated with present case out of ulterior and oblique motive, with malicious approach, while petitioners were



discharging their official duty along with other police personnels on the date of alleged occurrence.

8. It is submitted that the complaint is baseless and concocted. Mr. Singh submitted that alleged occurrence is said to have been committed on 28.03.2014, but the present complaint was filed with an unexplained delay of 15 days i.e. on 16.04.2014, clearly suggests that same was lodged as an afterthought to counter the case, which was lodged on 28.03.2014, against the complainant and witnesses of the complaint petition, as Begusarai Town P.S. Case No. 221/2014 for the offences punishable under Sections 147, 149, 188, 353, 435, 332, 333, 427, 323 & 341 of the I.P.C., as the complainant and his associates blocked the road during strike as to make strike successful and were engaged in getting the shop closed forcibly and also found assaulting the pedestrians, and when it was objected, scuffled with the police personnel, where police personnels, used a mild force as it was essentially required to check the occurrence.

9. It is further submitted by Mr. Singh that the demonstration was not a peaceful protest rather it was a



violent demonstration endangering the safety of common people. No prior permission was taken by the complainant or anyone for aforesaid demonstration, which was absolutely prohibited under the Model Code of Conduct, already in vogue due to “2014 general election”. It is submitted that the complainant and witnesses are interested persons being accused and co-accused of Begusarai Town P.S. Case No. 221/2014.

10. It is further submitted by Mr. Singh that Section 197 of the Cr.P.C. provides a bar upon the court to take cognizance in a case wherein it is alleged that the act done or purported to be done in discharge of an official duty except with the previous sanction, but same was completely ignored by the learned trial court. It is pointed out that in view of same, impugned cognizance order is without any foundation and, as such, the impugned order is covered under the legal maxim “*sublato fundamento cadit opus*” meaning thereby that if foundation being removed, structure would fall automatically.

11. While argument further, it is submitted by Mr.



Singh that the injury report on which the learned trial court has placed reliance, appears failed to appreciate that medical of injured persons was conducted upon the report of ASI of Town Police Station, Begusarai, where, upon the medical examination of injured Zafir Khan, only two injuries were noticed, one was pain in right hand and other was pain in whole body and, therefore, allegation raised through complaint that this petitioner (A-1) assaulted on his testicles appears *prima-facie* false on its face, which was said only to aggravate the allegation to settle the personal vengeance.

12. It is further submitted that upon medical examination of Rupak Kumar only two complain was explained before the doctor, which were pain in both hands and pain in the whole body. The report was obtained on the basis of oral complain of injured and, therefore, the malicious approach and oblique motive, cannot be denied. It is also submitted that learned trial court, while taking cognizance, committed mistake by ignoring the fact that by the time the medical board was constituted, the complainant and other alleged injured persons had spent a considerable time in



custody making the reasons of injury un-ascertainable, which can be gathered with any prudence at least to initiate a criminal prosecution like present against dedicated police officers like petitioner, engaging herself to maintain law and order in the district, while Model Code of Conduct was under operation in view of General Election, 2014.

13. It is also submitted that complainant had a political background and also found accused of Begusarai Town P.S. Case No. 212/2014 instituted for the offences punishable under Sections 188/153 of the I.P.C., section 126 of the Representation of People Act and provisions of Bihar Loudspeaker and Control Act, 1955 and also of Begusarai Town P.S. Case No. 213/2014 registered for the offences under Sections 144, 188, 353, 332, 333, 153 of the I.P.C. Both these cases upon investigation found true against him for which charge-sheet has already been submitted. It is pointed out that the nature of accusation, as raised through above two cases, suggests on its face that complainant is habitual offender, breaches peace and thus by posing a challenge to law and order enforcing agency/police.



14. While concluding argument, Mr. Singh submitted that the sword of prosecution hanging on the petitioner since last ten years, where she was summoned by the court after inordinate delay of ten years, which in itself may be the sole ground to quash the present proceedings and, moreover, the impugned order was passed by the second class Magistrate, where entire enquiry witnesses was examined by learned Judicial Magistrate, 1st Class, and the Magistrate who passed the order not appears to be specially empowered by learned CJM in view of section 190(2) of the Cr.P.C. as to take cognizance against the petitioner, where the detailed impugned cognizance order appears to be a mini trial, instead of finding a *prima-facie* case because certain facts, which be taken into consideration at the time of trial, was taken into consideration for securing cognizance order.

15. In view of aforesaid submission, Mr. Singh submitted that continuing present criminal proceeding before the court below against both petitioners, who is the head of Police Administration, being Superintendent of Police, an IPS Officer and also as Deputy Superintendent of Police (Dy.S.P.)



having unimpeachable service record would only amount to abuse the process of court of law and, therefore, same be fit to be set-aside/quashed in view of legal report of Hon'ble Supreme Court as available through **Neeharika Infrastructure Private Limited Vs State of Maharashtra & Others** reported through **(2021) 19 SCC 401** and **D.T. Virupakshappa Vs. C. Subash** reported in **(2015) 12 SCC 231**.

16. Despite effective service of notice, opposite party no. 2 failed to join the proceeding. Mr. Navin Kumar Pandey, learned A.P.P. for the State is present.

17. It would be apposite to reproduce the para nos. **12.4 and 57** of the ***Neeharika Infrastructure Private Limited Case (supra)***, which reads as under:-

12.4. In Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426], it is observed and held by this Court that save in exceptional cases where non-interference would result in miscarriage of justice, the court and the judicial process should not interfere at the stage of the investigation of offence. It is further observed that in a routine case where information of an offence or offences has been lodged, investigation commenced, search and seizure followed and suspects arrested, the resort to the unusual procedure of oral applications and oral appeals and interim stay order thereon would have



the effect of interfering and staying the investigation of offences by the investigating officer performing statutory duty under CrPC.

"57. *From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:*

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr. P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is,



however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr. P.C.

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr. P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this



Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr. P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.”

18. It would further be apposite to reproduce para 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.”

19. It would be further apposite to reproduce the impugned cognizance order dated 29.04.2024, for better understanding of the case, which reads as under:

**“IN THE COURT OF MAYANK KUMAR PANDEY
JUDICIAL MAGISTRATE SECOND CLASS, BEGUSARAI
Complaint Case No. 13373(C) of 2014
Abhinav Kumar Akela and Ors. Vs. Harpreet Kaur & Others
Date of Order : 29.04.2024**

Today this file is put up before the Court for order. The complainant, Abhinav Kumar Akela, has lodged this complaint against Harpreet Kaur and four other accused persons. The Ld. CJM took cognizance of the offences punishable under sections 166, 323, 325, 341, 342, 307, 427 and 389/34 of I.P.C, 1860 and makeover the same u/s 192 Crpc.and the case was later on transferred to this court by Order No. 08/24 of the Ld. District & Sessions Judge for further proceedings.

Case of the complainant

The story of the complainant is that a one-day Begusarai Bandh was called for by the Aparadh Virodhi Sangharsh Samiti on 28.03.2014 to protest against the kidnapping of three children in Begusarai and killing of one child Piyush post his kidnapping. The call for one day bandh or strike was supported by the civil societies and business organizations. The two district advocates’ associations of Begusarai had also given their support to the bandh and kept themselves away from all kinds of legal work. The call for strike was duly informed in writing by Suman Kumar, the



convenor of Aparadh Virodhi Sangharsh Samiti, to the Sub-Divisional Officer, Begusarai and the news of strike was also already published in various newspapers.

When the protesters were marching towards Power House Chowk Begusarai, accused A2-DSP. Rajkishore Singh, A3-Sadar SDO Satyaprakash Mishra and A4-Circle Officer. Niranjana Kumar came along with armed forces and took the complainant along with fellow protesters/witnesses namely Amrendra Kumar, Zafir Khan, Anil Kumar Anjan, Rupak Kumar, Chandradeo Verma, Sikandar Rai, Pushkar Prasad Singh to the town thana. After half an hour, other protesters Mukund Kumar, Sujeet Kumar and Murari Kumar were also brought to the town thana.

At around 12 PM, accused A1-SP Begusarai, Harpreet Kaur reached the town thana and started hurling abuses at them. When the detained protesters stated that they were only peacefully protesting against the crime and criminals, accused A1, A2, A3, A4 and accused A5-Meghnath Singh started abusing and beating them. Accused A1-Harpreet Kaur beat up Zafir Khan and Rupak Kumar, who was physically disabled, using police rod and inflicted numerous blows on their back, buttock and legs. Subsequently, accused A1 Harpreet Kaur kicked the testicles of Zafir Khan with her boots leading to bleeding from penis of Zafir Khan. Accused A2-DSP Rajkishore Singh beat up Mukund Kumar using his police rod leading to his hand fracture. All the accused persons brutally assaulted the detained protesters. Accused A-4 Niranjana Kumar tore down the shirt of the complainant leading to loss of Rs. 1000.

At around 8 pm, the detained protesters brought before the house of learned CJM for remand after 8 hours of incident in PS Case No- Nagar 221/2014 and they had threatened the protesters not to tell the Ld. CJM about the injuries. The detained protesters showed their injuries to the learned CJM and despite the instructions for proper treatment vide order sheet dated 28-03-2014 of Ld.CJM Begusarai, the injured protesters were not treated as per directions of Ld. CJM. They were only treated upon an application of jail doctor and jail superintendent when the medical condition of Zafir Khan, Rupak Kumar, Mukund Kumar, Sujit Kumar and Murari Kumar deteriorated and a medical board was formed on 07.04.2014 for their treatment only upon directions from the Ld.CJM vide order dated 02-04-2014. The detained protesters were threatened with their life and institution of false cases



against them by the accused persons.

Discussion of the Materials/ Evidence adduced during inquiry:

The Judicial test which a Court ought to examine on the point that whether a Summoning order is to be passed under section 204 Cr.P.C, 1973 or a Dismissal order under Section 203 Cr.P.C, 1973 is to find out whether there is sufficient ground for proceeding in the case or not.

The court examined the complainant on oath under section 200 CrPC, 1973 and eight inquiry witnesses namely IW-1 Amrendra Kumar, IW-2 Zafir Khan, IW-3 Anil Kumar Anjan, IW-4 Rupak Kumar, IW-5 Sujit Kumar, IW-6 Murari Kumar, IW-7 Chandrdev Verma and IW-8 Mukund Kumar were examined by the court.

Upon perusal of the complaint petition, S/A of the complainant and statement of the inquiry witnesses, relevant order sheets of Ld. CJM Begusarai in Nagar 221/2014 following facts appear:

* The complainant in his S.A. supported the date, time and place of incident. He has fully supported the allegations made against the all accused persons in the complaint petition.

* IW-1, Amrendra Kumar, said that he along with other protesters were arrested by the police. The accused persons hurled abuses at them and they were brutally beaten up and assaulted by the accused persons in police custody. He has also supported all the allegations made against the accused persons in the complaint petition.

* IW-2, Zafir Khan, supported the story of the complaint. He also stated that he was kicked on his testicles by the accused A1-Harpreet Kaur, He also lost his consciousness and fell down.

* IW-3, Anil Kumar Anjan, also supported the story of the complaint. He stated that accused A5 -Meghnath Singh, Nagar Thana munshi, slapped him incessantly leading to internal injuries in his ears.

* IW-4, Rupak Kumar, IW-5, Sujeet Kumar, IW-6 Murari Kumar, IW-7 Chandradev Verma and IW-8 Mukund Kumar also fully and without any significant contradiction supported the story of the complaint.

The complainant in his SA and all the inquiry witnesses in their depositions have supported the allegations made against the accused persons. The court does not find any substantial contradiction in their versions, nor is there any hint of false or concocted story made up against the accused



persons. On the contrary, in the FIR no 221/2014 dated 28-03-2014 lodged by A-4 Niranjan Kumar against the complainant and witnesses, it was alleged that only slight and immediate force was used for arrest around 11 am but the injury report by the medical board clearly highlights the injuries on the arrested persons namely Zafir Khan, Rupak Kumar, Mukund Kumar, Sujit Kumar and Murari Kumar caused in the custody and during the period of arrest that certain injuries are not simple and caused by hard and blunt substance. Thus, in the present case there appears to be more than prima-facie grounds available on the record to proceed against all accused persons mentioned in the complaint petition.

Why sanction to prosecute is not required in this case?

The court is aware that the accused persons are police officials and courts should be circumspect in summoning public servants. Section 197 of the CrPC requires previous sanction from the government to prosecute public servants. However, where the acts of a public servant exceeds his lawful authority within the confines the requirement of previous sanction from the Hon'ble Supreme Court and Hon'ble Patna High Court have laid down numerous judgment on this point. In a very recent judgment by the Hon'ble Supreme Court in *Shadakshari v. State of Karnataka, (2024) SCC OnLine SC 48*, it has been held that "this court has been consistent in holding that Section 197 CrPC does not extend its protective cover to every act or omission of a public servant while in service. It is restricted to only those acts or omissions which are done by public servants in the discharge of official duties." By no stretch of imagination, inflicting injuries and torture on the arrested persons be held as acts in the discharge of official duties. Thus, in compliance of the Hon'ble Supreme Court, the court does not find any need for previous sanction of the government in this case.

Also, in *Jitendra Kumar v State of Bihar, (2019) 4 PLJR 1128*, delivered by Hon'ble Mr. Justice Ashwini Kumar Singh of Patna High Court, held that "taking the accused in police custody and mercilessly assaulting him with hard and blunt substance in police lock-up in the name of custodial interrogation, by no stretch of imagination can be said to be an act either in discharge of official duty or in purported discharge of official duty."

Thus, upon perusal of complaint petition, S/A of the



complainant, statement of the inquiry witnesses, and the case record, the court is of the opinion that there is sufficient material available on record to proceed further as a prima facie case is made out under sections 166, 323, 504 and 506/34 of I.P.C, 1860 to summon the accused persons mentioned in the complaint petition.

Accordingly, complainant is directed to file necessary requisites positively within seven days from today. Thereafter, office is directed to issue summons against the accused persons namely **1-Harpreet Kaur, 2-Rajkishore Singh, 3- Satyaprakash Mishra, 4-Niranjan Kumar and 5- Meghnath Singh.**

Put up on 29-05-2024 after filing of requisites by the complainant.

JM II
Begusarai"

20. Upon perusal of record and arguments as canvassed by learned counsel appearing for the parties, it appears that the occurrence took place on 28.03.2014, the day on which the Model Code of Conduct was in operation, issued by Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi-110001 through its Notification No. 437/6/1/2014-CC&BE dated 5th March 2014, with immediate effect. Admittedly, the petitioner on the alleged date of occurrence was the Superintendent of Police, Begusarai having responsibility to maintain the law and order situation, where complainant and its associates admittedly called for a strike on the issue of law and order. In support of peaceful march, as claimed by complainant, no permission was given



by the local administration as complaint suggest only intimation. The complainant and his associates turns violent during their protest and for that Begusarai Town P.S. Case No. 221/2014 was lodged, where other complainant witnesses are also arrayed as an accused. Admittedly this complaint was filed after 15 days of the occurrence and also after lodging of the aforesaid police case against complainant. The complainant almost with similar accusation arrayed as an accused in Begusarai Town P.S. Case Nos. 212/2014 and 213/2014. No doubt, the court is aware about the position of law that at this stage the defence version of accused cannot be looked into, but simultaneously, this Court is also aware about the legal position that the documents, which is of sterling in nature, cannot be ignored. Reference can be taken from the legal report of Hon'ble Apex Court as available through **State of Orissa Vs. Debendra Nath Padhi** reported in **AIR 2005 SC 359**.

21. The petitioners and associate police officials in view of Model Code of Conduct were duty bound to be more vigilant to deal any unwarranted situation. The injury report,



as discussed through impugned order, suggests only bodily pain and pain in hand of injured Zafir Khan, *prima-facie* negating the version of the complainant that he was assaulted on his penis by petitioner causing bleeding therefrom. The allegation, as raised, appears *prima-facie* with ulterior and oblique motive in view of afore-discussed background which was brought with malicious approach against the petitioner as to counter the criminal case lodged against him by police, for their violent protest on 28.03.2014.

22. Allegation admittedly raised in the background, while petitioner and her associates police personnels were discharging their official duty, and therefore, sanction for prosecution was mandatorily required in view of section 197 of the Cr.P.C. Nonetheless to say that continuation of enquiry for long ten years in complaint case in itself an eyebrow raising event.

23. The nature of injury, as alleged through complaint, *prima-facie* not suggesting that the police personnels including the petitioners were exceed the limit particularly in view of strike/demonstration when Model Code



of Conduct was in practice due to General Election, 2014.

24. In view of aforesaid discussions, particularly by taking a guiding note of **Neeharika Enterprises case (supra)**, and also of **D.T. Virupakshappa case (supra)**, **[para-8]**, the impugned cognizance order dated 29.04.2024 passed in Complaint Case No. 13373(C) of 2014 *qua* petitioners is hereby set-aside/quashed.

25. Accordingly, both above mentioned petitions stand allowed.

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

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	20.03.2025
Uploading Date	16.04.2025
Transmission Date	16.04.2025

