

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10178 of 2016

Arising Out of PS. Case No.-12912 Year-2014 Thana- BEGUSARAI COMPLAINT CASE
District- Begusarai

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Smt. Rachna Sinha @ Archana Singh Wife of Sri Vivek anand and Daughter
of Sri Mithilesh Kumar Sinha, Resident of Mohalla - Bekapur, Police Station
- Kotwali, District - Munger, the then c.D.P.O., Nawkothe, Begusarai Accused.
... .. Petitioner/s

Versus

1. The State Of Bihar
2. Subodh Kumar Paswan, Son of Chhote Lal Paswan, C/o Ram Ishwar
Paswan, Choukidar, Naokothi P.S., Resident of Village and P.O. Razakpur,
Ward No.12, Near Harijan Choupal, P.S. - Nawkothe, District - Begusarai.
... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Arvind Kumar Tewary, Advocate Mr. Akanksha Verma, Advocate
For the Opposite Party/s :		Dr. M.K.Gautamapp, APP

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CORAM: HONOURABLE MR. JUSTICE PRAVEEN KUMAR
ORAL ORDER

14 24-07-2026 Heard learned counsel for the petitioner and learned
counsel for the State. Despite several opportunities given to
Opposite Party No.2 and even after valid service of notice, the
complainant did not choose to represent himself before this
Court.

2. The petitioner has filed this application for
quashing of the order dated 20.08.2014, passed in Complaint
Case No. 12912 of 2014, whereby cognizance has been taken
against the petitioner for the offences punishable under Sections
323, 427 and 504 of the Indian Penal Code by the learned
Judicial Magistrate-1st Class, Begusarai.

3. As per the allegation, the complainant objected to
the petitioner, who at the relevant time was Child Development



Project Officer, Nawkothi, against the appointment of Angarwadi Sevika of one Sajani Devi in place of his wife, Manisha Devi and had also raised objection that the selection of Sajani Devi was not as per rules. It is further alleged that this petitioner abused the complainant by caste name and asked her associates to assault the complainant, whereafter this petitioner along with co-accused Naresh Shukla started assaulting the complainant and also abused the complainant with caste name and forced the complainant to leave the place. It has further been alleged that co-accused Nilesh Jha took altogether Rs. 235/- from the pocket of the complainant and also tore his cloth worth Rs. 200/-.

4. Learned counsel for the petitioners has submitted that the allegation is false and concocted. It has further been submitted that the petitioner is a public servant and on the alleged date and time of occurrence, she was not in her office which is the place of occurrence, but actually she had gone for inspection of the different Anganwadi Centres, such as Anganwadi Centre Nos. 5, 6, and 9 which is clear from the log book and inspection reports which are annexed as Annexure-2 and 2-A. It has further been submitted that the complainant was aggrieved with non-selection of his wife, but actually the wife



of the complainant was less experienced and the petitioner selected co-accused Rajani Devi as per the rules and guidelines prescribed for the appointment of Anganwadi Sevika. It has further been submitted that if the complainant or his wife was aggrieved by the selection process then they would have approached before the concerned authorities and not by filing the present complaint with false allegations, using it as a means of weapon of harassment. It has further been submitted that although there is allegation of abusing the complainant by caste name, but the learned Magistrate finding the case to be false and did not take cognizance under the provisions of SC/ST Act. It has further been submitted that the present case against the petitioner is attended with malice, personal vendetta and to spite personal score.

5. Learned counsel for the petitioner has placed reliance upon a judgment of the Hon'ble Supreme Court in the case of **State of Haryana vs. Bhajan Lal**; reported in **1992 Supplementary (1) SCC Page 335**.

Learned counsel for the petitioner has further placed reliance on another judgment of the Hon'ble Supreme Court in the case of **Suneeti Toteja vs. State of Uttar Pradesh & Another** reported in **2025 INSC 267** and has referred to



paragraph nos. 25, 26 and 27, which are reproduced hereinbelow :-

“25. For the sake of convenience, the provisions of Section 197 Cr.P.C. are reproduced hereinunder :-

“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 cognizance of such offence except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013—

(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:

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression “State Government” occurring therein, the expression “Central Government” were substituted.

Explanation.—For the removal of



doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB or section 509 of the Indian Penal Code (45 of 1860).

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of subsection (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that subsection will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

(3A) Notwithstanding anything contained in subsection (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of



the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991 (43 of 1991), receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.”

*26. The object and purpose of the aforesaid provision was recently reiterated by this Court in the case of **Gurmeet Kaur vs. Devender Gupta, 2024 SCC OnLine SC 3761**, which reads as follows:*

“22. ... the object and purpose of the said provision is to protect officers and officials of the State from unjustified criminal prosecution while they discharge their duties within the scope and ambit of



their powers entrusted to them. A reading of Section 197 of the CrPC would indicate that there is a bar for a Court to take cognizance of such offences which are mentioned in the said provision except with the previous sanction of the appropriate government when the allegations are made against, inter alia, a public servant. There is no doubt that in the instant case the appellant herein was a public servant but the question is, whether, while discharging her duty as a public servant on the relevant date, there was any excess in the discharge of the said duty which did not require the first respondent herein to take a prior sanction for prosecuting the appellant herein. In this regard, the salient words which are relevant under subsection (1) of Section 197 are “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 cognizance of such offence except with the previous sanction”. Therefore, for the purpose of application of Section 197, a sine qua non is that the public servant is accused of any offence which had been committed by him in “discharge of his official duty”. The said expression would clearly indicate that Section 197 of the CrPC would not apply to a case if a public servant is accused of any offence which is de hors or not connected to the discharge of his or her official duty. However, there are a line of judgments which have considered this expression in two different ways which we shall now advert to.”

27. In *Amod Kumar Kanth vs. Association of Victim of Uphaar Tragedy*, 2023 SCC Online SC 578 disposed of by a



three-Judge Bench of this Court on 20.04.2023, of which one of us (Nagarathna, J.) was a member, it was observed that the question of cognizance being taken in the absence of sanction and thereby Section 197 of the CrPC being flouted is not to be conflated and thereby confused with the question as to whether an offence has been committed. The salutary purpose behind Section 197 of the CrPC is protection being accorded to public servants. In paragraphs 28, 29 and 31, it was observed as under:

“(28) The State functions through its officers. Functions of the State may be sovereign or not sovereign. But each of the functions performed by every public servant is intended to achieve public good. It may come with discretion. The exercise of the power cannot be divorced from the context in which and the time at which the power is exercised or if it is a case of an omission, when the omission takes place.

(29) The most important question which must be posed and answered by the Court when dealing with the argument that sanction is not forthcoming is whether the officer was acting in the exercise of his official duties. It goes further. Even an officer who acts in the purported exercise of his official power is given the protection under Section 197 of the Cr.P.C. This is for good reason that the officer when he exercises the power can go about exercising the same fearlessly no doubt with bona fides as public functionaries can act only bona fide. In fact, the requirement of the action being bona fide is not expressly stated in Section 197 of the Cr.P.C., though it is found in many other statutes protecting public



servants from action, civil and criminal against them.

x x x x

(31) One ground which has found favour with the High Court against the appellant is that the appellant, according to the High Court, could raise the issue before the Magistrate.

(32) Here we may notice one aspect. When the question arises as to whether an act or omission which constitutes an offence in law has been done in the discharge of official functions by a public servant and the matter is under a mist and it is not clear whether the act is traceable to the discharge of his official functions, the Court may in a given case tarry and allow the proceedings to go on. Materials will be placed before the Court which will make the position clear and a delayed decision on the question may be justified. However, in a case where the act or the omission is indisputably traceable to the discharge of the official duty by the public servant, then for the Court to not accept the objection against cognizance being taken would clearly defeat the salutary purpose which underlies Section 197 of the Cr.P.C. It all depends on the facts and therefore, would have to be decided on a case-to-case basis.”

It was concluded that learned Magistrate had erred in the facts of the said case in taking cognizance against the appellant therein contrary to the mandate of Section 197 of the CrPC and on that short ground alone, the appeal was allowed and the proceedings challenged in Section 482 CrPC were quashed. However, it was observed that the same would not stand in



the way of the competent authority taking a decision in the matter and/or granting sanction for prosecuting the appellant therein in accordance with law.”

6. Learned counsel for the petitioner has further submitted that none of the ingredients of offence are made out against the petitioner in which cognizance has been taken against him. It has further been submitted that the learned Magistrate took cognizance against the petitioner without applying judicial mind rather the same was taken in a mechanical manner. It has further been submitted that before taking cognizance, no sanction has been taken as provided under Section 197 of the Cr.P.C. and the entire process of inquiry cannot be done in absence of sanction by the competent authority.

7. Learned counsel for the State opposed the prayer of the petitioner.

8. Heard the learned counsel for the parties and perused the records.

9. Considering the facts and circumstances of the case as well as the fact that the present prosecution appears to be an abuse of process of Court and the same is vexatious in nature. Accordingly, the order taking cognizance dated 20.08.2014 passed by the Learned Judicial Magistrate-1st Class, Begusarai



is hereby quashed with respect to the petitioner.

10. This application is allowed.

(Praveen Kumar, J)

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