

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.1087 of 2014

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Anita Kumari, Wife of Sri Gautam Kapoor, Resident of Village -
Gonawan, P.S./P.O. - Nawada, Distt. - Nawada, presently residing
at Mohalla - Shiv Nagar, Nawada, P.S./Distt. - Nawada, Member,
Zila Parishad, Nawada.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Ramji Singh, D.D.C.-Cum-Chief Executive Officer, Zila Parishad,
Nawada, Son of Late Bhagwat Singh, Resident of Village - Basauli,
P.O. - Titidha, P.S. - Rajapakar, Distt. - Vaishali.
3. Chandeshwar Prasad Yadav, District Engineer, Zila Parishad,
Nawada, Son of Late Ritlal Singh, Resident of Village - Simri, P.S.
- Bihta, Distt. - Patna.
4. Kapildeo Kumar Sinha, Head Clerk, Zila Parishad, Nawada, Son
of Late Amrit Mahton, Resident of Village - Supaul, P.S. -
Akbarpur, Distt. - Nawada.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Sidhendra Narayan Singh, Adv.

For the Opposite parties : Mr. Arun Kumar Pandey, APP

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

ORAL JUDGMENT & ORDER

Date: 31-03-2017

The petitioner, at the relevant point of time, was
Member of Zila Parishad, Nawada. She is aggrieved, in the
present criminal revision application, by an order, dated



10.10.2014, passed by the learned Sessions Judge, Nawada, in Cr. Revision No. 32 of 2013, whereby, he has set-aside an order, taking cognizance, dated 27.04.2013, passed by learned Chief Judicial Magistrate, Nawada, in Complaint Case No. 1354 of 2012. The said complaint case, making allegation of offence by the opposite parties Nos. 2 to 4, punishable under Sections 420, 188, 185, 179, 171(e), 169, 167, 166 and 120B of the Indian Penal Code (*hereinafter referred to as the **I.P.C.***), was filed by the petitioner. By the order, dated 27.04.2013, the learned Chief Judicial Magistrate, Nawada, had taken cognizance of the offences punishable under the same very sections of the I.P.C..

2. Learned Sessions Judge, Nawada, by the impugned order, dated 10.10.2014, has set-aside the order, taking cognizance, dated 27.04.2013, and summoning the accused persons, considering the merits of the allegations made in the complaint petition and in absence of requisite sanction under Section 197 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as the **Cr.P.C.***).

3. Learned counsel for the petitioner and learned Additional Public Prosecutor, appearing on behalf of the State of Bihar, have been heard at length and the matter has, accordingly, placed for passing final order.

4. In order to appreciate the controversy and the dispute involved in the present matter, it would be useful to



take note of the allegations made in the complaint petition by the petitioner, which is as under:-

(i) Settlement of Dhamaul Bus Stand, situated within the area of the petitioner's constituency from where she is elected as Member of Zila Parishad, was already finalized in an open bid filled on 15.06.2012. The settlement was to be implemented by the Deputy Development Commissioner-Cum-Chief Executive Officer, Zila Parishad, Nawada and the District Engineer, Zila Parishad, Nawada. In the said bid, five (5) persons, namely, Naresh Yadav, Kuldip Yadav, Ranbir Yadav, Yadunandan Yadav and Awadhesh Yadav, had participated, wherein, Kuldip Yadav was the highest bidder. The Deputy Development Commissioner-Cum-Chief Executive Officer (opposite party No. 2), however, neither prepared any record of the said open bid nor issued any direction to the highest bidder to deposit the bid amount. He also did not bring this fact to the notice of Members and Chairman of Zila Parishad, Nawada. When the highest bidder offered the bid amount for deposit, opposite party No. 2 asked him to meet the Head-Clerk of the office, namely, Sri Kapildeo Prasad (described as Kapildeo Kumar Sinha in the cause title of this application as opposite party No. 4). When he met the said Head-Clerk, he told said Kuldip Yadav that D.D.C. will not do any work without taking money and, accordingly, asked to pay a sum of Rs. 10,000/-, as



gratification, purportedly under the direction of the D.D.C., opposite party No. 2. Thereafter, said Kuldip Yadav went to meet opposite party No. 2, who scolded him and ousted him out of his office and asked him to pay the money as directed by the Head-Clerk.

(ii) The highest bidder, Kuldip Yadav, thereafter, met the petitioner and told her the facts, whereafter, the petitioner tried to contact opposite party No. 2 on his mobile. Opposite party No. 2 intentionally ignored to receive her call. She (the petitioner) then contacted the District Engineer, Zila Parishad, Nawada (opposite party No. 3), who also directed her, likewise opposite party No. 2, to meet the Head-Clerk of the office.

(iii) The complainant-petitioner demanded the record of the said open bid from the Head-Clerk upon which, he told that there was no such record with him. The complainant, thereafter, informed the Chairman of Zila Parishad, Nawada and the Collector, Nawada about the occurrence, whereon, the Chairman immediately directed opposite party No. 2 to produce the record of Dhamaul Bus Stand, which he disobeyed. Upon the said complaint, the Collector directed the Additional Collector (Departmental Enquiry) for a full fledged enquiry, who found the allegation to be true. Despite demand, having been made by the Chairman of the Board, the D.D.C. did not produce the record



regarding Dhamaul Bus Stand. The accused persons, thus, for their personal gain committed forgery in the records intentionally, acting in violation of the Government Rules, under the conspiracy in collusion with the District Engineer and the Head-Clerk of the Zila Parishad, Nawada.

5. Based on the allegation, made in the complaint petition, the statement of the complainant-petitioner on solemn affirmation and statement of the witnesses, namely, Kuldip Yadav and Yadunandan Yadav, learned Chief Judicial Magistrate, Nawada, *vide* order, dated 27.04.2013, took cognizance of the offences punishable under Sections 420, 188, 185, 179, 171(e), 169, 170, 167, 166 and 120B of the I.P.C. and ordered for issuance of summons against them. The said order, taking cognizance, dated 27.04.2013, has been set-aside, in revision, by learned Sessions Judge, Nawada, *vide* order, dated 10.10.2014, which is impugned in the present application, as has been indicated at the very outset.

6. Mr. Sidhendra Narayan Singh, learned counsel, appearing on behalf of the petitioner, assailing the impugned order, dated 10.10.2014, has relied on Supreme Court decision in case of **Chandra Deo Singh Vs. Prokash Chandra Bose @ Chabi Bose & Anr. [A.I.R. 1963 SC 1430]**, to submit that learned Chief Judicial Magistrate, Nawada, had rightly taking cognizance of the offences and



object of enquiry, under Section 202 Cr.P.C., is merely to ascertain whether the allegations made in the complaint petition are intrinsically true and there is sufficient ground for proceeding. He has submitted that once a *prima facie* case is made out, on the basis of allegation made in the complaint petition, the Chief Judicial Magistrate does not have any other option than to take cognizance of the offence. He has next relied upon another Supreme Court decision in case of ***Raj Kishor Roy Vs. Kamleshwar Pandey & Anr.***, reported in ***2002 (4) PLJR 74 (SC)***, to contend that the offence alleged to have been committed by the opposite parties cannot be said to be an act in discharge of their official duties, as demanding bribe cannot be termed as an act in discharge of the official duty. He has, accordingly, submitted that no sanction, under Section 197 of the Cr.P.C., was required for taking cognizance of the offence and learned Sessions Judge wrongly disturbed the order, taking cognizance, validly passed by the learned Chief Judicial Magistrate.

7. Reliance has also been placed on another Supreme Court decision in case of ***Inspector of Police & Anr. Vs. Battenapatla Venkata Ratnam & Anr.***, reported in ***2015 (3) PLJR 32 (SC)***, to buttress the submission that in the present facts and circumstances, no sanction was needed. Another Supreme Court decision ***in case of State of U.P. Vs. Paras Nath Singh***, reported in ***2009 CRI. L. J.***



3069, has also been refereed to submit that if allegations make out commission of offence under Section 420 of the I.P.C. against a public servant, bar under Section 197 of the Cr.P.C. shall not operate.

8. Before considering the legality of the order impugned, I must take into account certain facts, which are not in dispute. It is alleged in the complaint petition that illegal money was demanded from one Kuldip Yadav, who was found to be the highest bidder for the purpose of allotment of a Bus Stand. Said Kuldip Yadav did not raise any grievance before any forum, making allegation of demand of money against the said officials. He, however, made statement, as an witness, in the enquiry under Section 202 of the Cr.P.C.. It is evident from the impugned order, passed by the learned Sessions Judge, Nawada, that said Kuldip Yadav had filed a writ application before this Court registered as C.W.J.C. No. 13052 of 2012. In said writ application, he did not make mention of any such allegation, as contained in the complaint petition. He did not mention in his writ application that any illegal demand of money was made. Evidently, thus, the person, who has allegedly wronged, did not make allegation as made by the complainant-petitioner in her complaint petition. The revisional court below, in that circumstance, doubted the very *bona fide* of the complainant-petitioner in filing of such



complaint case with allegations, which were never made by the person, who was allegedly wronged.

9. Learned counsel for the petitioner does not dispute that the private opposite parties come within the definition of public servants within the meaning of Section 21 of the I.P.C.. The test for application of protection under Section 197 of the Cr.P.C., as to whether the public servant was acting or purporting to act in the discharge of his duty, would be whether the act complained of was directly connected with the official duty or done in discharge of his official duty or so intrinsically connected with or attached to his office as to be inseparable from it. The Supreme Court held in the case of ***Om Prakash Vs. State of Jharkhand***, reported in ***(2012)12 SCC 72; [2012(4) PLJR (SC) 89]***, that if in doing his official duty, after a public servant is alleged to have acted in excess of his duty, but there is reasonable nexus between the act and performance of official duty, the excess will not be the ground for depriving of the public servant of the statutory protection.

10. Facts in the present case, as has been noticed above, are peculiar. The petitioner was herself not wronged by the alleged act of the private opposite parties. Admittedly, she was not present when any demand of illegal money was allegedly made from said Kuldip Yadav. The said Kuldip Yadav did not allege before this Court, in his writ



application, that any such demand was made. It is not, therefore, difficult for the Court to gather that the petitioner, because of some personal grouse and for any other reason, not *bona fide*, filed the complaint petition. Section 197 of the Cr.P.C. provides for protection of public servants from malicious prosecution for such circumstances, in my view.

11. The Supreme Court decision in case of **Chandra Deo Singh** (supra), does not, in any manner, support the contention of the petitioner, as in that case the Magistrate had dismissed the complaint petition without giving reasons as required under Section 203 of the Cr.P.C.. In the present case, learned revisional court below has assigned detailed reason as to why learned Chief Judicial Magistrate ought not to have proceeded against opposite parties Nos. 2 to 4.

12. In case of **Raj Kishor Roy** (supra), there was allegation of assault made by the police officer. The said decision of the Supreme Court has been delivered in different set of facts and circumstances.

13. In any view of the matter, absence of sanction is not the only reason why the learned revisional court below has set-aside the order, taking cognizance, by the impugned order. On perusal of the complaint petition and in the background of the facts and circumstances, as discussed above, which are not in dispute, I am of the view that lodging



of the complaint petition by the petitioner itself was an abuse of process of the Court. Learned court below, in my opinion, considering the facts and circumstances in totality, in the interest of justice, rightly set-aside the order taking cognizance and summoning opposite parties Nos. 2 to 4.

14. I do not find any merit in this application. This application is, accordingly, dismissed.

15. Since, I am of the view that filing of the complaint petition by the petitioner in the facts and circumstances of the case, as discussed above, was an abuse of the process of the Court, mere dismissal of the application will not be enough and some cost deserves to be imposed on the petitioner, so as to deter persons from filing frivolous cases. A cost of Rs. 10,000/- is, accordingly, imposed on the petitioner to be deposited by her in the account of District Legal Service Authority, Nawada, within a period of three (3) months from today.

(Chakradhari Sharan Singh, J.)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	03/04/2017
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