

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.363 of 2019**

Arising Out of PS. Case No.-380 Year-2005 Thana- Bhagalpur Complaint Case District-
Bhagalpur

1. Dhananjay Kumar Singh, Son of Late Nathuni Singh R/o village- Kutubpur, P.S.- Doriganj, District- Saran (Chapra)
2. Balmiki Mandal, Son of Late Indradev Mandal R/o village- Sharansingh Tola, P.S.- Muffassil, District- Munger
3. Md. Sahabudin, Son of Late Md. Abul R/o village- Mirzapur Burdh, P.S.- Muffasil, District- Munger
4. Bhubneshwar Das @ Muneshwar Das, Son of Late Mahabir Das R/o village- Gopalpur, P.S.- Sabaur Zero Mile, District- Bhagalpur. At present posted as ASI, Buxar

... .. Petitioner/s

Versus

1. The State of Bihar
2. Janardan Das, S/O Late Ram Ayodhya Das R/O village- Bihpur, P.S.- Bihpur, Distt.- Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. A. K. Thakur, Advocate Ms. Vashanavi, Advocate Mr. Shashank Shekhar
For the Respondent/s	:	Mr. Bharat Bhushan

**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT**

Date : 11-01-2024

1. Propriety of an order, dated 17th of January, 2019, passed by the learned Additional Sessions Judge, 2nd Court at Naugachhia, rejecting an application under Section 227 of the Cr.P.C., filed by the accused persons/petitioners, praying for discharging them from Sessions Trial No. 67 of 2018, arising out of Naugachhia Complaint Case No. 380 of 2005, under Section 302, 201 read with Section 120 B of the Indian Penal Code and



Section 27 of the Arms Act has been challenged in the instant revision.

2. For the sake of adjudication, brief fact of the case and the background thereof are narrated below:-

(i) One Rajesh Kumar was murdered, receiving gun-shot injury on 6th of April, 2000. On the basis of a complaint, filed by the complainant, namely, Janardan Das, under Section 156(3) of the Cr.P.C, Bihupur P.S. Case No. 68 of 2000 was registered against the accused persons. Police took up investigation of the case and on completion of investigation, submitted report in final form stating, *inter alia*, that the allegation made by the informant had not been substantiated and the accused persons were not sent up for trial. The complainant filed a protest petition before the learned Judicial Magistrate. The said protest petition was considered as a court complaint and registered as Complaint Case No. 380 of 2005. The learned Magistrate, on examination of the complainant and the witnesses, took cognizance of offence under Section 302, 201 and 120 B of the IPC and Section 27 of the Arms Act against the accused persons. The accused persons duly appeared before the Court of the learned Magistrate and since the offence complained of was exclusively triable by the Court of Sessions, the case was committed to Court of Sessions.



Subsequently, it was transferred to the Court of the 2nd learned Additional Sessions Judge, Naugachhia for trial.

(ii) The accused persons filed an application before the learned Additional Sessions Judge under Section 227 of the Cr.P.C., which was rejected by the learned Additional Sessions Judge, 2nd Court at Naugachhia, *vide* order dated 17th of January, 2019.

3. Being aggrieved, the accused persons (hereinafter described as petitioners) have preferred the instant revision.

4. It will not be out of place to mention at this stage that Bihupur P.S Case No. 51 of 2000, dated 7th of April, 2000, was initially registered on the basis of a statement made by Havildar Surya Nath Singh on 6th of April, 2000 at about 11:30 P.M., stating, *inter alia*, that he along with four Constables of Police, namely, Md. Shahabuddin, Dhanjay Kumar Singh, Muneshwar Das and Balmiki Mandal were performing sentry duty in Bihupur Block Office. On 6th of April, 2000, at about 11:30 PM, Constable, Md. Shahabuddin was in duty. The informant was taking rest in the rest room. Other Constables were also lying on their beds. Suddenly, Md. Shahabuddin heard some noise coming from the south-eastern side of the Block Office, where the treasury of the Block Office was located. He immediately alerted the informant and other



Police Constables. They proceeded to the spot from where sound was coming to ascertain the incident. As soon as they proceeded towards the spot, some unknown miscreants opened fire at them. In order to save the Government property, lives of the Guards and the arms and ammunition allotted to them by the Police Department, Government of Bihar, they also retaliated by opening fire. In course of such incident, some unknown persons fled away from the spot. When they proceeded towards the south-eastern side room of the Block Office, where the Government Treasury was located, they were again confronted with firing. The Police Guards also opened fire which caused death of one Rajendra @ Babua Das, son of Janardan Das. It was also stated by the informant that the victim died by Police firing when Police tried to protect themselves as well as the property of Bihupur Block Office Treasury while acting in discharge of official duty.

5. It is already stated that Police submitted a final report in Bihupur P.S. Case No. 51 of 2000. Against the said final report, Janardan Das, father of the deceased, filed a protest-cum-complaint petition before the Additional Chief Judicial Magistrate, Naugachhia, stating *inter alia*, that deceased, Rajesh had his business of supplying Generators. The house of the informant is situated at a distance of about 100 yards from Anchal (Block)



Office and the accused persons were posted as Guard in the said office. As the son of the informant, namely, Rajesh Kumar was staying in proximity, he had developed friendship with Constable Dhanjay Kumar Singh. The complainant further stated that the above-named Police Guards and other Constables used to deal in Korean Slick business in association with Rajesh Kumar @ Babua Das. Subsequently, Rajesh Kumar wanted to disassociate from the Constables who were posted as Guards in the said Anchal Office as they were indulged in smuggling business. As a result, animosity grew up between them. He was threatened by the said Constables on 6th of April 2000. Accused, Dhanjay Kumar Singh caught hold of Rajesh Kumar and forcibly took him to Anchal Office. Family Members of Rajesh Kumar tried to intervene but failed. Thereafter, the family members as well as witnesses also followed the accused and Rajesh to the said Anchal Office. On the order of Surya Nath Singh, Dhanjay Kumar Singh opened fire at Rajesh Kumar and he died at the spot, receiving gunshot injury. Immediately after the occurrence, local people assembled there but the Police Guards did not allow anyone to touch the dead body of Rajesh Kumar. The body was sent for post-mortem and after post-mortem examination, it was handed over to the informant on 7th of April, 2000.



6. The father of the deceased lodged a complaint stating aforesaid fact before the learned Chief Judicial Magistrate under Section 156 (3) of the Cr.P.C., which led to institution of Bihupur P.S. Case No. 68 of 2000. The Police submitted final report also in Bihupur P.S. Case No. 68 of 2000.

7. Before acceptance of final report submitted in Bihupur P.S. Case No. 68 of 2000, the *de facto* complainant was notified. He submitted a protest petition which was treated as a Court Complaint Case No. 380 of 2005. Subsequently, the learned Magistrate examined the informant / complainant and all the witnesses on behalf of the complainant and on being satisfied that there is sufficient ground for proceeding further, issued process against the accused persons / petitioners. The case was also committed to the Court of Sessions which was registered as Sessions Trial No. 67 of 2018.

8. The accused persons filed an application under Section 227 of the Cr.P.C. praying for discharging them from the case as the victim died of police firing to protect government treasury of the Block office and the lives of the Police Personnel while discharging official duty. The said petition was, however, rejected by the Trial Court.



9. The learned Advocate for the petitioners makes his submission against the impugned order, stating, *inter alia*, that the impugned order is bad in law in view of the fact that accused persons being the Police Constables, opened fired while discharging their official duties. Therefore, the prosecution was under obligation to take sanction under Section 197 of the Code of Criminal Procedure before committing the Complaint Case No. 380 of 2005 under Sections 302/201/120B of the Indian Penal Code and Section 27 of the Arms Act, before the learned Sessions Court. In support of his contention, the learned counsel heavily relies on the decision of the Hon'ble Supreme Court in the case of ***Om Prakash & Ors. Vs. State of Jharkhand & Anr.***, reported in ***(2012) 12 SCC 72.***

10. The learned Advocate for the petitioners submits that whether sanction is necessary or not may have to be determined from stage to stage. Question may arise at any stage of the proceedings. It may arise at the inception. There may be unassailable and unimpeachable circumstances on record which may establish, at the outset, that public servant or Police Officer concerned is acting in performance of his official duty and is entitled to protection under Section 197 of the Cr.P.C.



11. In the instant case, the petitioners were employed as Guards of Anchal Office at Bihupur. They were allotted with the duty of protecting the Treasury of the Anchal Office. When some miscreants along with the deceased tried to commit theft in the Government Treasury of the Anchal Office, the accused persons opened fire in discharge of their official duty to protect the Government property and also their own lives. The said fact was brought on record on the basis of the information given by Surya Nath Singh, Havildar and Incharge of the Guards of the said Anchal Office.

12. The learned Advocate for the petitioners has also referred to a Full Bench decision of this Court, reported in **2016 (3) BLJ 222; Sri Ram Rekha Pandey Vs. The State of Bihar & Ors.** In this judgement, Om Prakash (supra) and other decisions of the Hon'ble Supreme Court was considered. This Court also considered the decision of the Hon'ble Supreme Court in **Abdul Wahab Ansari Vs. State of Bihar**, reported in **(2000) 8 SCC 500**, to come to a finding with regard to the stage, when the plea that sanction was required to be obtained under Section 197(1) of the Code could be raised. The Hon'ble Supreme Court held as follows in para 7 of the aforesaid report:-

“7. Previous sanction of the competent authority being a precondition for the



court in taking cognizance of the offence if the offence alleged to have been committed by the accused can be said to be an act in discharge of his official duty, the question touches the jurisdiction of the Magistrate in the matter of taking cognizance and, therefore, there is no requirement that an accused should wait for taking such plea till the charges are framed.”

13. Thus, it is submitted by the learned Advocate for the petitioners that the learned Magistrate ought to have obtained sanction order to prosecute the accused persons before commitment of the case, since it was done in Complaint Case No. 380 of 2005, the accused persons are entitled to be discharged.

14. On the same point, the learned Advocate for the petitioners refers to other decisions of the Hon'ble Supreme Court in the case of ***General Officer Commanding Rashtriya Rifles Vs. Central Bureau of Investigation & Anr.***, reported in (2012) 6 SCC 228 as well as in the case of ***D. Devaraja Vs. Owais Sabeer Hussain***, reported in (2020) 7 SCC 695. It is also submitted by the learned Advocate for the petitioners that State Government issued a notification on 16th of May, 1980, which was considered by the Full Bench of this Court in Sri Ram Rekha Pandey (supra) and the following observation was made by the Full Bench of this Court: -

“14. In view of the above decision of the Supreme Court in case of Om Prakash (supra), we answer the reference as follows:-



(i) *The notification, dated 16.05.1980, cannot be held to be beyond the scope and/or powers conferred on the State Government under Subsection (3) of Section 197 of the Code of Criminal Procedure, the same having been applied by Supreme Court in case of Om Prakash v. State of Jharkhand (supra) and criminal prosecution having been quashed against police personnel on that ground. We are mindful of the fact that the question of jurisdiction of the State Government to issue notification, granting protection to police personnel in exercise of power under section 197(3) of the Cr.P.C, was neither raised nor decided.*

(ii) *In view of the said notification, the previous sanction of the offences alleged to have been committed by the Police Officers, while acting or purporting to act in discharge of his official duty is a condition precedent. The decision of a learned single Judge of this Court in case of Ram Swarath Yadav v. Dr. Rajeshwar Prasad Sinha (supra) lays down the correct law. Accordingly, we are in agreement with the Division Bench decision of Gujarat High Court in case of Bhikhaji Vaghaji v. Barot (supra)."*

15. The learned Additional Public Prosecutor on behalf of the State of Bihar, on the other hand, refers to a decision of the Hon'ble Supreme Court in ***Devinder Singh & Ors. Vs. State of Punjab through CBI***, reported in ***(2016) 12 SCC 87***. According to



the prosecution, it was a case of fake encounter or death, caused by torture, whereas the defence of the accused persons was that it was a case in discharge of official duty and as the deceased was involved in terrorist activities and while maintaining law and order, the incident took place. The incident was in the course of discharge of official duty. On such factual premises, it was held by the Hon'ble Supreme Court that in case the version of the prosecution is found to be correct, there is no requirement of any sanction. However, it would be open to the accused persons to adduce evidence in defence to submit such other materials on record indicating that the incident took place in discharge of their official duties and the orders passed earlier would not come in the way of the Trial Court to decide the question afresh or even at the time of conclusion of the trial at the time of judgement, as at the stage of framing charge, it can not be said, which version is correct, the Trial Court has *prima facie* to proceed on the basis of the prosecution version and can re-decide the question afresh. In case from the evidence adduced by the prosecution or by the accused or in any other manner, it comes to the notice of the Court that there was a reasonable nexus of the incident with discharge of official duty, the Court shall re-examine the question of sanction and take decision in accordance with law. Therefore, the Hon'ble



Supreme Court was pleased to direct continuation of trial in the above-mentioned case. Relying on the aforesaid report, it is contended by the Learned Additional Public Prosecutor, that at the time of consideration of the petition under Section 227 of the Code, the Court will rely only the prosecution story and not on the Defence, that may be adduced on behalf of the accused persons at an appropriate stage.

16. Section 197 of the CR.P.C. runs thus:-

“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 officer 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 (1 of 2014)]--

(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 376, [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 sub-section (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 sub-section will apply as if for the expression "Central Government" occurring therein the expression "State Government" were substituted.

(3-A) Notwithstanding anything contained in sub-section (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.

(3-B) 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, 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.”

17. The Law Commission in its 41st Report states:-

“15.123. Section 197, as it now stands, applies to a public servant of the specified category only when he is holding office as such public servant. It does not apply to him after he has retired, resigned or otherwise left the service..... It appears to us that the protection under the Section is needed as much after retirement of the public servant as before retirement. The protection afforded by the Section would be rendered illusory if it were open to a private person harbouring a grievance to wait until the public servant ceased to hold his official position, and then to lodge a complaint. The ultimate justification for the protection conferred by Section 197 is the public interest in seeing that official acts do not lead to needless or vexatious prosecutions. It should be left to the Government to determine from that point of



view the question of expediency of prosecuting any public servant.”

18. Section 197 of the Cr.P.C. provides that when any person who is or was a public servant, not removable from his office, save by or with the sanction of the Central Government or State 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 duties, no Court shall take cognizance of such offence, except with the previous sanction of the appropriate Government.

19. Sub-Section (1) of Section 197 of the Cr.P.C. postulates that sanction for prosecution is required where 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 discharge of his official duty. Article 311 of the Constitution lays down that no person, who is a member of a civil service of the Union or State or holds a civil post under the Union or State, shall be removed by an authority subordinate to that by which he was appointed. It, therefore, follows that protection of Sub-Section (1) of Section 197 of Cr.P.C. is available only to such public servants whose



appointing authority is the Central Government or the State Government and not to every public servant.

20. Thus in order to get protection under Sections 197 (1) of the Cr.P.C, if the following two conditions are fulfilled :-

(i) The accused is a public servant who is not removable from his office save by or with the sanction of the Government; and

(ii) He commits any act or omission which is otherwise an offence in discharge of his official duties.

21. The decision of the Hon'ble Supreme Court ***K. Ch. Prasad Vs. Smt. Vanalatha Devi & Ors.***, reported in (1987) 2 ***SCC 52*** may be relied upon in this regard.

22. It is not in dispute that the accused persons are members of Police Force under the State of Bihar. I have already pointed out hereinbefore that by virtue of a Government notification, protection under Section 197 of the Cr.P.C. has been extended to the members of Police Force under the State of Bihar.

23. In the instant case, the question that requires to be adjudicated is, as to whether the purported act alleged to have been committed by the petitioners while acting or purporting to act in the discharge of their official duties.



24. The learned Advocate for the petitioners repeatedly draws attention of this Court on the final report submitted in connection with Bihupur P.S. Case No. 51 of 2000. The said case was registered on the basis of Fardebyan made by Havildar Surya Nath Singh and recorded by a Sub-Inspector of Police of the concerned Police Station.

25. The present complaint case speaks of a completely different story, according to which the deceased Rajesh had friendship with the petitioners because his house was situated about 100 yards away from the Anchal/Block Office of Bihupur. Both Rajesh and the accused persons used to deal in the business of selling Korean Silk Cloth. Subsequently, Rajesh wanted to disassociate himself from their association because he came to know that the accused persons were engaged in smuggling. On 6th April, 2000, accused Dinanath Singh caught hold of him by his neck. Three other accused persons forcibly took him inside the treasury room of the block office and accused Dinanath opened fire at him, as a result of which he died of gunshot injury.

26. At the stage of Section 227 of the Cr.P.C., it is the duty of the learned Trial Judge 1st to consider the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in this behalf, the



Judge will consider if there is sufficient ground for proceeding against the accused, only then he shall discharge the accused and record his reasons for so doing.

27. At the stage of consideration of the record under Section 227 of the Cr.P.C., the trial Judge will only consider the records of the prosecution case and the documents produced or collected by the Investigating Agency during investigation in Sessions Case No. 67 of 2018 arises out of a Complaint Case No. 380 of 2005. In the petition of complaint as well as evidence adduced by the complainant and other witnesses during inquiry under Section 200 of the Cr.P.C., complainant and all the witnesses corroborated the incident in which the son of the complainant was murdered.

28. The learned trial Judge rightly considered the materials and the initial evidence led by the complainant and his witnesses during inquiry under Section 200 of the Cr.P.C. and rejected the application under Section 227 of the Cr.P.C. filed by the accused persons. Before the trial Court as well as before this Court in support of their prayer, the accused persons relied upon the statement of Havildar Surya Nath Singh and final reports submitted by the Police in Bihupur P.S. Case No. 51 of 2000. We should not forget that Bihupur P.S. Case No. 51 of 2000 was



instituted on the basis of the version made by the In-charge of the Guards of Bihupur Block Office. It may so happen that the informant in Bihupur P.S Case No. 51 of 2000 might not narrate the true account of the story.

29. On the other hand, a false and fictitious account of the incident was cooked up and narrated by the informant to save the accused persons. The said account of incident may be a defence during trial of the accused persons.

30. At the stage of Section 227 of the CR.P.C., the learned trial Judge rightly laid stress upon the record of the complaint case and rejected the application under Section 227 of the Cr.P.C.

31. At this stage, on careful consideration of the case of the complainant as well as initial evidence of the witnesses, it is *prima facie* found that the deceased was not murdered allegedly by the accused persons while discharging their official duties. He was murdered as a result of animosity which developed in course of business relationship with the accused persons.

32 For the reasons stated above, I do not find any ground to accept the contention made by the learned Advocate for the petitioners that sanction under Section 197 of the Cr.P.C. was necessary to prosecute the accused persons and such sanction



ought to have been obtained before taking cognizance of offence by the learned Magistrate under Section 119 of Cr.P.C. or by the learned Sessions Judge under Section 193 of the Code.

24. Therefore, the instant revision application is liable to be dismissed and accordingly it is dismissed on contest.

25. The impugned order, dated. dated 17th of January, 2019, passed by the learned Additional Sessions Judge, 2nd Court at Naugachhia, is affirmed.

26. Lower Courts Record be sent down to the Court below along with a copy of this order forthwith.

(Bibek Chaudhuri, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	18.01.2024
Transmission Date	18.01.2024

