

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23310 of 2016

Arising Out of PS. Case No.-711 Year-2008 Thana- COMPLAINT CASE District- Banka

Anil Kumar Jha son of Late Guneshwar Jha, Presently posted as Forest Range Officer at Working Plan Forest Division, Patna and residing at Flat No. 307, Vrindavan Garden Apartment, Ashiana Digha Road, Police Station- Shastri Nagar in the town and district of Patna

... .. Petitioner

Versus

1. The State Of Bihar, Through Principal Chief Conservator Of Forest, Bihar, Patna
2. Shyam Mandal, Son of Late Kailash Mandal, Resident of village- Bhelai, P.S.- Banka, District- Banka

... .. Opposite Parties

Appearance :

For the Petitioner/s	:	Mr. Surendra Kumar Singh, Advocate Mr. Ranjit Kumar Singh, Advocate
For the State	:	Mr. Upendra Kumar, APP
For the O.P. No.2	:	Mr. Sanjay Kumar Jha, Advocate Mr. Rana Pratap Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 23-03-2026

The present criminal miscellaneous petition has been preferred by the petitioner under Section 482 Cr.PC for setting aside the impugned order dated 23.08.2014 passed by learned S.D.J.M., Banka in Complaint Case No. C-711 of 2008,



whereby learned S.D.J.M., Banka has issued summons against the petitioner holding that there is sufficient material to issue summons against him.

Factual Background

2. The Complaint Case bearing No. C-711 of 2008 has been filed by one Shyam Mandal against the petitioner and other four accused persons alleging that the Complainant/Shyam Mandal is a Clerk in Amapur Construction Limited whose Director/Chairman is Sahdeo Kanodia. The work of the said company is taken care of by Mr. Anand Kanodia who is son of Sahdeo Kanaudia. He does business by name of “Anand Traders” and even mobile has been taken in the name of Anand Traders. The company has several tractors to do its business.

3. It is further alleged that on 18.05.2008, stone/Moram was being transported from Laxmikant Singh, who is contractor of Mining Department. There was valid challan and the place of occurrence was outside the forest range. On the date of occurrence, the complainant was coming with a tractor with Moram/stone. The tractor was being driven by the driver. The co-accused, Mukesh Yadav and they were coming to the place of work situated at Chakkadih. When the complainant along with the tractor reached near village-Ramaniya, the



accused persons, including the petitioner, intercepted the tractor and asked for the documents. All the relevant and valid documents were shown to them. But the accused-petitioner got the complainant and the driver down from the tractor and abused them and even assaulted them and also asked them that to send Rs.25,000/- from his owner, failing which he will have to bear heavy cost. It is also alleged that even one Reliance Mobile was taken from his pocket.

4. It further transpires that the complaint was filed on 20.05.2008 in the court of learned Chief Judicial Magistrate, Banka and the same was transferred to the Court of learned S.D.J.M., Banka vide order dated 29.05.2008 under Section 192 Cr.PC. In other words, deemed cognizance of offence was taken on 29.05.2008 when the complaint was transferred by learned C.J.M. to learned S.D.J.M. under Section 192 Cr.PC. After receipt of the complaint, learned S.D.J.M., conducted pre-summoning inquiry by examining the complainant and one witness, Ajay Kumar and vide the impugned order, issued summons against the petitioner finding sufficient material against him.

Submissions of the Parties

5. I heard learned counsel for the petitioner, learned



APP for the State and learned counsel for the complainant.

6. Learned counsel for the petitioner submits that petitioner is innocent and has falsely been implicated in this case. He further submits that the petitioner was a Range Officer in the Forest Department and admittedly as per the complaint itself, the occurrence had taken place in course of discharge of his official duty by the petitioner and hence, no cognizance can be taken or summons can be issued against the petitioner, unless there is sanction obtained from the competent authority. But it transpires from the Trial Court Record that no sanction has been obtained by the complainant from any competent authority. Section 73 of the Indian Forest Act, 1927 clearly provides that all the Forest Officers shall be deemed to be Public Servant within the meaning of Indian Penal Code and as per Section 197 Cr.PC, any Court is debarred from taking cognizance of any offence except with previous sanction against the public servant. But no such sanction has been applied for by the complainant or granted by any competent authority. Hence, the whole proceeding is vitiated in which summons has been issued against the petitioner.

7. He also submits that the present complaint against the petitioner has been prompted by malafide. Just two days



prior to the complaint lodged by the complainant, the petitioner had filed criminal complaint bearing Complaint Case No. C-3-71 of 2008 against him for illegal mining in the forest area on 18.05.2008 in the Court of learned Chief Judicial Magistrate, Banka, on account of which even seized articles have been confiscated in Confiscation Case No. 3 of 08-09 by competent authority.

8. However, learned APP for the State and learned counsel for the complainant vehemently defend the impugned order submitting that there is no illegality or infirmity in the impugned order and the petition is liable to be dismissed.

Extent and Scope of Section 482 Cr.PC

9. Before I proceed to consider the rival submissions of the parties, it would be pertinent to see the scope and ambit of Section 482 of the Cr.PC.

10. Section 482 Cr.PC saves inherent power of High Court and it reads as follows:-

“482. Saving of inherent powers of High Court.- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

11. **State of Haryana Vs. Bhajan Lal [1992 Suppl (1) SCC 335]**, is the celebrated judgment on the scope and extent



of the jurisdiction of High Court under Section 482 Cr.PC, still holding the field and being followed and relied upon by all Courts including the Apex Court.

12. Hon'ble Apex Court in Bhajan Lal case (supra) held as follows:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.



(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

(Emphasis Supplied)

13. In Smt. Nagawwa Vs. Veeranna Shivalingappa Konujalgi [(1976) 3 SCC 736], while considering the scope of Sections 202 and 204 of Cr.PC., Hon’ble Supreme Court laid down the following guidelines and grounds on which proceeding would be quashed.

“(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no



prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused.

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.”

(Emphasis Supplied)

14. In Pepsi Foods Limited & Anr. Vs. Special Judicial Magistrate & Ors., [(1998) 5 SCC 749], Hon’ble Supreme Court has held as follows:

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course.....”

(Emphasis Supplied)

Extent and scope of Section 197 Cr.PC

15. Section 197 Cr.PC reads as follows:

“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-

(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,] [Inserted by Criminal Law (Amendment) Act, 2013] or section 509 of the Indian Penal Code(45 of 1860).

.....”

16. The object and purpose underlying this Section is to afford protection to public servants against frivolous, vexatious or false prosecution for offences alleged to have been committed by them while acting or purporting to act in the discharge of their official duty. The larger interest of efficiency of State administration demands that public servants should be free to perform their official duty fearlessly and undeterred by apprehension of their possible prosecution at the instance of private parties to whom annoyance or injury may have been caused by their legitimate acts done in the discharge of their official duty. This Section is designed to facilitate effective and unhampered performance of their official duty by public servants by providing for scrutiny into the allegations of



commission of offence by them by their superior authorities and prior sanction for their prosecution as a condition precedent to the cognizance of the cases against them by the Courts. In this regard, the following judicial precedents may be referred to:

- (i) Bhagwan Prasad Srivastava v. N.P. Mishra**
(1970) 2 SCC 56
- (ii) Pukhraj Vs. State of Rajasthan**
(1973) 2 SCC 701
- (iii) Lakshmansingh Himatsingh Vaghela (Dr) Vs. Naresh Kumar Chandrashanker Jah**
(1990) 4 SCC 169
- (iv) Centre for Public Interest Litigation Vs. U.O.I.**
(2005) 8 SCC 202
- (v) Choudhury Parveen Sultana Vs. State of W.B.,**
(2009) 3 SCC 398
- (vi) State of Bihar Vs. Rajmangal Ram**
(2014) 11 SCC 388

17. Explaining the meaning and scope of Section 197 Cr.PC, **Hon'ble Supreme Court in Pukhraj Vs. State of Rajasthan, (1973) 2 SCC 701** has held that what is necessary is that the offence must be in respect of an act done or purported to be done in the discharge of an official duty. It does not apply to acts done purely in a private capacity by a public servant.

18. Interpreting the meaning of the expression "official duty", **Hon'ble Supreme Court in State of Orissa Vs. Ganesh Chandra Jew, (2004) 8 SCC 40** has held that the official duty implies the Act or omission done by the public servant in course of his service and it has been done in discharge



of his duty. It has further held that Section 197 Cr.PC does not extend its protective cover to every Act or omission done by a public servant while in service. The scope of operation of the Section is restricted to only those Acts or omissions which are done by a public servant in discharge of his official duty.

19. In Shreekantiah Ramayya Munipalli Vs. State of Bombay, (1954) 2 SCC 992, Hon'ble Supreme Court has held if Section 197 Cr.PC is construed too narrowly, it can never be applied, for of course it is no part of an official's duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it.

20. In P. Arulswami Vs. State of Madras, AIR 1967 SC 776, Hon'ble Supreme Court has held that it is the quality of the Act that is important and if it falls within the scope and range of his official duties, the protection contemplated by Section 197 Cr.PC would be attracted. But, if the Act is totally unconnected with the official duty, there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable.

21. In B. Saha Vs. M.S. Kochar, (1979) 4 SCC 177,



Hon'ble Supreme Court has held that *sine qua non* for the applicability of section 197 Cr.PC is that the offence charged must be one which has been committed by the public servant either in his official capacity or under colour of the office held by him.

22. In Om Prakash Vs. State of Jharkhand, (2012)

12 SCC 72, Hon'ble Supreme Court has held that 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. It has been further held that protection given under Section 197 Cr.PC 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.

23. Hon'ble Supreme Court in D. Devaraja Vs.

Owais Sabeer Hussain, (2020) 7 SCC 695 has held that to decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty. In the case of an



act of a policeman or any other public servant unconnected with the official duty there can be no question of sanction. Hon'ble Apex Court further held that if the act alleged in a complaint purported to be filed against the public servant is reasonably connected to discharge of his official duty, the cognizance thereof cannot be taken unless requisite sanction of the appropriate Government is obtained under Section 197 Cr.PC.

24. Hon'ble Supreme Court has also held in para 74 of **D. Devaraja case (supra)** that it is well settled that an application under Section 482 of the Criminal Procedure Code is maintainable to quash proceedings which are ex facie bad for want of sanction, frivolous or in abuse of process of court. If, on the face of the complaint, the act alleged appears to have a reasonable relationship with official duty, where the criminal proceeding is apparently prompted by mala fides and instituted with ulterior motive, power under Section 482 of the Criminal Procedure Code would have to be exercised to quash the proceedings, to prevent abuse of process of Court.

25. It is also relevant to point out that a trial without a valid sanction, where one is necessary, is a trial without jurisdiction, rendering the criminal proceeding *void ab initio*. In this regard, one may refer to the following judicial precedents:

(i) R.R. Chari Vs. State of U.P., AIR 1962 SC 1573



(ii) S.N. Bose Vs. State of Bihar, AIR 1968 SC 1292

(iii) Md. Iqbal Ahmed Vs. State of A.P., AIR 1979 SC 677

(iv) R.S. Nayak Vs. A.R. Antulay, AIR 1984 SC 684

Present case

26. Coming to the case on hand I find that the Petitioner Anil Kumar Jha is a Range Officer in the Forest Department and the alleged offence has been committed by him undisputedly in discharge of his official duty.

27. As per Section 73 of the Indian Forest Act, 1927, all the forest officers are deemed to be public servants within the meaning of the Indian Penal Code. I further find that as per Section 197 Cr.PC, any Court is debarred from taking cognizance of any offence, if the alleged offence is committed by the public servants during discharge of his official duty, except with previous sanction from the competent authority. But undisputedly, there is no such sanction applied for by the Complainant, nor is any sanction granted by any competent authority. Hence, the Criminal Proceeding arising out of the cognizance order dated 29.05.2008 and the summoning order dated 23.08.2014 passed against the Petitioner is vitiated, for want of any sanction against the Petitioner, who is a public servant within the meaning of Section 197 Cr.PC read with Section 73 of the Indian Forest Act.



28. The Criminal Proceeding against the Petitioner is liable to be quashed also in view of the **Bhajan Lal case** (supra), which provides, as amongst other things, that if a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the criminal proceeding is liable to be quashed by a High Court under writ jurisdiction as well as inherent jurisdiction under Section 482 Cr.PC. In the case on hand, the Petitioner had undisputedly filed criminal complaint against the Complainant/O.P. No.2 herein, just two days prior to the present Complaint filed against the Petitioner by the O.P. No.2. in the Court of learned C.J.M., Banka for illegal mining in the forest area on 18.05.2008. This Complaint bears Complaint No.C-711 of 2008. The articles seized in this Complaint had been even confiscated in Confiscation Case No.3 of 08-09. As such, the Complaint filed by the O.P. No.2 against the Petitioner is clearly prompted by *mala fide* and vengeance.

29. Considering the aforesaid facts and circumstances, the cognizance order dated 29.05.2008, and the summoning order dated 23.08.2014 passed by learned Court below in Criminal



Complaint No.C-711 of 2008 and the whole proceeding arising
out of the same are set aside and quashed qua the Petitioner.

(Jitendra Kumar, J.)

ravishankar/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	31.03.2026
Transmission Date	31.03.2026

