

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26755 of 2016**

Arising Out of PS. Case No.-525 Year-2009 Thana- BHAGALPUR COMPLAINT CASE
District- Bhagalpur

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Ravish Mishra @ Ravish Kumar Mishra, S/O Late Bidya Nand Mishra,
Resident of Village- Kamalpur, P.S.- Raiyam, District- Darbhanga. At present
posted as Sub- Inspector, Bihar Police Academy, Patna, Bihar.

... .. Petitioner/s

Versus

1. State of Bihar
2. Jale Prasad Yadav, S/o Late Ramchu Yadav, Resident of Bona Rai Lane,
Barari, P.S.- Barari, District- Bhagalpur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Subhash Kumar Mishra, Adv.
For the State	:	Mr. Suresh Prasad Singh, APP
For the O.P. No. 2	:	None.

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**CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT**

Date : 27-03-2025

The instant petition has been filed under section 482 of the Code of Criminal Procedure (in short ‘Cr.P.C.’) with a prayer to quash the order dated 19.12.2011 passed by learned C.J.M., Bhagalpur in connection with Complaint Case No. 525 of 2009, whereby cognizance of the offences under sections 147, 148, 149, 323, 325 and 448 of the Indian Penal Code (in short ‘IPC’) has been taken against the petitioner and others.

2. Mr. Subhash Kumar Mishra, learned counsel appearing for the petitioner has argued that the O.P. No. 2 filed his complaint with malafide intention to harass the petitioner



and others on account of a legal action taken by the petitioner in connection with Barari P.S. Case No. 103 of 2009 registered under sections 447, 384, 385, 427 and 379 read with section 34 of the IPC against the complainant's sons, namely, Indu Yadav, Bharat Lal Yadav, Narad Yadav and Guddu Yadav. On the alleged day of occurrence, the petitioner being officer-in-charge of Barari police station proceeded with other police officials to conduct raid at the house of the accused persons of Barari P.S. Case No. 103 of 2009 and before proceeding, an entry in the general diary was also made of which copy has been filed before this Court with supplementary affidavit and during the course of raid, one wanted accused, namely, Munna Sah was arrested but the raid at the complainant's house could not be conducted as the complainant's house's main gate was found locked at that time. The complainant filed his complaint only with a view to harass and humiliate the petitioner and also as a counterblast to the official action taken by the petitioner against the sons of the complainant and there are sufficient materials to show that at the time of alleged occurrence, the petitioner was discharging his official duty and during the course of inquiry, an enquiry witness namely Narad Yadav stated before the trial court that the petitioner along with all other police personnel



were in uniform which also clearly manifests that the petitioner and other police personnel visited the house of the complainant to perform their official duty as the sons of the complainant were warranted in Barari P.S. Case No. 103 of 2009, so, the petitioner's act is protected under the provisions of section 197(2) of the Cr.P.C. but the learned trial court took cognizance of the alleged offences without taking previous mandatory sanction from the competent authority of the Government of Bihar and also ignored an important notification issued by the Governor of Bihar by which the protection under section 197(2) of the Cr.P.C. has been extended to the officers of the Bihar Police Force whenever they discharge their official function if an offence is alleged to have been committed by any of them while discharging his official duty. It was lastly submitted that the manner of occurrence particularly with regard to the number of injuries to the complainant's son Bharat Lal Yadav described in the complaint does not get corroboration from his injury report filed before the enquiry court by the complainant and there is vital contradiction in between them and the enquiry witnesses are not the independent persons and from perusal of their statements, the alleged offences do not even *prima facie* attract against the petitioner and the instant matter is an example



of gross misuse of the process of law.

3. In support of above submissions, learned counsel for the petitioner has placed reliance upon a judgment delivered by the Full Bench of this Court in the case of **Sri Ram Rekha Pandey vs. The State of Bihar & Anr.** reported in **2016 (3) PLJR 296**. The relevant paragraph No. 14, upon which reliance has been placed, is being reproduced as under for ready reference: -

*“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 sub-section (3) of Section 197 of the Code of Criminal Procedure, the same having been applied by Supreme Court in case of **Om Prakash vs. 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 vs. Barot and others (supra).”

4. No one appears on behalf of the O.P. No. 2.

5. Mr. Suresh Prasad Singh, learned APP appearing for the State submits that the order impugned taking cognizance of the alleged offences has been rightly passed and there is no merit in this petition.

6. Heard both the sides and perused the order impugned and the relevant materials. In order to get protection under section 197(2) of the Cr.P.C., it must be shown that there was reasonable connection between the acts allegedly done by a public servant with discharging his official duty, if such reasonable connection is not found then the public servant cannot claim to get the protection under section 197(2) of the Cr.P.C. In the instant matter, as per the allegations, the petitioner, who was then SHO of Barari police station, went to the house of the complainant on the intervening night of 23rd and 24th of March at about 1:00 A.M. and firstly surrounded the house of the complainant and thereafter, knocked at the door of the complainant's house, then the complainant asked for search warrant from the petitioner and other police officers but he was pushed away by the accused persons including the petitioner,



thereafter the complainant's son was assaulted by the accused and to escape from that assault, he climbed up to the roof but even then the police official including the petitioner chased and caught him. As per further allegations, the accused persons including the petitioner badly assaulted the complainant's son, namely, Bharat Lal Yadav on the roof where he was caught hold by the accused persons, owing to that assault, the victim sustained fracture injuries to his legs and thereafter, he was thrown from the roof to the ground. Regarding these alleged acts, the statement of C.W.-1, Vinay Yadav who is said to be an independent witness, is relevant and supportive and other enquiry witnesses also supported the said allegations. Though as per defence taken by the petitioner, the complainant's sons including the injured were accused in Barari P.S. Case No. 103 of 2009 at the time of commission of the alleged occurrence of the present matter and the petitioner proceeded to nab the accused persons in the said Barari P.S. Case after making relevant entry in the general diary but the manner in which the police party came at the house of the complainant at late night and thereafter, their entering into the house forcefully and assaulting the complainant's son, Bharat Lal Yadav, brutally causing fracture injuries to him cannot be deemed to be the acts



coming in the purview of discharge of their official duty and there is no reasonable connection between the acts allegedly done by the petitioner and other police officials and their official duty and in this regard, the principle laid down by a Constitution Bench of the Hon'ble Apex Court in the case of **Matajog Dobey vs. H.C. Bhari** analogous with **Nand Ram Agarwala vs. H.C. Bhari and Others**, reported in **1955 SCC Online SC 44** is important, of which the relevant paragraph Nos. 17 to 19 are being reproduced as under :-

“17. Slightly differing tests have been laid down in the decided cases to ascertain the scope and the meaning of the relevant words occurring in Section 197 of the Code; “any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty”. But the difference is only in language and not in substance. The offence alleged to have been committed must have something to do, or must be related in some manner with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What we must find out is whether the act and the official duty are so inter-related that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation.....

18. There are two cases of this Court to which reference may be made here. In Shreekantiah Ramayya Munipalli v. The State of Bombay [(1955) 1 SCR 1177, 1186] , Bose, J. observes as follows: “Now it is obvious that if Section 197 of the Code of Criminal



Procedure 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. The section has content and its language must be given meaning". The question of previous sanction also arose in Amrik Singh v. State of Pepsu [(1955) 1 SCR 1302, 1307, 1308] . A fairly lengthy discussion of the authorities is followed up with this summary: "If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction under Section 197(1) would be necessary; but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required."

19. The result of the foregoing discussion is this : There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

The aforesaid principle has been followed by the Hon'ble Apex Court in several cases and also in recent judgment passed in the case of **Om Prakash Yadav vs. Niranjana Kumar Upadhyay and Others** reported in **2024 SCC Online SC 3726**.

The statements of the enquiry witnesses including the complainant's statement on solemn affirmation (S.A.) and victim's injury report are sufficient to show *prima facie* commission of the alleged offences. So, considering these aspects, the petitioner is not entitled to get the protection under section 197(2) of Cr.P.C. as the alleged acts cannot be deemed



to come in the purview of petitioner’s official duty at the relevant time. In result, the instant petition stands dismissed on account of lack of merit.

(Shailendra Singh, J)

annu/-

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