

STATE OF BIHAR

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v.

KAMLA PRASAD SINGH AND ORS.

MAY 6, 1998

[G.T. NANAVATI AND S.P. KURDUKAR, JJ.]

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Code of Criminal Procedure, 1973 :

Sections 190, 197 and 202—Prosecution of police officials—Cognizance of offence by Magistrate—Requirement of sanction of Government—Magistrate, after inquiry u/s 202, coming to conclusion that police officials appeared to have acted while discharging or purporting to discharge their duty—Held no cognizance of alleged offences could be taken without a proper sanction by the Government.

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A complaint was filed by respondent No. 1 in the Court of Chief Judicial Magistrate, Patna alleging that a police party comprising respondents no. 2 to 4 raided his house without any warrant of search and assaulted his wife, abused her and other persons present in the house and took away certain articles belonging to him. The Magistrate, after holding an inquiry under s. 202 of the Code of Criminal Procedure, 1973 found that the raid was carried out by the three police officials under the supervision of an Executive Magistrate and since the acts alleged appeared to have been committed by respondents 2 to 4 while discharging their official duty, no cognizance of the offences could be taken in absence of sanction under s. 197 of the Code. On a revision petition filed by respondent no. 1, the High Court held that no sanction under s. 197 of the Code was required, and directed the Magistrate to hold further inquiry. Consequently, the Magistrate took cognizance of the offences and directed issuance of process against respondents no. 2 to 4. The State challenged the order of the High Court in the present appeal.

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It was contended for the State that the High Court erred in holding that the Magistrate was required to consider only the allegations made in the complaint and no other material, and that the evidence collected during the inquiry under s. 202 Cr. P.C. supported that allegations made in the complaint.

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Allowing the appeal, this Court

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A **HELD : 1.1.** No cognizance of offences alleged to have been committed by respondents 2 to 4 could be taken without a proper sanction of the Government, as the search was made by them after obtaining a proper warrant, and there is no credible material to show that they had either abused or assaulted the wife of the complainant or any other persons or misappropriated any article belonging to the complainant. What they had done appears to have been done while discharging or purporting to discharge their duty. [205-F-G]

C **1.2.** The High Court while recording the finding that the version of the occurrence stated in the complaint has been supported by the prosecution witnesses does not appear to have gone through the evidence of those witnesses. The order of the Magistrate does not contain anything which can support the finding recorded by the High Court. On the contrary the Magistrate has observed that there is no evidence to show that the wife of the complainant was assaulted or abused by anyone of the respondent 2 to 4. [205-B-C]

D **1.3.** The High Court was clearly wrong in holding that the Magistrate should have considered only the allegations made in the complaint to find out whether the alleged acts were committed by respondents 2 to 4 while discharging or purporting to discharge their duties. The High Court failed to appreciate that the material collected during the inquiry discloses that material facts were suppressed by the complainant and some of the allegations made in the complaint were not correct. [204-G-H; 205-A-D-E]

F **1.4.** During the inquiry under s. 202 Cr. P.C. it had come on record that an offence was registered against the complainant and respondent no. 2 had obtained a warrant for the arrest of the complainant and search of his premises. The raid was carried out under the supervision of an Executive Magistrate. Proper lists regarding search and seizure were made and copies thereof given to the brother-in-law of the complainant. No complaint of any type was made by anyone to the Executive Magistrate supervising the acts of respondents 2 to 4. All this evidence could not have been ignored by the Magistrate while considering the allegations made in the complaint.

[204-F-H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 769 of 1989.

H From the Judgment and Order dated 23.4.87 of the Patna High Court in

Criminal Revision No. 799/1982.

Pramod Swarup for the Appellant.

Anil Kumar Jha and Mr. Akhilesh Kumar Pandey for the Respondents.

The Judgment of the Court was delivered by

NANAVATI, J. This appeal is directed against the judgment and order passed by the Patna High Court in Criminal Revision No. 799/1982.

Respondent No. 1 Kamla Prasad Singh has filed a complaint in the Court of Chief Judicial Magistrate, Patna alleging that on 30.3.1982 a Police Party headed by Respondent No. 2 raided his house without obtaining any warrant of search and while carrying out the search Respondent Nos. 2 to 4 assaulted his wife, abused her and other persons present in the house and took away certain articles belonging to him. Thus Respondent Nos. 2 to 4 have committed offences punishable under Sections 451, 452, 453, 456, 457, 458, 380 334, 426 and 120B IPC.

The learned Magistrate after recording the statement of the complainant felt some doubt about the correctness of his version and, therefore, decided to hold an inquiry under Section 202 Criminal Procedure Code. During the inquiry the complainant, his wife and his two brothers-in-law who were stated to be present at the time of incident, were examined. The complainant refused to examine Shri. J.C. Das, Executive Magistrate who was also present when the raid was carried out. After considering the evidence thus gathered, the learned Magistrate held that there is no evidence to show that there was an assault on his wife or that respondents 2 to 4 had misbehaved with her or any other person in the house. The learned Magistrate also found that the raid was carried out by the three police officers under supervision of Shri J.C. Das, the Executive Magistrate. He also found that search and seizure lists were prepared and copies thereof were given to Nagendra Kumar, brother-in-law of the complainant who was present at the time of the raid. It appeared to the learned Magistrate that the acts alleged to have been committed by respondents 2 to 4 were done under the colour of their office and while discharging their official duty. He, therefore, held that no cognizance of any of the offences could be taken against them in absence of the required sanction under Section 197 of the Code.

Aggrieved by this order, the complainant filed a criminal revision petition before the High Court. The High Court without considering the relevant aspects pointed out by the learned Magistrate and without going through the

A record itself held that "version of the occurrence stated in the complaint has been supported by prosecution witnesses. It cannot also be said that even if the evidence is accepted to be correct, no offence is made out. "The High Court further observed that only the allegations made in the complaint should have been considered by the learned Magistrate and the allegations clearly show that the police officers cannot be said to have acted like that in discharge of their duties. It, therefore, held that no sanction under section 197 Cr.P.C. was required. The High Court allowed the Revision Application and directed the Magistrate to hold further inquiry in accordance with law. Pursuant to the decision of the High Court the learned Magistrate on 22.8.1987 took cognizance of the offences and directed issuance of process against respondent Nos. 2 to 4.

The State has filed this Appeal against the order passed by the High Court. Respondent Nos. 2 and 4 have filed an application for transposing them as Appellants. Therein it is stated that Respondent No. 3 has died during the pendency of this appeal.

What is contended by the learned counsel for the State is that the High Court committed an error of law in holding that the learned Magistrate was required to consider only the allegations made in the complaint and no other material. He also submitted that High Court has erroneously held that the evidence collected during the inquiry under Section 202 supports the allegations made in the complaint.

It was not disputed by the learned counsel for the complainant that during the inquiry under Section 202 it has come on record that an offence was registered against the complainant on 30.3.82 and Respondent No. 2 had obtained a warrant for the arrest of the complainant and search of his premises. Admittedly, the raid was carried out under the supervision of Shri J.C. Das an Executive Magistrate who was deputed by the District Magistrate to supervise the raid, on a request made to that effect by respondent No. 2. The evidence further shows that proper lists regarding search and seizure were made and copies thereof were given to Nagendra. No complaint of any type was made by anyone to Shri J.C. Das who was supervising the acts of respondent Nos. 2 to 4. All this evidence could not have been ignored by the learned Magistrate and the High Court was, therefore, clearly wrong in holding that the learned Magistrate should have considered only the allegations made in the complaint to find out whether the alleged acts were committed by respondents 2 to 4 while discharging or purporting to discharge

their duties.

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The High Court had also recorded a finding that the version of the occurrence stated in the complaint has been supported by the prosecution witnesses. It appears from the judgment of the High Court that it had not gone through the evidence of those witnesses. That becomes clear from the observation made by the High Court in paragraph 3 of the judgment that, "it appears from the order in which the evidence has been set out in extenso". The order of the learned Magistrate does not contain anything which can support the finding recorded by the High Court. On the contrary the learned Magistrate has observed that there is no evidence to show that the wife of the complainant was assaulted or abused by anyone of respondents 2 to 4. There was also no material to show that any article belonging to the complainant was misappropriated by any of respondents 2 to 4. On the contrary the material discloses that seizure lists were prepared and copies thereof were given to the brother-in-law of complainant who was present. Thus the material collected during the inquiry discloses that material facts were suppressed by the complainant and some of the allegations made in the complaint were not correct. The High Court failed to appreciate that the search was made by respondents 2 to 4 after obtaining a warrant from the competent authority and the Executive Magistrate was kept present to supervise the raid. No complaint whatsoever was made to him regarding any misbehaviour or the illegal acts now alleged in the complaint. Surprisingly the complainant who had returned to his house while the search was being made, did not enter his house upon knowing that the police were conducting a search and quietly went away from that place.

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As the search was made by respondent 2 to 4 after obtaining a proper warrant for that purpose and as there is no credible material to show that they had either abused or assaulted the wife of the complainant or any other person what they had done appears to have been done while discharging or purporting to discharge their duty. Therefore, no cognizance of the alleged offences could be taken without a proper sanction of the Government. We, therefore, allow this appeal, set aside the judgment and order passed by the High Court and also the order dated 22.8.1997 passed by the Magistrate.

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R.P.

Appeal allowed.