

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.45840 of 2016**

Arising Out of PS. Case No.-9 Year-2010 Thana- SANDESH District- Bhojpur

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Rameshwar Ojha @ Shiv Raman Ojha son of @ late Sahdev Ojha Resident of
Village-Baga, Police Station-Ajimabad district-Bhojpur

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Gopal Govind Mishra, Advocate
For the Opposite Party/s : Mr. Sri Panchanand Pandit, APP

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**CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER**

2 02-12-2024 Heard Mr. Gopal Govind Mishra, learned counsel
for the petitioner, Mr. Lakshmi Kant Sharma and Mr. Sri
Panchanand Pandit, learned APPs for the State.

2. The instant petition has been filed under Section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') against the order dated 16.11.2010 passed by learned Additional Chief Judicial Magistrate – VII, Ara (Bhojpur) in G.R. No. 191 of 2010, Trial No. 505 of 2016 arising out of Sandesh Police Station Case No. 09 of 2010 by which the learned Trial Court has taken cognizance of the offences under Sections 409 and 420 of the Indian Penal Code (in short 'I.P.C.') against the petitioner.

3. Heard both the sides and perused the order impugned and other relevant materials. The main grounds taken



by the petitioner's counsel are that the informant himself withdrew the alleged amount and in this regard the withdrawal forms dated 14.09.2009, 08.09.2009 and 22.08.2009 are relevant and the same have been annexed with the petition as Annexure-2. Further, prior sanction to prosecute the petitioner for the alleged offences was not taken by the learned trial Court before passing the cognizance order and it is an admitted position that at the time of commission of the alleged offences, the petitioner was discharging his official duty on the post of Post Master at Fulari Post Office. The second ground is that as per the Post Office Rules, if signature of a depositor on a withdrawal application differs from the specimen on record then the payment will be made only after identification of the depositor's signature on the withdrawal application by someone other than the agent of the depositor and the said Rule was completely followed by the petitioner while allowing the withdrawal applications.

4. This Court finds no substance in the above grounds as there is sufficient, *prima facie*, material to attract the alleged offences. As firstly, it is an admitted position that the informant was to be paid the alleged embezzled amount of Rs. 5,000/- by the Post Office concerned where the petitioner was



admittedly posted on the post of Post Master during the relevant period, in respect of MNAREGA wages, secondly, from the bare perusal of the Annexure-2 series filed by the petitioner himself which are the alleged withdrawal forms, the purported signature of the informant (Opposite Party No.2) does not appear to be similar to the undisputed signature of the informant which is available on the F.I.R. though, in this regard a proper conclusion is to be made by the trial Court itself after comparing the informant's signature on the alleged forged withdrawal forms with the admitted signature of the informant, but at this stage, *prima facie*, material is in favour of the prosecution and thirdly, during the investigation several witnesses, whose details has been given in the order impugned, claimed themselves to be victims of the alleged breach of trust committed by this petitioner with them.

5. So far as the protection under Section 197 of the Cr.P.C. is concerned, it is an established law that in order to get the said protection, it must be proved by the accused that there was a reasonable connection between the alleged act and his official duty but the sanction will not be required if the alleged act has no reasonable nexus with the official duty of the accused. In this regard, the principle laid down by the Hon'ble



Supreme Court in the case of ***P.K. Pradhan vs State of Sikkim*** represented by the ***Central Bureau of Investigation***, reported in **(2001) 6 SCC 704** is important and the relevant paragraph No. 15 of this judgment is being reproduced as under:

“Thus, from a conspectus of the aforesaid decisions, it will be clear that for claiming protection under Section 197 of the Code, it has to be shown by the accused that there is reasonable connection between the act complained of and the discharge of official duty. An official act can be performed in the discharge of official duty as well as in dereliction of it. For invoking protection under Section 197 of the Code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. If the case as put forward by the prosecution fails or the defence establishes that the act purported to be done is in discharge of duty, the proceedings will have to be dropped. It is well settled that question of sanction under Section 197 of the Code can be raised any time after the



cognizance; maybe immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused that the act that he did was in course of the performance of his duty was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial.”

6. The above principle has been followed by the Hon'ble Apex Court in the case of ***Devinder Singh and Others Versus State of Punjab Through CBI***, reported in **(2016) 12 SCC 87** and in this regard the relevant paragraph Nos. 39.2, 39.3 & 39.4 of this judgment are being reproduced as under:

“ 39.2. Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide



construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197 Cr.P.C. has to be construed narrowly and in a restricted manner.

39.3. Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under Section 197 Cr.P.C. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor is it possible to lay down such rule.

39.4. In case the assault made is intrinsically connected with or related to performance of official duties, sanction would be necessary under Section 197 Cr.P.C., but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 Cr.P.C. would apply.”



7. The embezzlement and fabrication of withdrawal forms, allegedly committed by this petitioner, can not be deemed to have a reasonable nexus with the official duty of the petitioner. However, in this regard, a proper conclusion can be made by the trial Court after taking the evidences and it has been ruled in the case of P.K. Pradhan (*supra*) that the question of sanction under Section 197 of the Code can be raised any time after the cognizance, even after conclusion of the trial or after conviction as well and in the present matter at this stage, this Court does not find substance in the aforesaid ground.

8. Accordingly, this Court finds no merit in this petition and the order impugned taking cognizance of the alleged offences has been rightly passed, so, the instant petition stands dismissed.

(Shailendra Singh, J)

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