

(2002) 08 JH CK 0009

Jharkhand High Court

Case No: Criminal Miscellaneous No. 1701 of 1999

Ramesh Kumar Verma and
Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision: Aug. 2, 2002

Acts Referred:

- Bihar Finance Act, 1981 - Section 33
- Criminal Procedure Code, 1973 (CrPC) - Section 197

Citation: (2003) CriLJ 617

Hon'ble Judges: Vishnudeo Narayan, J

Bench: Single Bench

Advocate: Mahesh Tiwari, Lalan Kumar Ray and Rashmi Pradhan, for the Appellant; K.K. Jhunjhunwala, Assistant Public Prosecutor and A.K. Sahani, for Opposite Party No. 2, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Vishnudeo Narayan, J.

This application has been filed u/s 482 of the Cr.P.C. by the petitioners who were at the relevant time posted as Commercial Taxes Officer, Tenughat Circle at Phusro and Hazaribagh Division at Hazaribagh under Government of Bihar for quashing of the proceeding of Complaint Case No. 33 of 1997 including the order dated 24-2-1998 passed therein by Sri J. P. Singh, Judicial Magistrate, 1st Class, Barmo at Tenughat whereby and whereunder the cognizance for the offence under Sections 385, 448, 342, I.P.C. has been taken against the petitioners and summons were issued against them for their trial.

2. The facts giving rise to this application are as follows :--

O.P. No. 2, Om Prakash Keshri filed a complaint case bearing Complaint Case No. 33 of 1997 on 24-2-1997 against the petitioners regarding the alleged occurrence which is said to have taken place at 11.00 A.M. on 18-9-1996 and continued till 8.00 A.M. on 19-9-1996 in the Court of Sri J.P. Mishra, the then Judicial Magistrate, 1st Class, Bermo at Tenughat, Bokaro and the complainant was examined on S.A. and an enquiry was conducted u/s 202, Cr.P.C. and six witnesses were examined in the said enquiry and finding a prima facie case having been made out and reliance having been placed upon case of Smt. Pratibha Sinha v. State of Bihar 1994 (1) PLJR 642 and N. C. Dhoundial v. State of Bihar 1997 (2) PLJR 754) that there being no reasonable connection between the act complained of and discharge of duty by the petitioners, the acts of the petitioners cannot be said to have relation with their official duties and they were summoned for trial.

3. It has been averred in the petition of complaint that O.P. No. 2 is the proprietor of the food grains shop at Tand Balidih P. Section Jaridih, District Bokaro and he runs the business of food grain and his full brother Jai Prakash Keshri is the proprietor of food grain business known as Shyam Bhandar at Tand Balidih and all the petitioners came to the shop of Jai Prakash Keshri at 11.00A.M. on 18-9-1996 and finding the shop closed came to the shop of the complainant and enquired from him as to why the shop of Jai Prakash Keshri was closed and they were told that Jai Prakash Keshri has gone out of station and the petitioners insisted O.P. No. 2 to open the shop of his brother Jai Prakash Keshri and on his refusal they threatened him and took some documents from his shop and asked him to open the shop of his brother failing which he shall be arrested and finding no way out O.P. No. 2 went to the house of his brother and informed the wife of his brother and demanded the key from her of the said shop, i.e., Shyam Bhandar which was refused. It is alleged that when the refusal was communicated to the petitioners by O.P. No. 2 they entered into the house of Jai Prakash Keshri and threatened his wife as a result of which the key of the shop, i.e., Shyam Bhandar was handed over to them. It is also alleged that the petitioners again came to the shop of O.P. No. 2 along with books of accounts and other papers from the shop of Jai Prakash Keshri and asked O.P, No. 2 to sign some blank papers and on his refusal they forcibly obtained his signature on two blank papers and also forcibly brought O.P. No. 2 in a vehicle to the Sales Tax Office at Phusro where he was wrongfully confined in a room for the whole night. It is also alleged that O.P. No. 2 was threatened to sign on several blank papers failing which he will be beaten and cases will be Instituted against him and his brother and they forcibly obtained his signature on 10 or 12 blank papers at extreme (sic) form of the said papers and thereafter he was allowed to go and further an illegal gratification of Rs. 50,000/- was also demanded. It is also alleged that: the petitioners have used some of the aforesaid blank paper containing the signature of O.P. No. 2 as seizure memos and show cause notices on him and his brother which were served on his brother on 20-9-1996 and O.P. No. 2 informed the Deputy Commissioner of Commercial Taxes (Administration), Hazaribagh Division, Hazaribagh as well as

Tenughat" Circle, Phusro through registered letter on 21-9-1996 and also to the officer-in-charge, Jaridih P. Section It is also alleged that when no action was taken by O/C Jaridih P. S., this complaint petition was lodged against the petitioners.

4. It has been submitted for the petitioners that they have been falsely implicated in this vexatious proceeding after inordinate delay of the search and seizure of the business premises of Shyam Bhandar owned and possessed by Jai Prakash Keshri, the brother of O.P. No. 2 due to grudge and animosity to counter blast the cases bearing Bermo (Phusro) P.S. Case No. 18 of 1997 and cases under Sections 49(3)(a) and 49(3) (d) of the Bihar Finance Act filed by the petitioners against O.P. No. 2 and his brother. It has also been submitted that Jai Prakash Keshri aforesaid filed C.W.J.C. No. 3936 of 1996(R) for quashing of the penalty proceeding as a result of the inspection by the petitioners and the seizure made on inspection which was dismissed in limine on 5-12-1999 (sic) and thereafter this vexatious and false complaint case has been filed against the petitioners as a pressure tactics on them and also to humiliate them. It has also been contended that the petitioners were Commercial Taxes Officers posted at Hazaribag Division and Tenughat Circle at the relevant time and as per order of the authorities they had inspected the business premises of the brother of O.P. No. 2 and books of account, ledger, cash memo, register, invoices and challans etc. were seized in the course of inspection u/s 33(1) of the Bihar Finance Act and gross irregularities were found and amount of rs. 9,21,126.18 was levied as taxes besides Rs. 27,63,378 and a penalty amount of Rs. 49,602.00 u/s 33(5) of the Bihar Finance Act was imposed on the brother of O.P. No. 2 and also a case u/s 49 of the Bihar Finance Act is to be instituted against them. Lastly it has been contended that all the petitioners are public servants not removable from their office save by or with the sanction of the State Government and in due discharge of their official duties they have made inspection of the business premises of the brother of O.P. No. 2 and the entire allegation levelled against them are false and fabricated and they are protected u/s 197 of the Cr.P.C. and their prosecution in this got up case without sanction of the prescribed authority is a patent illegality and the ratio of Smt. Pratibha Sinha (supra) and N.C. Dhoundial (supra) does not at all cover the case of the petitioners rather the law settled by the Apex Court in the case of [Suresh Kumar Bhikamchand Jain Vs. Pandey Ajay Bhushan and Others](#), squarely covers the case of the petitioners in which it has been categorically stated that while discharging public duty a public servant is fully protected u/s 197, I.P.C. It has also been submitted that the prosecution of the petitioners without the sanction of the competent authority is a patent illegality and the learned Court below has no jurisdiction vested in him to proceed against the petitioners in this false and got up fraudulent case.

5. It has been contended on behalf of opposite party No. 2 that the petitioners had no search warrant or any authority of law to search the business premises of the brother of O.P. No. 2 and it was no business on their part to threaten O.P. No. 2 to get the shop of his brother opened and to obtain his signatures on blank papers

and they have abused their authority and wrongfully confined O.P. No. 2 and there is also no reasonable connection between the acts complained of and the official duties of the petitioners and as such the petitioners are not protected u/s 197 of the Cr.P.C. It has also been submitted that it cannot be said that the acts complained of by the petitioners are such they can say that they did it while acting or purported to act in discharge of their official duties and in this view of the matter the sanction for their prosecution is not at all required in this case and there is no illegality at all in the proceeding for their prosecution.

6. It will admit of no doubt that all the three petitioners were at the relevant time serving as Commercial Taxes Officers with the State of Bihar and in pursuance of the order of the higher authorities they made search of the business premises styled as Shyam Bhandar of Jai Prakash Keshri, the brother of O.P. No. 2. There is no denying the fact that the search of the business premises of Shyam Bhandar was conducted as per the provisions Section 49(3) of the Bihar Finance Act and after prior compliance of the provisions contained u/s 33(1) of the said Act and in view of the provision of Section 33 of Bihar Finance Act it is not incumbent upon the petitioners to have Search warrant for making any inspection and seizure of the documents of the shop. Shyam Bhandar of the brother of O.P. No. 2. It is manifest from the materials on the record that the petitioners have made inspection and search of the business premises Shyam Bhandar and seized the documents from the said business premises while acting or purporting to act in discharge of their official duty. It also appears that cognizance in this case has been taken and summonses have been issued against them for trial in the said complaint case without the prior sanction of the competent authority. Sanction u/s 197(1), Cr.P.C. is a sine qua non for taking cognizance of the offences against the petitioners. The legislative mandate engrafted in Section 197(1) of the Cr.P.C. debarring a Court from taking cognizance of an offence except with the previous sanction of the competent authority concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from his office save by or with the sanction of the Government touches the jurisdiction of the Court itself. It is a prohibition imposed by the statute from taking cognizance. It is not disputed that the search of the business premises of the brother of O.P. No. 2 and seizure made from the said shop by the petitioners u/s 33 of the Bihar Finance Act lay within the scope of the official duty of the petitioners as Commercial Taxes Officers and even if some accesses as alleged and complained of were allegedly committed in the purported discharge of their duties as Commercial Taxes Officers even then sanction u/s 197, Cr.P.C. for taking cognizance against them and for their prosecution is a necessity and the alleged access complained of does not at all oust the necessity of sanction u/s 197, Cr.P.C. for the prosecution of the petitioners. The expression "no Court shall take cognizance of such offence except with the previous sanction appears in Section 197, Cr.P.C. unmistakably shows that the bar on the

exercise of power by the Court to take cognizance is mandatory and the previous sanction from the competent authority for prosecution of the public servant who is accused of having committed an offence either in execution of his duty or in purported execution of his duty is essential to take cognizance. Thus, in the absence of sanction u/s 197, Cr.P.C. a manifest error, has been committed by the learned Court below in taking cognizance in this case and issuing summons against the petitioners for their trial. The ratio of the case of Suresh Kumar Bhikamchand Jain (supra) as well as 1997 (3) CTC 369 (SC) , squarely covers the case of the petitioners.

7. There is merit in the application and it succeeds. The application is hereby allowed. The Complaint Case No. 33 of 1997 and order dated 24-2-1998 of taking cognizance and summoning the petitioners for trial are hereby quashed.

8. However, it is hereby observed that the proceeding of Complaint Case No. 33 of 1997 against the petitioners has been quashed on account of want of sanction u/s 197, Cr.P.C. and if the competent authority grants sanction u/s 197, Cr.P.C. it will be perfectly valid and open to O.P. No. 2 herein to activate the prosecution against the petitioners and this order shall not come in the way of the learned Court below in proceeding against the accused persons further in the complaint case nor shall this order come in the way of the competent authority to grant sanction u/s 197, Cr.P.C. under the facts and circumstances of this case if O.P. No. 2 applies for obtaining sanction.