

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.4237 of 2025**

Arising Out of PS. Case No.-2260 Year-2008 Thana- WEST CHAMPARAN COMPLAINT  
District- West Champaran

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Dilip Kumar, S/o Shri Jagdish Prasad Saha, R/o House No. 55, Sector-7, P.S.-  
Sector-26, Chandigarh.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Shri Brajraj Srivastava, S/o- Sri Ramadhar Pandit Srivastava, Village-  
Sargattia, P.S.- Gopalpur Distt.- West Champaran.

... .. Opposite Party/s

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**Appearance :**

For the Petitioner/s	:	Mr. Mriganka Datta, Sr. Advocate
		Mr. Tuhin Shankar, Advocate
		Mr. A.K. Thakur, Advocate
		Mr. Goyal Kumar, Advocate
For the Opposite Party/s :		Mr. Choubey Jawahar, APP
For the Opposite Party No.2:		Mr. Akhileshwar Kumar Shrivastva, Advocate
		Mr. Amrit Kirti, Advocate

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**CORAM: HONOURABLE MR. JUSTICE SOURENDRA PANDEY**  
**CAV JUDGMENT**

**Date : 04-09-2025**

Heard Mr. Mriganka Datta, learned Senior counsel  
assisted by Mr. Tuhin Shankar, Mr. A.K. Thakur and Mr. Goyal  
Kumar, learned counsels for the petitioner; Mr. Choubey



Jawahar, the learned APP for the State and Mr. Akhileshwar Kumar Shrivastava and Mr. Amrit Kiriti, learned counsel for the opposite party no.2.

2. The present application has been filed by the petitioner invoking the inherent jurisdiction of this Hon'ble Court for quashing the order dated 13.08.2024 passed by the learned Sub-divisional Judicial Magistrate, Bettiah, West Champaran in Complaint Case No. 2260(C) of 2008 by which cognizance for the offence under Section 295-A, 298, 323, 342, 427, 500 and 504 of the Indian Penal Code has been taken against the petitioner.

3. The present application arises on account of a complaint case being Complaint Case No. 2260(C) of 2008 which was filed by the opposite party No. 2, namely, Brajraj Srivastava, alleging offence under Sections 295-A, 298, 323, 342, 427, 500 and 504 of the Indian Penal Code. The complainant has stated that he is a member of 'Adhivakta Manch' Bihar and is an ex-propagator of Rashtriya Swayamsevak Sangh (RSS) and is presently pursuing advocacy at Bettiah Civil Court. The complainant has alleged



that he was called upon by the Block Development Officer to attend the Peace Committee Meeting at 11:00 AM on 12.08.2008 in the office of the Collector, which he attended along with his friend Vijay Prasad @ Vijay Kashyap. The complainant further alleges that at the end of the meeting, when he raised a question that a person, who was involved in tearing of the Mahivir Flag and had destroyed the idol of Lord Mahavir should be taken to task, upon which, the District Magistrate (petitioner) asked the complainant to sit aside and after the meeting was over, the petitioner along with some youth in plain clothes came to him and started abusing him alleging him to be the killer of Gandhi and communal. It is alleged that when the complainant objected to such abuse, the petitioner caught the opposite party no. 2 by his collar and pulled him raising his hand causing injury on his neck and the collar of the shirt also tore. It is further alleged that on instructions of the petitioner some unknown young men pulled and assaulted the opposite party no.2 with fist.

4. The complainant has further alleged that he along with his friend were taken to the town police station and were



kept in the lockup, where, at around 09:30 PM the petitioner again came to the police station along with police force and on his instruction the complainant was brought out of the lockup. Petitioner then abused the complainant and even hurt the religious sentiment of the complainant, thereafter on his instructions the Police Officers hit the complainant with the butt of the rifle causing severe injury and hurt and further directed the police officials to send the complainant and his accomplice to jail after procuring the order of remand.

5. Lastly, the complainant has alleged that the jail Doctor had provided medication to the complainant, who was suffering from fever and sustained serious injury and he kept mum towards the violence and aggressive action and obscene language used by the petitioner, fearing his life. The complainant also alleged that the Doctor refused to issue any injury report under the pressure and fear of the petitioner.

6. Learned Senior counsel for the petitioner submits that the factual matrix of the present application arises from a dispute, with regard to a vacant public land which was commonly used by the villagers of all communities, residents



and persons living within the village Karnemya within the Panchayat of Lalganj, Chanpatya police station, Bettiah, District West Champaran, which arose on the issue of its use between two communities. It is stated that every year in the month of August-September both communities celebrate their respective festivals at the disputed site, i.e., the Muslim minority community celebrate annual “Tajia festival”, while the Hindu majority community celebrates their annual “Mahaviri Flag Day” of Lord Hanuman. In the year 2008, the Hindu Community after terminating the Mahaviri Flag March proceeded ahead to install an idol of Lord Hanuman at the disputed site, which the minority Muslim community saw as an attempt to claim and occupy the disputed land. In retaliation an attempt to discourage, thwart such move the Muslim Community tore and vandalized the Mahaviri Flag hoisted at the disputed site. In further retaliation the Hindu community on the same date attacked and desecrated and vandalized the local mosque of the village.

7. The learned Senior counsel further submits that the aforesaid series of events that occurred on 06.08.2008 at



the disputed land cautioned and alarmed the Home Department, State of Bihar and fearing further retributive action, escalation of violence and even rapid deterioration of law and order, the State Administration/Department of Home proceeded to initiate certain instructions. A fax message dated 07.08.2008 issued by the Principal Secretary, Home (special) Department, State of Bihar, intimating the petitioner that members of two communities have clashed and damage has been done to the Mosque, directed the petitioner, who happens to be the District Magistrate, West Champaran to take immediate steps and treat the matter as extremely urgent. Another fax was received by the Office of the petitioner on 07.08.2008 issued by the Principal Secretary, Home (special) Department, State of Bihar, directing the petitioner to tackle the matter immediately to ensure that no untoward incident occurs, to camp at the village, to review the situation and the Government be informed timely of any development. Another fax message dated 07.08.2008 was issued by the Deputy Inspector General of Police, Champaran Region, Bettiah, directing the petitioner and the



Superintendent of Police, Bettiah to ensure that adequate administrative vigilance is maintained by the local administration. Likewise, further fax messages were sent in order to ensure that law and order and communal harmony are maintained, along with instructions to deploy sufficient force, register FIR and appropriate legal action against the culprits and keep the administration duly informed. The District Magistrate (petitioner), West Champaran and the Superintendent of Police, Bettiah were also directed to take preventive steps to avoid anticipated communal clashes at the disputed site.

8. He next submits that in response to the prevailing law and order situation and the directive received by the High Administration/Senior most Officer of the State, the petitioner and his subordinate Officers, in order to defuse and amicably resolve differences, sought to convene peace meetings between the communities. A peace meeting was initially convened by Block Development Officer (BDO), Bettiah with the members of both communities seeking to resolve their differences and disputes and thereafter another meeting was



held at the level of the Sub-Divisional Officer and looking at the fact that the matter remained unresolved, it was escalated to the higher level of the District, *i.e.*, Office of the District Magistrate and in order to make an attempt to secure peace another Peace Committee Meeting was called and held on 12.08.2008 at the Office of the District Magistrate, Bettiah, which was attended, amongst others, by a large number of people from both the communities. In the said meeting upon consideration of various proposals suggested by the participant, it was unanimously and amicably agreed *that the District Administration in order to ensure that the disputed site is not claimed exclusively by any religious Community and/or the disputed site is not reduced to an area of conflict, would construct a School, Dispensary and an Anganwadi Centre at the said site. Both Communities, recognised and accepted the lack of facilities in the Village and the imminent / immediate need for development and such related activities. Both Communities, recognised and accepted the futility of religious animosity and would accordingly refrain from conducting any construction activity / (ies), religious*



*programmes, fairs, processions etc., at the disputed site and that both Communities agreed that they would not allow any deterioration in the law and order situation of the Village. In the event of any untoward incident, the Members "present will be responsible and in case of violation of proposal, the District Magistrate will be free to take any strong action".*

9. The said consensus arrived at 12.08.2008 between all those present and attending the Peace Committee Meeting was recorded in writing and duly signed by *about 25 members of the Hindu Community, about 12 members of the Muslim Community and the entire administration of the District of West Champaran, Bihar, i.e., the District Collector/ District Magistrate, the Superintendent of Police, the Deputy Development Commissioner, the Sub-Divisional Officer and the Block Development Officer.*

10. It has been submitted by the learned Senior counsel that on 12.08.2008 at about 02:30 P.M. the opposite party no. 2 along with one Vijay Prasad @ Vijay Kashyap entered the campus of the District Collector with around 30-40 unknown persons. They began to insult and abuse the



members of the Muslim community who were participating and attending the Peace Committee Meeting, resulting in chaos and absolute indiscipline and despite intervention of the Block Development Officer requesting them to maintain calm and allow the Peace Committee Meeting proceedings to end, the opposite party no. 2 and his associate began to question the justification, purpose and reasoning behind the Peace Committee Meetings and they began raising slogans, which were insulting, derogatory, abusive of the Muslim minority community. Opposite party no. 2 and others began to throw and hurl the vacant chairs lying at the Office of the District Magistrate and made every attempt to interrupt and disrupt the proceedings that were continuing before the Office of the District Collector. The opposite party no. 2 and others questioned the motive and wisdom of the District Magistrate (petitioner) and accused the petitioner and other officials of pursuing Muslim appeasement policy of seeking favour to them at the cost of the Hindu majority.

11. On account of such incident, an FIR bearing (Bettiha) Sadar P.S. Case no. 0260 of 2008 dated



12.08.2008 was registered by the then Block Development Officer against the complainant/opposite party no. 2 and his companion/accomplice Vijay Prasad @ Vijay Kashyap and also 30-40 unknown persons.

12. Pursuant to such registration of FIR, the opposite party no. 2 and his accomplice were arrested on the same day i.e. 12.08.2008 at about 04:00 PM and they were both produced for their medical examination before the Additional Chief Medical Officer, who after physical examination, noted the fact of the absence of any injury on the body/limb of the opposite party no. 2.

13. The learned Senior counsel further submits that considering the sensitivity of the situation and fearing the deterioration of law and order situation, the S.H.O. of the Bettiah Town police station filed an application seeking appropriate directions from the learned Chief Judicial Magistrate, Sadar Court, Bettiah, praying that both the accused may be taken into judicial custody and the learned Chief Judicial Magistrate considering the seriousness of the situation was pleased to take up the said application at 09:00



PM and after recording the following:-

*“(i) that there is a chance of serious law and order crisis, if the arrestees are not remanded to judicial custody; and*

*(ii) that the Accused Shri Brajraj Srivastava/ the opposite party herein "does not complain of any injury",*

remanded the opposite party no. 2 to judicial custody, to be subsequently produced before the learned Chief Judicial Magistrate, Sadar Court, Bettiah on 25.08.2008. Copy of the said order passed by the learned Chief judicial Magistrate has been brought on record by way of Annexure A-8.

14. On 14.08.2008 the learned Chief Judicial Magistrate, Sadar Court, Bettiah enlarged the opposite party no. 2 and his accomplice, namely, Vijay Prasad @ Vijay Kashyap on bail with an undertaking that they would not address public gathering till investigation is over and thereafter, the opposite party no. 2 and the other co-accused were released from judicial custody on 15.08.2008.

15. The learned Senior counsel at this juncture has



drawn the attention of this Court to Annexure A-10, which is a copy of release memo dated 15.08.2008 issued by the Superintendent, District Jail, Bettiah, wherein the superintendent District Jail was pleased to record *that the opposite party was taken into judicial custody on 12.08.2008 at about 10:55 PM "in the night" and that the opposite party was released on Bail on 15.08.2008. The opposite party did not complain of any health problem to the Jail Medical Officer. The Medical Outdoor Register does not record his name and that the opposite party did not make any Complaint regarding his health and accordingly did not receive any medicine.*

16. The learned senior counsel further submits that after a period of ten days from the date of incident, i.e., 12.08.2008 and after a week from his release, as a counter blast and vindictive retaliation the present Complaint Case No. 2260 of 2008 was filed before the learned Chief Judicial Magistrate, Sadar Court, Bettiah against the petitioner herein alleging offence under Section 323, 342, 500, 504, 506, 295A, 298 and 427 of the Indian Penal Code.

17. Learned Senior counsel submits that before



adverting to the legal issues in the present case the falsity of the present complaint needs to be examined and certain facts would completely negate the authenticity of the aforesaid complaint. It has been submitted that in complete opposition to the medical injuries, as suggested in the complaint petition, independent sources has recorded as follows:

(i) the absence of any well-defined injury, as recorded by the Additional Chief Medical Officer, Bettiah, West Champaran, Bihar, dated 12.08.2008 at about 07:40 PM;

(ii) The absence of any medical Complaint whatsoever recorded by the Jail Superintendent, Bettiah, West Champaran, Bihar during the *opposite party's* entire stay in judicial custody between 12.08.2008 to 15.08.2008; and

(iii) the Order dated 12.08.2008 passed by the Learned Chief Judicial Magistrate, Sadar Court, Bettiah, West Champaran, Bihar, recording that the *opposite party's* did not "complain of any injury" whatsoever, when produced before Court for his remand to judicial custody.



18. Learned Senior counsel has pointed out that the opposite party no. 2 has alleged and claimed that the petitioner visited the police station at about 09:30 PM and dragged the opposite party out and got him beaten off by the police rifle, however, from perusal of the order dated 12.08.2008 passed by the learned Chief Judicial Magistrate, Sadar Court, Bettiah (Annexure 8) whereby the opposite party no. 2 was sent to judicial custody, it has explicitly been recorded that the complainant/opposite party was produced before the learned Magistrate at 09:00 PM, which *prima facie* belies the claim of the complainant and it could be safe to deduce that the complainant/opposite party no. 2 could not have been beaten at the police station at 09:30 PM, if the opposite party no.2 was already before the learned Chief Judicial Magistrate at 09:00 PM, since he had been taken from the police station, to the Court and not vice-verse. Thus, he has submitted that the version of the opposite party in the complaint is self-contradictory, conflicting and thus cannot be relied upon.

19. The learned Senior counsel further submits that



the complaint of the opposite party no. 2 was registered as a private complaint under Section 202 of the Code of Criminal Procedure (in short 'the Cr.P.C.) and subsequent thereto *vide* order dated 18.09.2008 (Annexure 13) the learned Court below after recording that the offence alleged by the opposite party against the Petitioner was against the District Magistrate, who was "endeavouring in his official capacity", the complaint filed against "the Officer on duty" appears to be "malafide" and the case did not possess any "genuine material", was pleased to dismiss the said complaint of the opposite party no. 2. The revision petition preferred by the opposite party no. 2 was also dismissed by the learned Sessions Judge, West Champaran *vide* order dated 14.11.2008 holding that in such cases sanction under Section 197 of the Code of Criminal Procedure was mandatorily required before prosecuting a public servant and as no sanction had been obtained against the petitioner, the revision application was also dismissed.

20. The learned Senior counsel further submits that being aggrieved by the said order the opposite party no. 2



preferred an application under Section 482 of the Cr.P.C. before this Hon'ble Court being Cr. Misc. No. 1001 of 2009 which was heard and vide order dated 07.09.2010 (Annexure 15) the same was allowed with an observation that the learned Court below had erred in dismissing the complaint without conducting an inquiry as contemplated under Section 202 of the Cr.P.C. and also stating that the allegations leveled against the petitioner did not fall within the scope of official act of the District Magistrate (petitioner) requiring any form of sanction under Section 197 to the Cr.P.C.

21. It has been submitted that aggrieved by such order the petitioner preferred an SLP being Criminal Appeal No. 561 of 2012, which was heard and disposed off without going into the merits of the case by order dated 26.07.2023 (Annexure 16) passed by the Hon'ble Supreme Court recorded as under- (i) *"Therefore, we find no error when the High Court came to the conclusion that the complaint deserves to be remanded from the stage of holding an inquiry under sub-Section (1) of Section 202 of the Cr.P.C"; and (ii) "The High Court has made certain observations including on*



*the issue of absence of sanction under Section 197 of the Cr.P.C. As the High Court has remanded the case for holding an inquiry in terms of sub-Section (1) of Section 202 of the Cr.P.C., it is obvious that the observations made in the impugned order, including the observations on requirement of sanction under Section 197 of the Cr.P.C., will have to be held as tentative observations, which will have no bearing on ultimate conclusion to be drawn by the learned Magistrate".*

22. The learned Senior counsel has further stated that consequent thereto and upon remand the learned Sub-Divisional Judicial Magistrate, Bettiah, West Champaran by an order dated 13.08.2024 (Annexure 17) after recording the testimony of witnesses proceeded to conclude that there were sufficient grounds for issuing summons against the petitioner stating therein that no sanction under Section 197 of the Cr.P.C. was warranted, as the alleged offence did not fall within the scope and purview of Section 197 of the Cr.P.C., and issued summon against the petitioner.

23. The learned Senior counsel appearing on behalf of the petitioner further submits that it is relevant to point out



that the conduct of the complainant/ opposite party no. 2, of inciting religious discord, did not end there and even during the year 2009 while the administration was taking steps for maintaining peace and to ensure that no untoward incident would occur as it had in the year 2008 and also considering the gravity and sensitivity of the situation, the Superintendent of Police, Bettiah informed and intimated the petitioner that the opposite party no. 2 was again seeking to cause communal clashes by inciting the Muslim minority community against the Hindu majority community and it was suggested that the opposite party no. 2 be externed from the District. The opposite party no. 2 and his accomplice were again found to have been indulging in the acts of hate and violence leading to registration of another FIR being FIR No. 194 of 2009, which was registered by the District Administration and the opposite party no. 2 and his accomplice were arrested and taken into custody on 27.07.2009 and were finally granted bail on 07.10.2009.

24. The learned Senior counsel at this juncture draws attention of this Court, wherein the details of the



petitioner and his service record has been referred to starting from Paragraphs 10 to 15 of the application, which points out that the petitioner is an officer of Indian Administrative Services (1995 Batch) of Punjab Cader and in the year 2008 when the State of Bihar was facing acute paucity of Officers belonging to Indian Administrative Services, the State Government had invited Indian Administrative Service Officers, who are willing to serve in the State of Bihar and the petitioner, who belongs to the State of Bihar sensing an opportunity to serve his home State consented and agreed to be deputed to Bihar.

25. The learned Senior counsel has pointed out that the petitioner has served at various positions and enjoys an outstanding annual confidential report and is widely respected and regarded for his integrity, honesty and impeccable character both by his junior and senior Officers. The petitioner in terms of seniority and rank is empaneled to serve the Union of India as an Additional Secretary.

26. The learned Senior counsel submits that on the contrary the opposite party no. 2 is allegedly an advocate by



profession practicing before the District Court at Bettiah and he also claims to be member/leader of Hindu/Religious group with apparent and evident political ambitions and is equally known to be a violent activist indulging in violent activities in the nature of communal clashes against concerning a minority religious group. The criminal cases in which the opposite party no. 2 is an accused has also been enumerated in Paragraph 17 of the present application filed by the petitioner and from perusal of the same, it would be evident that almost eight criminal cases have been stated to be pending against the petitioner.

27. The learned Senior counsel, based on the aforesaid facts and circumstances with regard to the narrative of the incidents and the conduct of the complainant/opposite party no. 2, further submits that in view of the aforesaid, the impugned order dated 13.08.2024 in issuing summons against the petitioner is serious error and would amount to an abuse of the process of law as it has failed to appreciate that the petitioner was only a public servant discharging his public duties in accordance with the directions and instructions of his



superior in public interest. On the contrary, the opposite party no. 2 is a routine and habitual inciter/perpetrator of acute violence on religious and communal line as is apparent from the public records.

28. The impugned order has failed to acknowledge that the entire conduct of the petitioner was only and only in relation to his official duties and allegations against the petitioner of violence is absolutely false as there is no evidence, independent or otherwise, which would prove that the opposite party no. 2 had suffered any injury. The impugned order fails to consider and appreciate that the complaint of the opposite party No. 2 was a counter blast and in retaliation to the FIR filed by the administration against the complainant/opposite party no. 2 in which charge-sheet has already been submitted against the opposite party no. 2.

29. The learned Senior counsel has drawn attention of this Court towards Annexure A-23 which is the decision of the Government of Bihar dated 10.01.2014 to treat the act and actions of the petitioner as solely and only rising out and from the discharge of his official/public duty which further



supports the case of the petitioner that any action which was taken against the complainant/opposite party no. 2 was in discharge of his official duty only to maintain peace within the District, which was being disrupted at the behest of the opposite party no. 2 and against whom an FIR was lodged for the said offences.

30. The learned Senior counsel in the aforesaid backdrop has submitted that the impugned order dated 13.08.2024 has erred on two counts, namely, (i) in issuing summons and proceedings under Section 202 of the Cr.P.C. and (ii) in concluding that no sanction of 197 was implied since the purported offensive act does not fall within the meaning/definition of official acts/discharge of public duty.

31. The learned Senior counsel for the petitioner next submits that the impugned order is palpably illegal being against the mandate of Section 197 of Cr.P.C., which shall be clear from the following submissions.

32. The learned Senior counsel submits that no proceedings against the petitioner can and could be instituted without prior sanction under Section 197 of the Cr.P.C., as



the petitioner was solely and wholly discharging responsibilities in official/public capacity. The learned Senior counsel for the petitioner refers to the following factual position which would duly support and corroborate such facts which are as under:

*“(i) that the Petitioner is a Public Servant.*

*On 12.08.2008 the Petitioner was deputed and appointed as the District Collector/Magistrate, Bettiah, West Champaran, Bihar;*

*(ii) as the District Collector / Magistrate, the Petitioner is the Head of the District and responsible for the safety and security of its residents. The entire law and order of the District vests and is under his direct responsibility. He is the Nodal Head, to whom all other Departmental Head's report;*

*(iii) the Petitioner in such capacity was forewarned by his Superiors/ Senior most officers of the State of the likely and looming danger, waiting to transpire in the village. He was instructed to ensure peace and avoid danger to the life and limb of its people;*

*(iv) in particular the Petitioner had been instructed to ensure, that peace be maintained at all times despite the many odds;*

*(v) the decision to hold Peace-Committee Meetings and to further mobilise the District Police*



*Force, were taken in the interest of the public towards maintenance of law and order and avoidance of violence;*

*(vi) the subsequent Peace-Committee Meetings, held by the Block Development Officer and thereafter by the Sub-Divisional Officer were again in public interest, concerning public officials discharging public duties;*

*(vii) the Peace-Committee Meeting held on 12.08.2008 was equally and solely in public interest, to secure peace and calm for the residents of the village/ district;*

*(viii) the presence of the Petitioner at the Peace-Committee Meeting on 12.08.2008 was purely and solely in public interest and as a public servant;*

*(ix) the reaction, hostility, rudeness and further unacceptable conduct and behaviour of the opposite party No. 2 towards the Petitioner, was again solely and purely because of his status/designation of/as a public servant;*

*(x) the entire sequence of events as recorded in the FIR No. 0260/2008 and other documentary evidence as existent, it is clear beyond any reasonable doubt that the Petitioner's presence at the Peace-Committee Meeting on 12.08.2008 was purely and solely in the capacity of a public servant; and*

*(xi) there is no other factor attributed to*



*the Petitioner that reduces his stature as a public servant.”*

33. The learned Senior counsel has further submitted that the contents of the Complaint Case No. 2260 of 2008 filed by the opposite party no. 2 on 22.12.2008 evidently admits and confirms that the public nature and character of events that transpired on 12.08.2008, namely, (i) *that the place of the alleged incident, was- "Meeting Hall, Collectorate Campus, Bettiah". Undoubtedly, the Meeting Hall in the Collectorate Complex, is a public space where public activities are pursued by the public officials; (ii) the intimation about the Peace Committee Meeting of 12.08.2008 was conveyed to the said opposite party No. 2, by the Block Development Officer, Bettiah, West Champaran. Bihar. Undoubtedly, the Peace Committee Meeting was a public meeting and the Block Development Officer, Bettiah is a public official discharging public functions and responsibilities; (iii) the opposite party No. 2 was invited by the said Officer/ BDO, as he opined that the opposite party's No. 2 presence was "necessary for social welfare". Undoubtedly, social welfare is part of public duty and activity; (iv) that the*



*purported and alleged discussion between the Petitioner and the opposite party No. 2, pertained to a public purpose and the purported/ alleged loss of patience by the Petitioner was in public glare, in relation to a public activity and in a public space; (v) the purported and alleged acts of violence and physical abuse/ assault allegedly perpetrated by the Petitioner were - a) at a public place, b) at a public meeting, c) in relation to a public cause / issue, and d) in relation to public affairs and public officials; (vi) the purported arrest, lock-up and the further purported assault by purported rifle butts were again by purported officials engaged in public activities; and (vii) there was no interaction whatsoever between the Parties that was not public in nature, capable of denying the Petitioner the protective umbrella of Section 197 of the Cr.P.C.*

34. The learned Senior counsel has submitted that the veracity and truth of the complaint is seriously doubted, as the alleged violent outburst could not have possibly been taken place for the reasons that there was no prior history or interaction, rage or ill will between the petitioner and the



complainant/opposite party no. 2 prior to 12.08.2008. There is no purported incident on record of any enragement between those attending Peace Committee Meeting and there was no occasion for the parties to exhibit violence. There was no provocation either grave or sudden or most important any *mens rea* or the petitioner to assault and abuse the complainant/opposite party no. 2.

35. Therefore, from the plain reading of the complaint, it could safely be contended that the allegations therein are illusionary, imaginary, concocted and created only to settle personal score against the petitioner, after an FIR was lodged against him at the behest of the petitioner.

36. The learned Senior Counsel has submitted that the petitioner was apparently and solely discharging his public responsibilities and duties and consequently, he could not and cannot be prosecuted without sanction under Section 197 of the Cr.P.C. and if such protection is not afforded to an honest, upright, sincere, dedicated and brave officers like the petitioner, it would expose them to vindictive, malicious and *mala fide* scrutiny, investigation and examination. It has been



submitted that on account of such malicious prosecution, such persons, like the petitioner, shall be rendered vulnerable and subjected to unwarranted legal prosecution, which would, ultimately, affect their morale, integrity and their zeal in discharging their public responsibilities and duties.

37. The learned Senior Counsel, therefore, submits that the petitioner cannot be prosecuted without securing sanction under Section 197 of the Cr.P.C. and, thus, the order dated 13.08.2024, allowing the prosecution to proceed without securing sanction, is wrong, unlawful and illegal and is fit to be quashed.

38. In support of his submissions, the learned Senior Counsel has drawn the attention of this Court towards certain judgments of the Hon'ble Supreme Court on the point of the powers of the Hon'ble High Court under Section 482 of the Cr.P.C. and further on the point of Section 197 of the Cr.P.C.

39. The learned Senior Counsel though refers to the judgments on the point of Section 482 Cr.P.C., however, this Court need not go into the details of the same as it is the



settled principle that the accused persons are to be protected against fictitious and unwarranted criminal prosecution and from unnecessarily being put through the rigours of an eventual trap, which would be done either through quashing of the F.I.R./complaint or through an order against the order rejecting discharge.

40. The learned Senior Counsel, thus, moves on to refer to various judicial pronouncements on the point of Section 197 Cr.P.C. and has referred to a judgment passed by the Hon'ble Supreme Court in the case of ***Directorate of Enforcement Vs. Bibhu Prasad Acharya & Ors.***, reported in ***(2025) 1 SCC 404***, wherein, in paragraph 8, it has been held as hereunder :

*“8. The expression “to have been committed by him while acting or purporting to act in the discharge of his official duty” has been judicially interpreted. A Bench of three Hon’ble Judges of this Court in Centre for Public Interest Litigation v. Union of India, in para 9, observed thus: (SCC pp. 208-09)*

*“9. .... This protection 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.  
If in doing his official duty, he acted in excess  
of his duty, but there is a reasonable  
connection between the act and the  
performance of the official duty, the excess  
will not be a sufficient ground to deprive the  
public servant from the protection. The  
question is not as to the nature of the offence  
such as whether the alleged offence contained  
an element necessarily dependent upon the  
offender being a public servant, but whether it  
was committed by a public servant acting or  
purporting to act as such in the discharge of  
his official capacity. Before Section 197 can be  
invoked, it must be shown that the official  
concerned was accused of an offence alleged  
to have been committed by him while acting or  
purporting to act in the discharge of his official  
duties. It is not the duty which requires  
examination so much as the act, because the  
official act can be performed both in the  
discharge of the official duty as well as in  
dereliction of it. The act must fall within the  
scope and range of the official duties of the  
public servant concerned. It is the quality of  
the act which is important and the protection  
of this section is available if the act falls within  
the scope and range of his official duty. There  
cannot be any universal rule to determine



*whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case.”*

*(emphasis supplied)*

41. Further, the learned Senior Counsel refers to the judgment delivered by the Hon'ble Supreme Court in the case of ***Rizwan Ahmed Javed Shaikh & Ors. Vs. Jammal Patel & Ors.***, reported in ***(2001) 5 SCC 7***, wherein it has been observed in paragraphs 14 and 15 as follows :

***“14. The question of applicability of Section 197(2) of the Code is not free of difficulty. In B.***



*Saha v. M.S. Kochar* this Court on a review of the case-law available on the point held as under: (SCC pp. 184-85, paras 17-20)

“17. The words ‘any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty’ employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, ‘it is no part of an official duty to commit an offence, and never can be’. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision. As pointed out by Ramaswami, J. in *Bajinath v. State of M.P.* (AIR at p. 222) ‘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 of the Criminal Procedure Code will be attracted’.*

*18. In sum, the sine qua non for the applicability of this section is that the offence charged, be it one of commission or omission, 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.*

*19. While the question whether an offence was committed in the course of official duty or under colour of office, cannot be answered hypothetically, and depends on the facts of each case, one broad test for this purpose, first deduced by Varadachariar, J. of the Federal Court in *Hori Ram Singh v. Emperor* is generally applied with advantage. After referring with approval to those observations of Varadachariar, J., Lord Simonds in *H.H.B. Gill v. R.* tersely reiterated that the ‘test may well be whether the public servant, if challenged, can reasonably claim, that what he does, he does in virtue of his office’.*

*20. Speaking for the Constitution Bench of this Court, Chandrashekhar Aiyar, J., restated the same principle, thus:*

*‘[I]n the matter of grant of sanction under Section 197, 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.... 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.' ”*

*(emphasis added)*

*“15. The real test to be applied to attract the applicability of Section 197(3) is whether the act which is done by a public officer and is alleged to constitute an offence was done by the public officer whilst acting in his official capacity though what he did was neither his duty nor his right to do as such public officer. The act complained of may be in exercise of the duty or in the absence of such duty or in dereliction of the duty, if the act complained of is done while acting as a public officer and in the course of the same transaction in which the official duty was performed or purported to be performed, the public officer would be protected.”*

42. The learned Senior Counsel has next referred to a judgment passed in **Cr. Appeal No. 1759 of 2025**



**[G.C. Manjunath & Ors. Vs. Seetaram]**, wherein the Hon'ble Supreme Court in paragraph 34 has observed as hereunder :

*“34. .... While enunciating when the protection of prior sanction will be applicable, this Court held that even if a police officer exceeds his official powers, as long as there is a reasonable connection between the act and his duty, they are still entitled to the protection requiring prior sanction. The language of both Section 197 of the CrPC and Section 170 of the Police Act is clear that sanction is required not only for acts done in the discharge of official duty as well as for the acts purported to be done in the discharge of official duty and/or acts done “under colour of or in excess of such duty or authority”. Sanction becomes mandatory if there is reasonable connection between the act and the officer's official duties, even if the officer acted improperly or exceeded his authority. ....”*

*(emphasis added)*

43. The learned Senior Counsel, while referring to paragraph 37 to 40 of the aforesaid **G.C. Manjunath's** case, has submitted that the Hon'ble Supreme Court in that case had taken into account that the complainant was a declared rowdy sheeter and, therefore, any action undertaken by a



public officer, even if in excess of the authority vested in them or overstepping the confines of their official duty, would nonetheless attract statutory protection, provided there exist a reasonable nexus between the act complained of and the officer's official functions.

44. Paragraphs 37 to 40 of aforesaid **G.C. Manjunath's** case is being enumerated hereinbelow for ready reference :

*"37. Turning to the case at hand, there is little doubt that the allegations levelled against the accused persons are grave in nature. Broadly classified, the accusations against the accused persons encompass the following: (1) abuse of official authority by the accused persons in allegedly implicating the complainant in fabricated criminal cases, purportedly driven by malice or vendetta; (2) physical assault and ill-treatment of the complainant by the accused persons, constituting acts of alleged police excess; (3) wrongful confinement of the complainant; and (4) criminal intimidation of the complainant.*

*38. In the circumstances at hand, we are of the considered opinion that the allegations levelled against the accused persons, though grave, squarely fall within the*



*ambit of “acts done under colour of, or in excess of, such duty or authority,” and “acting or purporting to act in the discharge of his official duty,” as envisaged under Section 170 of the Police Act and Section 197 of the CrPC respectively. This Court, while adjudicating on instances of alleged police excess, has consistently held in **Virupaxappa** and **D. Devaraja**, that where a police officer, in the course of performing official duties, exceeds the bounds of such duty, the protective shield under the relevant statutory provisions continues to apply, provided there exists a reasonable nexus between the impugned act and the discharge of official functions. It has been categorically held that transgression or overstepping of authority does not, by itself, suffice to displace the statutory safeguard of requiring prior government sanction before prosecuting the public servant concerned.*

**39.** *In the present case, it is an admitted position that the complainant was declared a rowdy sheeter by the Deputy Commissioner of Police, Law and Order (West), Bengaluru City, pursuant to a request made by the Mahalakshmi Layout Police Station, Bengaluru, upon due consideration of the criminal cases registered against the complainant, vide order dated 23.08.1990.*



*Subsequently, multiple criminal cases have been instituted against the complainant. It is in the course of the investigation of these cases that the instant allegations have been levelled against the accused persons. As noted above, any action undertaken by a public officer, even if in excess of the authority vested in them or overstepping the confines of their official duty, would nonetheless attract statutory protection, provided there exists a reasonable nexus between the act complained of and the officer's official functions.*

**40.** *In the present case, it is evident that the actions attributed to the accused persons emanate from the discharge of their official duties, specifically in connection with the investigation of criminal cases pending against the complainant. As previously observed, a mere excess or overreach in the performance of official duty does not, by itself, disentitle a public servant from the statutory protection mandated by law. The safeguard of obtaining prior sanction from the competent authority, as envisaged under Section 197 of the CrPC and Section 170 of the Police Act cannot be rendered nugatory merely because the acts alleged may have exceeded the strict bounds of official duty. In view of the foregoing, we are of the considered opinion*



*that the learned VII Additional Chief Metropolitan Magistrate erred in taking cognisance of the alleged offences against the accused persons without the requisite sanction for prosecution in the instant case. The absence of the necessary sanction vitiates the very initiation of criminal proceedings against the accused persons.”*

45. The learned Senior Counsel raises a very pertinent question of law with regard to the provisions contained in sub-Clause (2) (a)(b) of Section 223 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*in short the **BNSS***) with respect to the mandatory provisions contained therein.

46. Sub-Clause (2) (a)(b) of Section 223 of the BNNS is extracted hereinbelow for ready reference :

**223. Examination of complainant.-**

.....

(2) A Magistrate shall not take cognizance on a complaint against a public servant for any offence alleged to have been committed in course of the discharge of his official functions or duties unless-

(a) such public servant is given an opportunity to make assertions as to the



*situation that led to the incident so allege; and*  
*(b) a report containing facts and*  
*circumstances of the incident from the officer*  
*superior to such public servant is received.*

47. In the aforesaid context, a reference has been made to an order dated **01<sup>st</sup> of October, 2019**, passed in **Cr. Appeal No (S). 1831 of 2010 [Trilok Chand Vs. State of Himachal Pradesh]**, wherein, the Hon'ble Supreme Court, while observing that when an amendment was beneficial to the accused persons, it could be applied to earlier cases as well which are pending in the Court, held as follows :

*“22. It is only retroactive criminal legislation that is prohibited under Article 20(1). The prohibition contained in Article 20(1) is that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence prohibits nor shall he be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. It is quite clear that insofar as the Central Amendment Act creates new offences or enhances punishment for a particular type*



*of offence no person can be convicted by such ex post facto law nor can the enhanced punishment prescribed by the amendment be applicable. But insofar as the Central Amendment Act reduces the punishment for an offence punishable under Section 16(1)(a) of the Act, there is no reason why the accused should not have the benefit of such reduced punishment. The rule of beneficial construction requires that even ex post facto law of such a type should be applied to mitigate the rigour of the law. The principle is based both on sound reason and common sense. This finds support in the following passage from Craies on Statute Law, 7<sup>th</sup> Edn., at pp. 388-89:*

*A retrospective statute is different from an ex post facto statute. "Every ex post facto law ..... " said Chase, J., in the American case of Calder v. Bull "must necessarily be retrospective, but every retrospective law is not an ex post facto law. Every law that takes away or impairs rights vested agreeably to existing laws is retrospective, and is generally unjust and may be oppressive; it is a good general rule that a law should have no retrospect, but in cases in which the laws may justly and for the benefit of the community and also of individuals relate to a time*



*antecedent to their commencement: as statutes of oblivion or of pardon. They are certainly retrospective, and literally both concerning and after the facts committed. But I do not consider any law ex post facto within the prohibition that mollifies the rigour of the criminal law, but only those that create or aggravate the crime, or increase the punishment or change the rules of evidence for the purpose of conviction.... There is a great and apparent difference between making an unlawful act lawful and the making an innocent action criminal and punishing it as a crime.”*

48. Referring to the aforesaid proposition, it has been submitted on behalf of the petitioner that under the new BNSS, the public servant is required to be given an opportunity to make assertions as to the situation that led to the incident so alleged and a report with the facts of the incident from superior officer to such public servant may also be called, before a Magistrate goes on to take cognizance on a complaint against a public servant of any offence alleged to have been committed in course of the discharge of his official functions.



49. Thus, it has been argued that in view of the aforesaid factual scenario, the order impugned in the present application, dated 13.08.2024, is fit to be quashed.

50. The learned counsel appearing on behalf of the complainant/opposite party No. 2 has submitted that from mere perusal of the complaint, it would appear that there is specific allegations against the petitioner, who was the then District Magistrate of West Champaran and during the Peace Committee Meeting, it was the petitioner who used very derogatory and abusive language against the complainant/opposite party No. 2 by stating that he was the murderer of *Gandhi* and was a communal person. He further points out that in page No. 2 of the complaint, the complainant/opposite party No. 2 has categorically mentioned that the petitioner had caught hold of him by his collar and dragged him causing injury on his neck and his collar also got tore and thereafter, on the instructions of the petitioner, the youngsters, who were present there in plain clothes, started assaulting him with fists and he was taken into custody by applying handcuffs.



51. It has further been submitted that the complainant/opposite party No. 2 was put in the lockup at the Bettiah Town Police Station, where the petitioner came at 09:30 in the night along with his men and had taken out the complainant/opposite party No. 2 and his friend from the lockup and assaulted him by the butt of the rifles being carried by the Constables. It is next submitted that on the instructions of the petitioner he was taken for remand on the same day and sent to jail in the night, contrary to the provisions of Jail Manual. It has been alleged that the Doctor did not provide the complainant/opposite party No. 2 any injury report on the guidelines of the petitioner and the complainant/opposite party No. 2 was abused in front of many people. It has further been alleged that the complainant/opposite party No. 2 has also given the explanation for the delayed filing of the complaint on account of his falling ill due to the trauma faced by him because of the conduct of the petitioner.

52. It has, thus, been submitted that from the averments made in the complaint petition, it would be clear



that the petitioner had gone beyond the limits of his official duty and went a step ahead and thereby, committed criminal offence for which cognizance was taken and since the acts committed by the petitioner was not purported to be done in furtherance of his official duty, the protection under Section 196 Cr.P.C. cannot be granted to him.

53. Disputing the facts contained in paragraph 17 of the quashing application, the learned counsel for the complainant/opposite party No. 2 has stated that the cases mentioned at serial Nos. 1 to 4 are neither known to the complainant/opposite party No. 2 nor he is an accused in said cases. However, it has been accepted that there are three cases against the complainant/opposite party No. 2, which are listed at serial Nos. 5, 7 and 8 of paragraph 17 of the quashing application.

54. In support of his contention, the learned counsel for the complainant/opposite party No. 2 has referred to a judgment passed by the Hon'ble Supreme Court in the case of ***State of Orissa Through Kumar Raghvendra Singh & Ors. Vs. Ganesh Chandra Jew***, reported in ***(2004) 8 SCC***



**40**, wherein, in paragraph 11, it has been held as follows :

*“11. It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The Section has, thus, to be construed strictly, while determining its applicability to any act or omission in course of service. Its operation has to be limited to those duties which are discharged in course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned. For instance a public servant is not entitled to indulge in criminal activities. To that extent the Section has to be construed narrowly and in a restricted manner. But once it is established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the Section in favour of the public servant.*



*Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in course of service but not in discharge of his duty and without any justification therefor then the bar under Section 197 of the Code is not attracted. To what extent an act or omission performed by a public servant in discharge of his duty can be deemed to be official was explained by this Court in Matajog Dobey v. H.C. Bhari thus: (AIR p. 49, paras 17 & 19)*

*“The offence alleged to have been committed (by the accused) must have something to do, or must be related in some manner with the discharge of official duty. ... 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 (claim) but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.”*



55. Referring to the aforesaid judgment, the learned counsel for the complainant/opposite party No. 2 submits that the protection under Section 197 of the Cr.P.C. has certain limits and for any act of a public servant, the provisions of this section does not come to the rescue of the petitioner, especially when, like the present case, he had gone all-out against the complainant/opposite party No. 2 by visiting the Bettiah Town Police Station in the night and, thereafter, forcing his remand on the same night, contrary to the statutory provisions.

56. In view of the aforesaid facts and circumstances, it has been submitted that, *prima facie*, a case under the alleged criminal offence is being made out against the petitioner, for such acts and commission, which was not within the ambit of discharge of his official duty. The protection under Section 197 Cr.P.C. could not be afforded to him and in the present case, there is no application of the judgment rendered in the case of ***State of Haryana & Ors. Vs. Ch. Bhajan Lal & Ors.***, reported in ***AIR 1992 SCC 604.***



57. The learned APP for the State, referring to the counter affidavit sworn by an officer of the rank of Under Secretary, Home Department (Spl. Branch), Govt. of Bihar, has drawn the attention of this Court to paragraph 10 of the affidavit, wherein the genesis of the entire dispute has been brought forward, which related to the dispute with regard to a government land, bearing Khata No. 23, Khesra No. 119, Mauja-Lalgarh, which was being used by the Muslim and the Hindu communities, both, for their festivals of “Tajiya” and “Mahavir Flag Day” respectively.

58. The counter affidavit further states that the authorities in the Office of the District Magistrate had communicated to the Government that cases under Sections 107 and 144 of the Cr.P.C. have been filed against the people of both the communities to maintain peace, tranquility and public order. In this regard, a report was also sent regarding communal disturbance created by some anti-social elements.

59. The learned APP submits that such gravity of communal disturbance in the area would have resulted in serious law and order concerns and in order to prevent further



escalation and violations of law and order, the Department of Home, Bihar, Patna sent a fax message dated 07.08.2008 (Annexure-P/1) to the District Magistrate (the petitioner) and the District Superintendent of Police, West Champaran, giving directions to handle the situation as soon as possible and to ensure that no untoward incident occurs. The District Magistrate and the Superintendent of Police were further directed to observe the directions issued by the Home Department, Govt. of Bihar to maintain law and order in the area and ensure communal harmony.

60. It has also been submitted that due to the gravity of the situation, a report from I.G., Intelligence, Special Branch, Bihar, Patna was also received, wherein it was stated that the tension and ill-will are prevailing amongst both the communities and, therefore, administrative action and preventive measures were needed to be taken. In view of such report, the District Magistrate/the petitioner had been taking all preventive/precautionary measures to maintain law and order and ensure communal harmony in the area. There was a request made from the Police Headquarter, Bihar,



Patna to the District Magistrate/the petitioner and the Superintendent of police to take all possible steps and organize a meeting of both the communities to settle the dispute amicably *vide* Memo No. 5350, dated 12.08.2008. In view of such directions, the Peace Committee Meeting was called for at the office of the District Magistrate.

61. The learned APP has further stated that it was during the said Peace Committee Meeting that the complainant/opposite party No. 2, namely, Shri Brajraj Shrivastava and one Shri Vijay Prasad @ Vijay Kashyap, along with 30 – 40 unidentified persons, arrived at the scene and started using derogatory and insulting language towards members of the other community. This led to a situation of complete chaos and disorder. The complainant/opposite party No. 2 and his accomplice questioned the legitimacy of the meeting and began shouting and using abusive and obscene language directed at the members of the other community and also started throwing chairs at the officer's present there and attempted to disrupt the official work, which would be evident from the minutes of the meeting of the Peace



Committee, dated 12.08.2008, which has also been brought on record by way of Annexure-C to the counter affidavit.

62. The learned Additional Public Prosecutor for the State then refers to the fact that because of such action of the complainant/opposite party No. 2, the Block Development Officer made a report before the Town Police Station, Bettiah, mentioning the afore-mentioned acts and misconduct done by the complainant/opposite party No. 2 and his accomplice, upon which, an F.I.R., bearing Town P.S. Case No. 260 of 2008, was registered for the offences under Sections 143, 453A, 295A, 353, 323, 298 and 120(B) of the Indian Penal Code.

63. The learned APP for the State, referring to paragraph 17 of the counter affidavit, submits that as a counterblast to the aforesaid F.I.R. lodged against the complainant/opposite party No. 2, the present complaint, bearing Complaint Case No. 2260 of 2008 was filed before the learned Chief Judicial Magistrate, Bettiah against the petitioner, who was the then District Magistrate and other unknown persons. It has also been submitted that the



learned Chief Judicial Magistrate was of the view that there existed no sufficient ground to proceed against the accused and therefore, the complaint was earlier rightly dismissed at the preliminary stage.

64. The learned Additional Public Prosecutor referring to the paragraphs 18, 19 and 20 of the counter affidavit, has submitted that it would suffice that the acts committed by the petitioner, being a public servant, was *bona fide* and in due discharge of his official duties in accordance with the directions and instructions issued by the Government and therefore, he ought to have been protected under Section 197 of the Cr.P.C.

65. Paragraphs 18, 19 and 20 of the counter affidavit filed by the State are being reproduced hereinbelow for their categorical stand in favour of the petitioner :

*“18. That, it is submitted that the petitioner is a Public Servant was discharging his public duties in accordance with the directions and instructions provided by the Government.*

*19. That, it is relevant to mention here that the inquiry report submitted by the I.G. Police reveals that the respondent complainant*



*was instigating and urging members of the community to boycott and refrain from participating in the peace committee meetings. The report also identifies the complainant (the respondent herein) as the principal instigator and ringleader, who was repeatedly involved in raising anti-administration slogans and persistently accusing the district administration and its officials of allegedly favouring another community.*

**20.** *That, it is further submitted that it is the duty of the State to ensure that peace and harmony is establish and maintained at all the times between the different communities of the society and to maintain law and order at all the times. Therefore, it is imperative upon the agencies and instrumentalities of the State to take all effective measures to ensure that law and order is maintained at all the times. Keeping that in view, such protections as prescribed under section 197 Cr.P.C. are provided to officers in order to ensure that honest and brave officers of the department are not exposed to vindictive, malicious and mala fide investigation and examination. The purpose of section 197 is to ensure that such malicious attempts are not made against honest and sincere officers and ensure that*



*they are not vulnerable and subjected to unwarranted legal prosecution which would affect their moral integrity and zeal in performing their public duties and responsibilities.”*

66. Thus, it has been submitted by the State Counsel that the learned Trial Court has failed to appreciate that no proceeding under Section 295-A of the Indian Penal Code could have been initiated without prior sanction as required and prescribed under Section 197 of the Cr.P.C. and, therefore, the learned Trial Court has erred gravely in proceeding against the petitioner, contrary to the settled principle of law that no public servant could have been proceeded against, without proper prior sanction under Section 197 of the Cr.P.C.

67. In view of the above, the learned APP, thus, submits that the order impugned in the present application is illegal, perverse and fit to be set-aside.

68. Having heard the learned counsel for the parties and in view of the various judicial pronouncements this Court proceeds to examine the foremost question which



is required to be answered in the present case, *i.e.*, -

*"Whether the petitioner is entitled to protection under Section 197 of the Cr.P.C. of prior sanction in the present case?"*

69. It has been observed that the present complaint has been filed by the opposite party no. 2 after ten days of the alleged occurrence and almost a week after his release from the judicial custody, in a case lodged against him by the district administration for causing disruption and interfering with peace and tranquility in the area.

70. This Court has taken note of the fact that the incident occurred during a peace meeting convened by the District Magistrate (petitioner), West Champaran on account of some differences between Hindu and Muslim communities with regard to usage of a particular land.

71. This Court has further noticed that there was aggravated circumstance in which this peace meeting was being convened in order to thwart any chance of violence or communal clashes in relation to the festivals coinciding around the said date. It is an admitted position that the



place of occurrence is the office of the District Magistrate, *i.e.*, petitioner, and it was the complainant/opposite party no.2, who had come to the Office of the District Magistrate and started opposing the petitioner and others challenging their authority for convening such Peace Committee Meeting and even the decision arrived at amicably.

72. This Court has observed that the District Administration on the instructions of the Home Department, State of Bihar, Patna was taking all the steps to ensure that any untoward incident does not occur and the entire State machinery was making all efforts to secure that law and order and communal harmony be maintained. In furtherance of such efforts, the Peace Committee Meeting was convened and a consensus was arrived at between the parties, who were attending the Peace Committee Meeting and about 25 members of Hindu Community and 12 members of the Muslim community and the entire administration of the District of West Champaran, *i.e.*, District Magistrate (petitioner), the Superintendent of Police, the Deputy Development



Commissioner, the Sub-Divisional Officer and the Block Development Officer were party to the same.

73. This Court further notices and takes into account that during such a condition of religious dissention, in which the town of Bettiah was reeling at the relevant time, the complaint/opposite party no. 2 along with his accomplice and some other unknown members began to insult and abuse the members of the Muslim community, who were participating and attending the Peace Committee Meeting and resultantly a chaos and absolute indiscipline prevailed in the Office of the District Magistrate (petitioner) compelling the Block Development Officer to lodge an FIR against the complainant/opposite party no. 2 and his accomplice Vijay Prasad and 30 to 40 unknown persons.

74. In view of the aforesaid factual matrix, this Court is conscious of the fact that it is to be borne in mind that at the relevant point of time, the petitioner was holding the Office of the District Magistrate and was entrusted with the onerous responsibility of maintaining law and order in the District. From the materials placed on



record, it shows that a sensitive situation had arisen owing to communal tension between the communities and immediate preventive measures were required to be taken to avert any breach of peace.

75. It was on account of such situation, in furtherance of his duty that a Peace Committee Meeting was convened under the chairmanship of the District Magistrate (petitioner) so as to restore confidence amongst the members of both communities and to defuse the volatile atmosphere prevailing at the relevant time.

76. As this Court has already observed hereinabove that during the course of such meeting, the complainant/opposite party no. 2 himself appears to have indulged in acts and utterances that disturbed the proceedings and sought to inflame the situation and therefore, he was taken into custody which was an immediate measure to curb any further escalation of violence or disturbance amongst the two communities. It was on account of such action of the complainant/opposite party no. 2 that an FIR was registered against him for his



conduct at the said meeting, and he was taken into custody and subsequently after investigation *charge-sheet* has also been submitted.

77. Now coming to the allegations levelled against the petitioner that he had directed the police personnel to assault the complainant/opposite party no. 2 and further he visited the police lockup and have him beaten by the butt of the rifle are not being substantiated by any medical evidence or material to suggest that complainant/opposite party no. 2 had suffered any physical injury.

78. This reminds the Court of the independent sources who have recorded the statements of the complainant/opposite party no. 2 during his arrest and production before the learned Court below as well as during his stay in the jail. The report 12.08.2008 passed by the Additional Chief Medical Officer, Bettiah, West Champaran records that the complainant/opposite party no. 2 was examined on 12.08.2008 at 07:40 P.M. and no injury was found. During the entire stay in judicial custody



between 12.08.2008 to 15.08.2008 no medical complaint was recorded by the Jail Superintendent, Bettiah, West Champaran and even the order dated 12.08.2008 passed by the learned Chief Judicial Magistrate, Sadar Court, Bettiah records that the complainant/opposite party no. 2 did not complaint of any injury whatsoever when he was produced before the learned Court below, for his remand to judicial custody.

79. This Court has also taken note of a major contradiction in the statement of the complainant/opposite party no. 2 viz a viz the order dated 12.08.2008 passed by the learned Chief Judicial Magistrate, Sadar Court, Bettiah which goes on to falsify the claim of the complainant/opposite party no. 2 whereby he has alleged in his complaint petition that the petitioner had come to the lockup of Bettiah Town police station at 09:30 P.M. and got him assaulted by the butt of the rifles giving instructions to the police constables. Since, the complainant/opposite party no. 2 has not alleged anything against the learned Court below nor has challenged the said order dated



12.08.2008, there is no reason to not take into account the order passed by the learned Chief Judicial Magistrate, Bettiah dated 12.08.2008, which categorically records the time also in the order as it was on extreme circumstances the complainant of the present case and an accused of the FIR of Bettiah Town P.S. Case No. 260 of 2008 was forwarded by the police alleging therein that the complainant/opposite party no. 2 and his accomplice were delivering instigating speeches against a particular community and they were causing disturbance in the official work and if the arrestees/complainant and his accomplice were not remanded to judicial custody, there would be a chance of serious law and order situation. The Court had recorded that the accused persons, meaning the complainant/opposite party no. 2 and his accomplice, did not complaint of any ill-treatment at the hands of the escort and specifically recorded that “**accused Brajraj Srivastava does not complaint of any injury**”.

80. In view of such facts as taken note of hereinabove, the petitioner was performing his duty as



District Magistrate of Bettiah, a town reeling under communal clashes between two communities as such in any case, the actions attributed to the petitioner, even if assumes on their face, are integrally connected with the discharge of his official function as a District Magistrate (petitioner) in the context of maintaining law and order.

81. It is a well settled law that when such allegations pertain to acts purportedly done in discharge of official duty, no cognizance can be taken by the Magistrate against a public servant without obtaining the previous sanction of the Competent Authority, as mandated under Section 197 of the Cr.P.C. The absence of such sanctions, therefore, render the order taking cognizance against the accused public servant is unsustainable in law.

82. This court has elaborately discussed the case laws on the point of sanction, and it has been seen that a test was stated by the Hon'ble Supreme Court in the case of ***Directorate of Enforcement*** (*supra*), wherein the Court has observed that if the omission or neglect on the part of the public servant to commit the act complaint of



could have been made him answerable for a charge of dereliction of his official duty then, if the answer to such question is in the affirmative, it maybe said that such act was committed by the public servant while acting in the discharge of his official duty.

83. This Court has already observed that the District Magistrate (petitioner) was carrying out preventive measures to defuse tension between two communities and, therefore, he had to taken stern actions with an iron hand against the perpetrators, who were trying to disturb the peace and tranquility of the area which could have serious repercussions and if not curtailed at the very threshold it could have expanded to other areas beyond the boundaries of the town, District, or State or through out the country.

84. This Court finds that the facts of the present case indicates that the petitioner, who has been accused of abusing the complainant/opposite party No. 2 during a Peace Committee Meeting and subsequently had sent him to judicial custody ignoring the provisions of the jail manual, however as discussed hereinabove, it *prima facie*



denotes that he was doing so within the scope and ambit of his authority.

85. As discussed above, this Court does not find this case to be one where the petitioner was known to the complainant/opposite party No. 2 and he had some personal differences with him and it was out of vengeance or some personal score that the complainant/opposite party no. 2 was sent to jail. On the contrary, the complaint was filed after the opposite party No. 2 was released from Jail in a case filed for the alleged acts of disrupting communal harmony, for an act committed at the petitioner's office.

86. There is enough material on record to suggest that the petitioner was acting on the directions of the Department of Home (Special Branch), Bihar, Patna, which had inputs of communal clashes between two communities and, therefore, stern actions were needed to be taken and the petitioner being the Head of the State bureaucracy was the man in-charge and had to ensure that peace and tranquility prevailed in the city.



87. In such circumstances, this Court holds that the petitioner had been discharging his duty as the District Magistrate and there were no personal differences with the complainant/opposite party no. 2 or his accomplice and taking into account the various judicial pronouncements of the Hon'ble Supreme Court, which has been quoted hereinabove, it is abundantly clear that it is one of those cases where the complainant/opposite party no. 2, who has described himself as a practicing Advocate and a political activist holding some post of an Advocate's Platform was taking laws in his hand and apparently, it is clear that since he was sent to judicial custody in regard to an FIR lodged against him for his conduct during such a sensitive period, the present complainant/opposite party no. 2, out of vengeance, in a retaliatory and vexatious attempt filed the complaint as an after thought, to personally harass the petitioner by filing the present complaint after almost a week of his release from judicial custody.

88. Accordingly, it becomes manifest that the continuation of the criminal proceedings against the



petitioner without the requisite sanction would amount to abuse of process of law. The order dated 13.08.2024, passed by the learned Sub-Divisional Judicial Magistrate, Bettiah, West Champaran in Complaint Case No. 2260(C) of 2008, whereby cognizance has been taken against the petitioner, deserves to be and is, hereby, quashed.

89. The application stands allowed.

**(Sourendra Pandey, J)**

manoj/praveen-II

AFR/NAFR	AFR
CAV DATE	22.08.2025
Uploading Date	04.09.2025
Transmission Date	04.09.2025

