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**(1994) 02 PAT CK 0036**  
**In the Patna High Court**  
**Case No : Criminal Misc. No. 8917 of 1993**

Smt. Pratibha Sinha

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

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**Date of Decision :** 07-02-1994

**Acts Referred:**

**Citation :** (1994) 02 PAT CK 0036

**Final Decision :** Dismissed

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### Judgement

S.K. Chattopadhyaya, J.—Being aggrieved by order dated 30-1-93 issuing processes against the Petitioner, the present application has been filed impugning the said order.

2. The matter arises in this way.

O.P. No. 2, the complainant filed a petition before the Court of Chief Judicial Magistrate, Patna on 15-6-92 alleging, inter alia, that on 26-5-92 at 2 P.M. the Petitioner, who is Officer-in Charge of Mahila Koshang at Kotwali P.S. along with some armed constables forcibly entered into his house at Sabzibagh. The complainant and his brother were arrested even without disclosing the reason for such arrest. The complainant is a practicing Advocate and he requested the Petitioner to disclose the cause for such arrest but the Petitioner did not disclose the same. When the complainant objected for such action, the Petitioner caught hold of his collar and gave him repeated jolt and thereafter hand-cuffed the complainant and his brother. The complainant told the Petitioner that he is the practising Advocate and as such he should not be hand-cuffed but all his requests were turned down and it is said the Petitioner commented "Aise Aise Adhivaktaon Ko Bahut Dekha Hai". The Petitioner ultimately brought the complainant and his brother on foot with hand-cuffed to Pirbahore P.S. where the complainant was told by the Petitioner for the first time that they were arrested and brought to Pirbahore Police Station in connection with Pirbahore P.S. Case No. 130/92. Both of them were confined at the Police Station for about an hour.

3. It is further alleged in the complaint that from Pirbahore P.S. the complainant and his brother, were taken to Civil Courts and thereafter to the quarter of learned Chief Judicial Magistrate at Chajjubagh, Patna. All along their journey they were taken on foot in hand-cuffed position. The C.J.M. directed the escorting constables to remove the hand-cuff as soon as, he came to know about the identity of the complainant. With this allegation, the complaint was filed for prosecuting the Petitioner as the conduct of Petitioner had caused physical and mental hurt and bodily injury to the complainant and complainant had to be hospitalised in Bankipur Central Jail, Patna. The complainant has alleged that his reputation has been damaged and his status is lower down in society. A copy of the complaint petition has been annexed as Annexure-1 to this petition.

4. The complainant was examined on 16-6-92 and on 18-6-92, C.W.I. Abdul Manobar Zahidi was examined. On 26-6-92, argument on the point of sanction was heard and 5-7-92 was fixed for order but the case was posted on 6-7-92 and without passing any order on the point of sanction, the court below on 6-7-92 transferred the case to the court of the learned Judicial Magistrate, 1st Class for enquiry and disposal.

5. It is stated that cognizance of the offence was taken on 15/16-6-92 and the learned Magistrate, who was entrusted to hold an enquiry and dispose of the case u/s 192 of the Code of Criminal Procedure, neither considered the complaint petition nor the statement on solemn affirmation or the statement of the witness. By order dated 18-7-92, the learned Magistrate directed the complainant to file requisite for issuance of summons and fixed the date of appearance of the Petitioner on 25-7-92.

6. The Petitioner challenged the orders dated 6-7-92 and 18-7-92 in Criminal Misc. No. 11364/92 and this Court by reason of its order dated 10- 9-92 quashed the order dated 18-7-92 and remitted back the case before the Judicial Magistrate with a direction to consider the points of sanction as well. This Court however refused to set aside the order dated 16-7-92 as well as to quash the entire criminal proceeding as prayed for by the Petitioner. Copy of the High Court order has been annexed as Annexure-2 to this application.

7. Pursuant to order of the High Court, the Judicial Magistrate examined one witness on 21-11-92 and after hearing the parties on the point of sanction by order dated 30-1-93 directed for issuing process against the Petitioner. This order has been challenged in the instant case.

8. Mr. Thakur, learned Counsel for the Petitioner has raised mainly two points before this Court for quashing the impugned order, It is submitted that from perusal of entire complaint petition as a whole, it is clear that complaint petition does not constitute an offence muchless offence under Sections 323, 355, 500 and 504 of the Indian Penal Code. Secondly, it is submitted that even assuming for the sake of argument that the complaint petition does disclose an offence, the same was committed in the discharge of her official duty and as such sanction as

required u/s 197 of the Code of Criminal Procedure was a must.

9. Mr. Shakil Ahmad Khan, learned Counsel for the Opposite Party No. 2. on the other hand has contended that the Petitioner earlier moved this Court for quashing the entire criminal proceeding including the order dated 6-7- 92 and 18-7-92, this Court while quashing the order dated 18-7-92 did not interfere with the order dated 6-7-92 and the High Court also did not quash the criminal proceeding against the Petitioner. This Court while quashing the order dated 18-7-92, directed the learned Magistrate to consider the question of sanction as well as to consider the evidence already collected during the enquiry and to pass appropriate order. It is submitted that on such order being passed by the High Court, the learned Magistrate by impugned order has examined a witness and after scrutinising the evidences on record come to a finding that the alleged offences were not committed by the Petitioner while acting or purporting to act in the discharge of her official duty.

10. It is an established principle of law that whereas in a police case only the F.I.R. and nothing else to be looked into, on the other hand, in a complaint case, the complaint petition, statement of witnesses that is evidence recorded by the Magistrate u/s 202 of the Code of Criminal Procedure and the complainant on Solemn affirmation have to be looked into.

11. On these backdrop of the facts, the first point raised by Mr. Thakur need not be gone into. The assertion as to whether the allegations made in the complaint petition does or docs not constitute an offence under the aforesaid sections of the I.P.C., is to be gone into at the trial and this Court in the present case cannot decide the said question. Moreover, earlier this Court has refused to quash the criminal proceeding pending against the Petitioner.

12. Further taking into consideration the allegations made in the petition of complaint, it is not possible to accept the second contention of Mr. Thakur because, in my view, there is no reasonable nexus between the Act complained of and the discharge of duty by the Petitioner. There is no averment in this petition that the Opposite Party No. 2 or his brother ever resisted the Petitioner or the escort party from being arrested. The Petitioner even after knowing the identity of the complainant did not disclose the reason for such arrest rather she uttered something against the lawyers at large, which certainly cannot be in relation to her official duty. Moreover, opposite Party No. 2 and his brother were handcuffed and taken on foot from Sabjibagh to Police Station, then to the house of the Chief Judicial Magistrate. The allegation in complaint petition goes to show that it was not at all necessary for the Petitioner to act in such a fashion in discharge of her official duly.

In the case of Matajog Dobey Vs. H.C. Bhari, , the apex court has observed that:

There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the

course of the performance of his duty.

The same view has been reiterated by their lordships in the case of B.S. Sambhu Vs. T.S. Krishnaswamy, while considering the similar point.

13. In the instant case, there is no averment in the petition that either Opposite Party No. 2 or his brother obstructed the Petitioner and the escort party from being arrested in such a manner that without handcuffing they could not have been arrested.

Further there is no whisper by the Petitioner that as no vehicle or even a rickshaw was available at that time and as such the Opposite Party No. 2 and his brother had to be taken on foot. What prevented the Petitioner from taking the arrested persons even on rickshaw, which is available in plenty at Patna, is not borne out from the records of the case. In such view of the matter, in my opinion there is no reasonable connection between the act and the discharge of her official duty.

14. For the reasons aforesaid, I am of the view that the learned Magistrate was right in coming to the conclusion that in the facts and circumstances of the case, provisions of Section 197, Code of Criminal Procedure was not applicable. There is, therefore, no ground for interfering with the order impugned and as such this application is dismissed.