

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.22780 of 2016

Arising Out of PS.Case No. -97 Year- 2008 Thana -KUSHESHWARSTHAN District-
DARBHANGA

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1. Prem Nath Raman, son of Late Baidnath Singh, resident of village -
Bhadhar, P.S. Kusheshwa Asthan, District Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar
2. Pramod Kumar Singh, son of Late Bhup Narayan Singh, resident of
village - Bhadhar, P.S. Kusheshwa Asthan, District Darbhanga.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Jagdish Prasad Singh -Advocate
For the Opposite Party/s : Mr. Gopesh Kumar (A.P.P.)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

02 09-09-2016 Heard learned counsel for the petitioner as well as

learned Additional Public Prosecutor.

2. The prosecution has been alleged against the

petitioner on account of having an allegation that he along with

others after forming an unlawful assembly, violating the order of

the S.D.M. whereunder they were prohibited to go over the land in

terms of Section 144(1) of the Cr.P.C., came over the land and

forcibly cut away maize crop. Furthermore, on being informed by

the informant, a Chaukidar, the police officials came, seized some

of the maize armpit.

3. On the basis of the aforesaid written report,

Kusheshwar Asthan P. S. Case no.97 of 2008 was registered under



Sections 147, 148, 149, 379, 188 of the I.P.C. and after concluding investigation final report was submitted, but differing therefrom, the learned Sub-divisional Judicial Magistrate took cognizance of an offence punishable under Sections 147, 148, 149, 379, 188 of the I.P.C. vide order dated 17.07.2009 and summoned the petitioner including others which has also been affirmed by the learned revisional Court vide order dated 17.09.2015 under Criminal Revision No.58 of 2012.

4. Before proceeding ahead, it looks pertinent to incorporate Section 195 of the Cr.P.C.

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub- clause (i) or sub- clause (ii), Subs. By Act 2 of 2006, sec. 3, except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub- section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub- section (1), the term " Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub- section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court in situate:

Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

5. That means to say, the complaint was to be filed on behalf of the authority by whom the prohibitory order was passed or by his administrative superior and that too, by way of complaint petition. Certainly, the informant is not the S.D.M., who had passed the prohibitory order and further, it happens to be a police case instead of complaint case. As such, in terms of Section 195(1) of the Cr.P.C., learned S.D.J.M. was not competent enough to take cognizance. Apart from this, when there happens to be claim and counter-claim over the disputed plot and further, there was absence of material to justify the land to be custodia legis mere assertion would not justify initiation of the proceeding, moreover, the prosecution was silent over the step if any, having been taken with regard to occurrence dated 03.06.2015 and in likewise manner, there happens to be no seizure list on record to substantiate plea that any kind of recovery of maize was done.

Hence, the prosecution on that score became doubtful.

6. Consequent thereupon, the successive orders are set aside. Petition is allowed.

(Aditya Kumar Trivedi, J)

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