

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.22972 of 2015

Arising Out of PS.Case No. -261 Year- 2014 Thana -BEGUSARAI TOWN District- BEGUSARAI

Pinki Devi, wife of Rajesh Kumar, resident of village-Haripur P.S.-Rosera District-Samastipur. Petitioner

Versus

The State of Bihar

.... Opposite Party

Appearance :

For the Petitioner/s : Mr. Dharmendra Kumar Singh, Advocate
Mr. Sada Nand Roy, Advocate

For the Opposite Party-State: Ms. Sangeeta Sharma, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 29-07-2016

Heard learned counsel for the petitioner and learned
counsel for the State.

2. By way of the present application under Section 482 of the Code of Criminal Procedure (for short 'CrPC'), the petitioner seeks quashing of the order dated 10.06.2014 passed by the learned Chief Judicial Magistrate, Begusarai in Begusarai Town P.S. Case No. 261 of 2014 by which cognizance has been taken of the offence punishable under Section 188 of the Indian Penal Code (for short 'IPC').

3. In short, the prosecution, according to one Niranjana Kumar, the Circle Officer, Begusarai, is that on 22nd April, 2014 a Tata Ace vehicle bearing registration No. BR-1AF-5742, in which the petitioner was moving, was intercepted on the basis of confidential information received that seven banners were hanged on

the outside of the vehicle for advertisement during the Parliamentary election, 2014 whereas the permission granted by the authorities was to display not more than three banners on the vehicle. On physical verification, the information received was found to be true.

3. Accordingly, on the basis of the aforesaid written report dated 22.04.2014 of the said Niranjana Kumar submitted to the Officer-in-charge of the Begusarai Town Police Station, Begusarai Town P.S. Case No. 261 of 2014 was registered against the petitioner under Section 188 of the IPC on 23rd April, 2014 and investigation was taken up.

4. On completion of investigation, the police submitted its report under Section 188 of the IPC against the petitioner pursuant to which the impugned order dated 10.06.2014 was passed by the learned Chief Judicial Magistrate, Begusarai.

5. It is submitted by learned counsel for the petitioner that the institution of the first information report (for short 'FIR') in the present case is bad in law. The allegations made in the FIR do not attract ingredients of the offence punishable under Section 188 of the IPC. It is also submitted that in view of the statutory bar created under Section 195(1)(a) of the CrPC, no cognizance could have been taken of the offence punishable under Section 188 of the IPC by the learned Magistrate on the basis of a police report submitted under Section 173(2) of the CrPC.

6. Learned counsel for the State has opposed the application filed by the petitioner half-heartedly. She has submitted that the offence alleged would have attracted electoral offences under Chapter-III of the Representation of the People Act, 1951 but, unfortunately, the FIR was instituted under Section 188 of the IPC.

7. I have heard respective counsel for the parties and perused the record.

8. The relevant provisions prescribed under Section 188 of the IPC reads as under:-

“188. Disobedience to order duly promulgated by public servant.- Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health, or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine

which may extend to one thousand rupees, or with both.”

9. Section 195(1) of the CrPC reads as under:-

195(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.”

10. From a reading of the provision prescribed under Section 188 of the IPC, it would be crystal clear that in order to attract an offence under Section 188 of the IPC, the disobedience must either cause or it must have tendency to cause obstruction, annoyance or injury as stated in this section. There has to be a factual proof of annoyance, mere mental annoyance of the concerned authorities is not intended to be included in the section. In the present case, in the FIR there is no such allegation that the disobedience of any order duly promulgated by the public servant had any tendency to cause obstruction, annoyance or injury to any person lawfully employed.

11. The provision prescribed under Section 195(1) of the CrPC being an exception to the general rule contained under



Section 190 of the CrPC, which carves out that any person can set the law in motion by making a complaint, prohibits the Court from taking cognizance on certain offences until and unless a complaint has been made by some particular authority or person. In other words, the provision of Section 195(1)(a)(i) of the CrPC being mandatory, all public servants are not entitled to launch prosecution. Only the concerned public servant can make a complaint and initiate a proceeding in respect of the offences mentioned therein.

12. In the present case, there is absolutely nothing on record on the basis of which it can be said that any order lawfully promulgated by the informant of the case was violated by the petitioner.

13. Moreover, Section 195(1) of the CrPC requires that that no Court shall take cognizance of any offence punishable under Sections 172 to 188 of the IPC, except on the “complaint” in writing of the public servant.

14. The word “complaint” used in Section 195(1)(a)(iii) has been defined under Section 2(d) of the CrPC, which reads as under:-

“2(d). “Complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.”

15. From a reading of the definition of the word “complaint”, it would be crystal clear that the complaint does not include a “police report”.

16. Admittedly, in the present case, cognizance of the offence under Section 188 of the IPC has been taken on the basis of a “police report” submitted by the investigating officer in the court under Section 173(2) of the CrPC.

17. In view of the statutory bar created under the CrPC, the order impugned dated 10.06.2014 passed on a “police report” cannot be sustained in law.

18. Accordingly, the impugned order dated 10.06.2014 passed by the learned Chief Judicial Magistrate, Begusarai in Begusarai Town P.S. Case No. 261 of 2014 is quashed.

19. The application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	
CAV DATE	N.A.
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