

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.976 of 2015

Arising Out of PS.Case No. -316 Year- 2015 Thana -Marhaura District- SARAN

=====

Nagendra Rai, son of Sri Bikarma Rai, Resident of village- Asoiyan, P.O. and P.S. Marhaura, District- Saran at Chapra.

.... Petitioner

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna.
2. The Superintendent of Police, Saran at Chapra, District- Saran at Chapra.
3. The Deputy Superintendent of Police, Marhaura, District- Saran at Chapra.
4. The Station Head Officer, Marhaura Police Station, District- Saran at Chapra.
5. The Circle Officer-cum-Chief Executive Officer, Nagar Panchayat, Marhaura, District- Saran at Chapra.

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Shashi Bhushan Kumar, Advocate
For the Respondent/s : Mr. Jitendra Kumar, AC to AAG-14

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 26-07-2016

By way of the present writ application preferred under Articles 226 and 227 of the Constitution of India, the petitioner seeks quashing of the first information report (for short 'FIR') of Marhaura P. S. Case No. 316 of 2015 dated 25.08.2015 registered under Sections 189, 186 and 353 of the Indian Penal Code (for short 'IPC').

2. It is submitted by the learned counsel for the



petitioner that offences punishable under Sections 189 and 186 of the IPC are non-cognizable offences and in the light of allegations made in the FIR, the ingredients of the offence punishable under Section 353 of the IPC are not attracted. Advancing his argument, learned counsel for the petitioner has submitted that in a non-cognizable offence, no FIR can be instituted, unless there is a direction in this regard by a court of Magistrate.

3. Mr. Jitendra Kumar, learned assistant counsel to AAG-14 appearing on behalf of the State submits that the allegations made in the FIR do attract ingredients of a cognizable offence.

4. I have heard respective counsel for the parties and perused the FIR.

5. The informant of the present case is Circle Officer-cum- Executive Officer of Nagar Panchayat, Marhaura, District Saran. He has alleged that by putting undue pressure upon him, the petitioner is compelling him to make some illegal appointments. When he refused to oblige him, the petitioner has threatened to implicate him in false cases and get him arrested.

6. The offence punishable under Section 353 of the IPC reads as under:-

“353. Assault or criminal force to deter public

servant from discharge of his duty —

Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

7. From a bare reading of Section 353 of the IPC, it would be evident that the essential ingredients to constitute an offence punishable under Section 353 of the IPC are as under:-

*“(i) there must be assault or use of criminal force;
(ii) Such assault or use of criminal force must have been made to a public servant; and
(iii) It must have been on a public servant; (a) while he was acting in the execution of his duty; or (b) with intent to prevent or deter him from discharging his duty; or (c) in consequence of anything done or attempted to be done by him in the discharge of duty.”*

8. In the present case, there is no dispute to the fact that the informant is a public servant. Further, as noticed above,

there is allegation that the petitioner was putting undue pressure upon the informant of the case to make some illegal appointment and the threat given by the petitioner had caused fear and annoyance in his mind. Such an act would certainly be an act of use of criminal force against a public servant in order to compel him to do some illegal act in discharge of his official duty.

9. Under the circumstances noticed above, I am of the considered opinion that the allegations made in the FIR do attract the ingredients of the offence punishable under Section 353 of the IPC.

10. In that view of the matter, I do not find any merit in this application. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J.)

Kanchan/-

U		T	
---	--	---	--