

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.33259 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- GOPALGANJ

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Anirudh Prasad Yadav @ Sadhu Yadav S/o Sheo Prasad Yadav, Resident of
Village- Hajiypur, P.S.- Gopalganj, District-Gopalganj.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vijay Shankar Shrivastava, Advocate
Mr. Pritish Ranjan, Advocate

For the Opposite Party/s : Dr. Mayanand Jha, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 04-08-2016

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 02.11.2010 passed by the learned Chief Judicial Magistrate, Gopalganj in G.R. No. 2559 of 2010 arising out of Gopalganj P.S. Case No. 301 of 2010 by which cognizance has been taken of the offence punishable under Section 188 of the Indian Penal Code (for short 'IPC').

2. In short, the prosecution case, according to one



Kundan Kumar, Assistant Election Officer-cum-Block Development Officer, Gopalganj, is that on 08.10.2010 the petitioner along with his armed guard and house guard reached his house situated at Hajiyapur in Gopalganj where Mr. Om Prakash Yadav, Member of Parliament, along with several police personnel named in the FIR was already present from before. It is stated that apart from the above said persons, 40-50 unknown persons, who were supporters of Mr. Anirudh Pd. Yadav alias Sadhu Yadav were also present there. It is alleged by the informant the presence of so many persons at one place on the eve of 2010 Assembly Election when an order under Section 144 of the CrPC was already issued by the Sub-Divisional Magistrate, Gopalganj, vide order bearing no. 988 dated 06.09.2010, was illegal.

3. On the basis of the aforesaid written report dated 08.10.2010 of the said Kundan Kumar submitted to the Officer-in-charge of the Gopalganj Police Station, Gopalganj P.S. Case No. 301 of 2010 was registered against the petitioner and Om Prakash Yadav under Section 188 of the IPC on 08.10.2010 and investigation was taken up.

4. It is submitted by Mr. Vijay Shankar Shrivastava, learned counsel for the petitioner that 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 02.11.2010 was passed by the learned Chief Judicial Magistrate, Gopalganj.

5. It is submitted that the institution of the First Information Report (For short 'FIR') in the present case is bad in law, and, 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. Dr. Mayanand Jha, learned counsel for the State has opposed the application filed by the petitioner.

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

8. Section 188 of the IPC under which the FIR has been registered 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 inquiry, or risk of obstruction, annoyance or inquiry, 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 on which the petitioner has placed reliance 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. It would be evident from the reading of Section 195(1) of the CrPC that no Court can take cognizance of any offence punishable under Sections 172 to 188 of the IPC, except on

the “complaint” in writing of the public servant.

11. 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.”

12. From a reading of the definition of the word “complaint”, it would be crystal clear that “complaint” does not include a “police report”. In other word a police report submitted under Section 173(2) of the CrPC can not be treated as “complaint”.

13. 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 of the case in the court under Section 173(2) of the CrPC.

14. Thus, in view of the statutory bar created under the CrPC, the order impugned dated 02.11.2010 passed on a “police report” cannot be sustained in law.

15. Accordingly, the impugned order dated 02.11.2010 passed by the learned Chief Judicial Magistrate, Gopalganj in Gopalganj P.S. Case No. 301 of 2010, is quashed.

16. The application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	----
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