

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.50052 of 2014

Arising Out of PS.Case No. -86 Year- 2014 Thana -MAHNAR District- VAISHALI(HAJIPUR)

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Sanjeev Prasad Toni @ Sanjeev Kumar Toni, Son of Late Jagdeo Prasad, Resident
of Mohalla-5/6 Krishana Nagar, P.S.-Budha Colony, District-Patna.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Abhay Kumar, Adv.

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 15-11-2017

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

Petitioner, in the present case, is seeking quashing of
the order dated 28.06.2014 passed by learned Judicial Magistrate-1st
Class, Vaishali at Hajipur in Mahnar P.S.Case No.86 of 2014 by
which the learned Magistrate has taken cognizance of the offence
alleged under Section 188 IPC and issued summons to the petitioner.

A perusal of the First Information Report, as contained
in Annexure-1, giving rise to Mahnar P.S. Case No.86 of 2014 dated



20.04.2014 under Section 188 IPC, would show that the Circle Officer, Mahnar has lodged the First Information Report alleging that a road show of Sri Sanjeev Kumar Toni (Congress candidate) was permitted on 19.04.2014, in the light of said permission of road show at about 6.30 pm he entered in the Mahnar circle area with four wheel vehicles (without permission). The Circle Officer, Mahnar therefore alleged that the petitioner has violated the code of conduct which was in force during the election period.

After the said First Informant Report was lodged, police submitted a charge-sheet and the learned Magistrate vide order dated 28.06.2014 took cognizance of the offence under Section 188 IPC and issued summons to the petitioner.

Learned counsel for the petitioner has raised a short point for purpose of this case. His submission is that an offence punishable under Section 188 IPC, as regards violation of the order or permission granted by the Circle Officer, shall come as one of the offences mentioned under Section 195 Cr.P.C. Learned counsel submits that a bare reading of Section 195(1)(a)(i) Cr.P.C. would show that no court is competent to take cognizance of any offence punishable under Sections 172 to 188 (both inclusive) of the IPC except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively



subordinate. He submits that, in the present case, the court has taken cognizance even though there was no complaint in writing.

Learned counsel in support of his submissions relies upon the decision of this Court in the case of **Pratik Sinha Vs. The State of Bihar and Ors. reported in 2016(4) PLJR 274**. Attention of this Court has been drawn towards paragraphs 40 and 41 of the said judgment which reads as under:-

“40. In that view of the matter, no prosecution could have been launched against the petitioner under Section 188 of the IPC on the basis of a written report submitted by the informant of the present case.

41. Furthermore, no FIR could have been registered by the police for an offence punishable under Section 188 of the IPC. The legislative intention appears to be clear from the language of Section 195(1) of the Cr.P.C, which clearly prescribes that where an “offence” is committed under Section 188 of the IPC, it would be obligatory that the public servant before whom such an “offence” is committed, should file a complaint before the jurisdictional Magistrate either orally or in writing. Hence, registration of an FIR for an offence under Section 188 IPC is not permitted in law.”

Learned counsel also relies upon another decision of this Court in the case of **Imamullah Vs. The State of Bihar through**



the Secretary, Department of Home (Police) and Ors. reported in 2016(3) PLJR 513. The relevant paragraphs 8, 12 and 13 are quoted hereunder for a ready reference:-

“8. So far as offence under Section 188 of the Indian Penal Code is concerned, the learned Magistrate shall bear in mind the provisions of Section 195 of the Code of Criminal Procedure, which disempowers the Magistrate from taking cognizance of an offence under Section 188 of the Indian Penal Code except on the complaint, in writing, of the public servant concerned or of some other public servant to whom he is administratively subordinate. In the case at hand, there is, admittedly, no such complaint is made and, therefore, question of taking cognizance of an offence under Section 188 Indian Penal Code does not arise in the present case.

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12. What emerges from the above discussion is that it would be an exercise in futility if the case is remitted to the learned Magistrate to take cognizance of the offence under Section 188 of the Indian Penal Code, when the learned Magistrate, for the reasons indicated above, lacks jurisdiction to take cognizance of the offence under Section 188 of the Indian Penal Code.

13. Thus, the registration of the case aforementioned under Section 188 of the Indian Penal



Code and the police report are hereby set aside to the extent that it deals with the provisions of Section 188 of the Indian Penal Code.”

Learned APP representing the State does not dispute the settled principles and the interpretations which have been given by this Court in the aforesaid two decisions as regards filing of the First Information Report in the matter of an offence alleged under Section 188 IPC.

I have heard learned counsel for the petitioner and learned APP for the State. Section 188 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 person 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.”

Further a perusal of the relevant part of Section 195 Cr.P.C. would show that what is being contended on behalf of the petitioner has got force. Section 195 Cr.P.C. is being taken note of hereunder:-

“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),

[except on the complaint in writing of that Court or by such officer of the Court as that Court may authorize in writing in this behalf, 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 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 is 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.”

I have already referred the two decisions on which the reliance has been placed by the learned counsel for the petitioner. There is no ambiguity so far as the provision of Section 195 Cr.P.C. is concerned. For an offence alleged under Section 188 IPC, there must be a complaint in writing which is not there in the present case. In absence of a complaint in writing, the investigation conducted by the police and charge-sheet submitted by the investigating agency based on which cognizance order has been passed are not sustainable.

In result, the order taking cognizance is held to be bad



in law and the same is hereby set aside.

The application is, accordingly, allowed.

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	AFR
CAV DATE	N/A
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