

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36303 of 2014

Arising Out of PS.Case No. -9 Year- 2013 Thana -ROSERA District- SAMASTIPUR

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Sunil Kumar, Son of Dr. Bindeshwar Prasad Sinha , resident of Mohalla Ashok Nagar , Road No. 11., Kankarbagh Colony , P.S. Kankarbagh, District Patna .

.... Petitioner/s

Versus

1. The State of Bihar.
2. Umesh Prasad Rai , son of Late Ramshray Rai to the petitioner , Advocate , Civil Court , Rosera ,District - Samastipur .

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Rama Kant Sharma, Sr.Adv. Mr. Lakshmi Kant Sharma Mr. Prem Shankar Kumar
For the Opposite Party/s	:	Mrs. Rita Verma, A.P.P.
For the Informant	:	Mr.Sada Nand Roy

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 28-08-2017

Heard learned Senior counsel for the petitioner, learned A.P.P. for the State and learned counsel for the informant.

The petitioner is seeking quashing of the order dated 14.05.2014 passed by the learned Sessions Judge, Sitamarhi Camp at Rosera in Criminal Revision No.1237 of 2014 by which he has rejected the application preferred by this petitioner for setting aside the order taking cognizance dated 13.03.2014. passed by the learned A.C.J.M., Rosera in Rosera P.S.Case No. 09 of 2013. By order dated 13.03.2014, the learned A.C.J.M., Rosera took cognizance for the offence under Sections 119, 120 and 120-B of the Indian Penal Code



and decided to summon the petitioner.

Learned Senior Counsel representing the petitioner submits that initially First Information Report giving rise to Rosera P.S.Case No. 9 of 2013 was lodged by the opposite party no.2, who is himself an Advocate in Rosera Civil Courts at Rosera. A perusal of the contents of the FIR would show that according to opposite party no.2, on 01.12.2012 there was a declaration by the Chief Minister of the State of Bihar that there will be Three Days' State Mourning and public holidays on 1.12.2012 due to death of the then Hon'ble Prime Minister of India, namely, Shri Indra Kumar Gujral. The opposite party no.2 alleged that at the relevant time this petitioner was posted as Sub- divisional Officer at Rosera. He along with other officials named in the FIR acted in violation of the declaration and direction issued by the Chief Minister of Bihar and in violation of the direction, so issued, the accused persons indulged in celebrating the 36th Foundation Day of Rosera Subdivision on 1.12.2012. The allegation is that this accused was himself in dress like a bridegroom and inaugurated the function by cutting a cake. The informant- opposite party no.2 further stated that there was a newspaper report published in Hindustan daily that on one hand there was a State Mourning but on the other hand the Sub-divisional Officer was cutting the cake. The whole allegation in the FIR is that this act of the accused is in total



violation of the direction of the State Government and it was a result of conspiracy entered into by the accused persons. The informant-opposite party no.2 further explained in the FIR that there was another news which disclosed that on the same day the then Hon'ble Chief Justice of Patna High Court had inaugurated Sheohar Civil Courts in a very simple and plain manner but the accused persons, in the present case, violated the declaration of the State Government.

Learned Senior Counsel for the petitioner submits that , in fact, after investigation, in the present case, police did not find sufficient material to proceed against the accused persons and submitted final form bearing no. 14 of 2013 dated 31.01.2013 (Annexure 2 to the present application). The final form was submitted on the ground that it is a case of 'mistake of fact' and police officers recommended to close the investigation. The learned Magistrate rejected the final form and decided to entertain the protest petition as a complaint case. Being aggrieved by the said order of the learned Judicial Magistrate, the informant filed a revision bearing Cr. Rev. No. 335 of 2013 in the court of learned Sessions Judge. According to learned Senior Counsel in the said revision application, the learned Sessions Judge seems to have taken note of the fact that there was material available on the record, on the basis of which, cognizance should have been taken and, therefore, the order of the learned



Judicial Magistrate rejecting the final form was set aside and the matter was remanded for fresh consideration by the learned Judicial Magistrate. On the basis of order dated 28.11.2013, passed in Cr. Rev. No. 335 of 2013, the learned Judicial Magistrate, 1st Class, Rosera passed a fresh order dated 13.03.2014 in which, referring to the order of revisional court, he has taken cognizance of the offence under Sections 119,120 and 120-B of the Indian Penal Code and issued summons to two accused persons, namely, Sunil Kumar and Arvind Kumar. Submission is that there is no independent application of mind by the learned Magistrate. One of the accused, namely, Sunil Kumar (the petitioner) challenged the said order dated 13.03.2014 by filing Cr.Rev. No. 1237 of 2014 in the court of learned Sessions Judge, Samastipur Camp at Rosera. This Criminal Revision came to be heard and finally disposed of vide order dated 14.05.2014.

The learned Sessions Judge, Samastipur, has been pleased to reject the Criminal Revision application by holding that there is no illegality and impropriety in the order passed by the learned Judicial Magistrate, Rosera. Under these circumstances, being aggrieved by the order dated 14.05.2014 passed in Cr.Rev. No. 1237 of 2014 the petitioner has moved this Court for quashing of the revisional order with which the order taking cognizance is also under challenge.



Learned Senior Counsel submits that a bare perusal of the provisions contained in Sections 119, 120 and 120-B of the Indian Penal Code would show that none of the ingredients of those provisions are available, therefore, the learned Judicial Magistrate has erred in taking cognizance of the offence under Sections 119, 120 and 120-B of the Indian Penal Code.

Learned Senior Counsel submits that it is a case in which opposite party no.2 being a practicing Advocate in Rosera Court has lodged the FIR without showing any provision either under IPC or under any law that the petitioner acted contrary to the declaration and direction of the State Government as alleged which would constitute an offence.

Submission is that the petitioner being a government servant was engaged in official work and there was no bar in celebrating the foundation day of Rosera Subdivision, which cannot constitute an offence. The allegations are false and flimsy allegations. It is, therefore, the submission of the learned Senior Counsel for the petitioner that continuation of the present proceeding is an abuse of process of law and harassment to a government servant. He also submits that the sanction under Section 197 Cr.P.C. has not been obtained for prosecution of the accused.

On the other hand, learned A.P.P. representing the



State submits that in the facts of the case cognizance has been taken by the Judicial Magistrate and the same has been upheld by the revisional court. Therefore, this Court in exercise of its jurisdiction under Section 482 Cr.P.C. need not interfere in the order taking cognizance.

Learned counsel representing the informant- opposite party no.2 submits that the petitioner having indulged in celebrating the foundation day by cutting a cake has committed an offence .He further submits that the present application is, in fact by way of a second revision, thus, this Court need not interfere with the order taking cognizance.

I have heard learned counsel for the parties and perused the records.

The only allegation against the petitioner is that on 1.12.2012 while there was a declaration of State Mourning for three days this petitioner celebrated the foundation day of Sub -divisional office at Rosera. It is his grievance that this celebration was done without much fanfare, which according to him is an offence.

In order to appreciate the order taking cognizance it would be just and proper to quote relevant provisions of the Indian Penal Code under which cognizance has been taken by the learned Judicial Magistrate, 1st Class. Sections 119, 120 and 120-B of the



Indian Penal Code are quoted hereunder:

“ 119 Public servant concealing design to commit offence which it is his duty to prevent. —Whoever, being a public servant, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent; ⁷¹ [voluntarily conceals by any act or omission or by the use of encryption or any other information hiding tool, the existence of a design] to commit such offence, or makes any representation which he knows to be false respecting such design; If offence be committed. — shall, if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both; If offence be punishable with death, etc. —or, if the offence be punishable with death or ² [imprisonment for life], with imprisonment of either description for a term which may extend to ten years;

If offence be not committed. —or if the offence be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment or with such fine as is provided for the offence, or with both.

120. Concealing design to commit offence punishable with imprisonment.—Whoever,



intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

If offence be committed—if offence be not committed.—shall, if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth, and, if the offence be not committed, to one-eighth, of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

120B. Punishment of criminal conspiracy.—

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, 2[imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.”

Nothing has been brought on the record on behalf of the



informant or the State to show that the celebration of the foundation day by cutting a cake would constitute an offence.

So far as Section 119 of the Indian Penal Code is concerned, it simply says that whoever, being a public servant, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent, voluntarily conceals by any act or omission or by the use of encryption or any other information hiding tool, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall if the offence is committed will be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both.

While trying to appreciate the contention of the learned counsel for opposite party no.2 this Court is unable to agree with the submission that this provision will be attracted in the facts of the present case.

The basic question that has been put to learned counsel representing the opposite party no.2 has not been answered as to how and under which provision the act, as alleged, would constitute an offence. Other provisions, such as, Sections 120 and 120B of the



Indian Penal Code are also not attracted by any stretch of imagination. None of the ingredients of both those sections even, prima facie are available in the present case. This Court is, therefore, of the considered opinion that the fact, as alleged in the FIR, would not constitute an offence for which cognizance has been taken. Further submission of opposite party no.2 that it is a second revision is also not acceptable to this Court. There is no bar in filing an application under Section 482 Cr.P.C. against revisional order. The only caution this Court in exercise of its inherent power adopts is that the revisional order should be a perverse order to invite an interference by this Court.

In the present case, this Court is of the opinion that the revisional court before whom the order taking cognizance was challenged has completely failed to appreciate the nature of allegation and the ingredients of the provisions of the Indian Penal Code under which cognizance has been taken by the learned Judicial Magistrate and by not appreciating the same the impugned order has made itself vulnerable to the jurisdiction of this Court.

In the facts and circumstances of the case, as stated above, this Court is of the opinion that the revisional order dated 14.05.2014 as well as order taking cognizance and issuing summons dated 13.03.2014 as against the petitioner is bad in law and the same



is liable to be set aside and it is, accordingly, set aside as regard this petitioner.

The application is, therefore, allowed.

(Rajeev Ranjan Prasad, J)

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