

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.44 of 2017

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

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Anil Kumar Singh Son of late Tej Narayan Singh Resident of Village- Benaut, P.O. Saraon, P.S. Rasulpur, District- Chhapra, at Present Estimator, Junior Engineer, Road Construction Department, Patna.

.... Petitioner/s

Versus

1. The State of Bihar Through Senior Superintendent of Police, Patna
2. The S.H.O. Pandarak, P.S. Pandarak, Distt. Patna.
3. Smt. Manisha Prasad Electoral Officer cum Block Development Officer, P.S. Pandarak, District. Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Uday Bhan Singh, Advocate

For the Respondent/s : Mr. P.K. Verma, AAG-3

Dr. Anand Kumar, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 06-11-2017

Heard learned counsel for the parties.

2. This writ application has been preferred for quashing the F.I.R. of Pandarak P.S. Case No.93 of 2016 registered for the offence under Section 188 of the Indian Penal Code and for offence under Section 130(8) of the Bihar Panchayat Raj Act, 2006, on the ground that perusal of the F.I.R. does not disclose the offences as alleged made out against the petitioner and the informant is not a competent person to lodged the F.I.R.

3. The prayer has been opposed by the State-respondents on the ground that the District Magistrate has already accorded



sanction for prosecution of the petitioner and after investigation of the case; the allegation has been found true against the petitioner.

4. Now the point for consideration is:

(I). whether the First Information Report for offence under Section 188 of the Indian Penal Code is competent in view of the specific bar under Section 195 Cr.P.C.?

(II). Whether the F.I.R. discloses the ingredients of offence under Section 188 of the Indian Penal Code against the petitioner?

(III). Whether the F.I.R. discloses ingredients of offence under Section 130(8) of the Bihar Panchayat Raj Act, 2006 against the petitioner?

5. According to First Information Report, the petitioner who was a Junior Engineer (Estimate) in the Road Construction Department, was asked to perform the work of counting of the votes in Panchayat Election. Allegation is that on lame excuse the petitioner went away causing inconvenience during counting proceeding. It is further stated that the conduct of the petitioner is against the code of conduct of a government servant and as such the petitioner has committed the alleged offence.

6. Section 195(1)(a) of the Cr.P.C., which is relevant for this purpose, is being reproduced below:



“(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, 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;”

A bare perusal of the aforesaid provision would make it clear that only a complaint in writing by the public servant concerned can be entertained by the Court and cognizance can be taken. The F.I.R. of offence under Section 188 of the Indian Penal Code is not competent nor the informant has brought on the record that she is the public servant whose order has been deliberately and intentionally disobeyed by the petitioner.

7. Section 188 of the Indian Penal Code, which defines the offence and prescribed punishment thereof reads as follows:

“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 trends 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.”

8. Contention of the petitioner is that after filing a petition for his exemption the petitioner had left the counting place. Therefore, important ingredient to constitute the offence under Section 188 of the Indian Penal Code that act alleged was committed



knowingly and intentionally is missing. Furthermore, this is not a case of promulgation of an order by the informant directing the petitioner to abstain from a certain act or to take certain order with respect to certain property under his possession or under his management. Therefore, apparently the offence under Section 188 OF the Indian Penal Code is not made out.

9. A bare perusal of the requirement of Section 188 of the Indian Penal Code would reveal that the F.I.R. of present case does not disclose commission of any offence under Section 188 of the Indian Penal Code. Hence, the prosecution of the petitioner under Section 188 of the Indian Penal Code would amount to abuse of the process of the Court and grant of sanction and finding of prima face case during investigation would not come in the way of the prayer of the petitioner to quash the F.I.R.

10. Identically no offence under Section 130(8) of the Bihar Panchayat Raj Act, 2006, is disclosed in the F.I.R. Hence, prosecution of the petitioner for this offence also would result in miscarriage of justice and offend the constitutional right of the petitioner of fair investigation and fair trial. The relevant provision is being reproduced below:

“130(8) Penalty for disorderly conduct in or near



polling stations.-(1) No person shall, on the date or dates on which a poll is taken at any polling station,-

(a) use or operate within or at the entrance of the polling station, or in any public or private place in the neighbourhood thereof, any apparatus for amplifying or reproducing the human voice such as megaphone or a loudspeaker; or

(b) Shout, or otherwise act in a disorderly manner, within or at the entrance of the polling station or in any public or private place in the neighborhood thereof, so as to cause annoyance to any person visiting the polling station for the poll, or so as to interfere with the work of the officers and other persons on duty at the polling station.

(2). Any person who contravenes, or willfully aids or abets the contravention of, the provisions of clause (1) shall be punishable with imprisonment which may extend to three months or with fine or with both.

(3) If the presiding officer of a polling station has reason to believe that any person is committing or has committed an offence punishable under this Section, he



may direct any police officer to arrest such person, and thereupon the police officer shall arrest him.

(4) Any police officer may take such steps, and use such force, as may be reasonably necessary for preventing any contravention of the provisions of clause(1), and may seize any apparatus used for such contravention.”

11. Next submission of the learned counsel for the petitioner is that Section 195 Cr.P.C. is an embargo on the Court to take cognizance of offence under Section 188 of the Indian Penal Code except on the complaint in writing by the public servant concerned or of some other public servant to whom he is administratively sub-ordinate. Though the informant was Returning Officer of the election, it is not mentioned that she had promulgated any order in respect of any property which order was offended. Moreover, the F.I.R. of the offences referred to in sub-section 195(1)(a)(i) is not maintainable in view of the specific provisions of Section 195 Cr.P.C., as referred above. Only complaint to the Court could have been lodged.

12. In view of the conclusions aforesaid, the impugned F.I.R. of Pandarak P.S. Case No.93 of 2016 and entire subsequent



criminal proceeding arising out of the aforesaid F.I.R. stands quashed
and this writ application stands allowed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	08.11.2017
Transmission Date	08.11.2017

