

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.9474 of 2017

Arising Out of PS.Case No. -40 Year- 2014 Thana -LAURIYA District- WEST CHAMPARAN
(BETTIAH)

- =====
1. Purnmasi Ram, Son of Late Mohar Ram, Resident of Mohalla- Naraipur, Police Station- Bagaha (Pathkhauli), District- West Champaran.
 2. Iftexhar Ahmad @ Munna Teyagi, Son of Md. Mustafa, Resident of Mohalla- Narkatiaganj, Police Station- Shikarpur, District- West Champaran.

.... Petitioners

Versus

1. The State of Bihar.
2. Tarkeshwar Ram, Son of Hullas Ram, Resident of Village- Gopalpur, Police Station- Khaira, Post- Kanar Haripur, District- Saran. At present Block Agriculture Officer cum Incharge Officer of Modal Code of Conduct, Lauriya, Police Station- Lauriya, District- West Champaran.

.... Opposite Parties

=====

Appearance :

For the Petitioner/s : Mr. Baxi S.R.P. Sinha, Sr. Advocate
Mr. Zainul Abedin, Advocate

For the Opposite Party/s : Mr. Shyam Kumar Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 01-11-2017

Heard Mr. Baxi S.R.P. Sinha, learned Senior Advocate for the petitioners and Mr. Shyam Kumar Singh, learned Additional Public Prosecutor for the State.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed for quashing



the order dated 09.07.2015 passed in Trial No.120 of 2015 arising out of Lauriya P.S. Case No.40 of 2014 by the learned Additional Chief Judicial Magistrate-1st, West Champaran, Bettiah whereby cognizance of the offence under Section 188 of the Indian Penal Code (for short 'IPC') has been taken against the petitioners.

3. The present case arises out of a written report filed by the Block Agriculture Officer-cum-Incharge Officer, Lauriya. It has been alleged that on the application of one Iftekhar Ahmad @ Munna Teyagi (petitioner no.2) permission was granted to petitioner no.1 Purnamasi Ram to hold road show at different places with condition that in one convoy there shall not be more than 10 vehicles, but in the road show held at Lauriya Bengali Chauk, there were about 25 vehicles in the convoy, which is violative of Model Code of Conduct promulgated by the Election Commission of India on the eve of Assembly Election, 2014.

4. On the basis of the aforesaid allegation, an FIR was instituted and investigation was taken up. On completion of investigation, the police submitted its report under Section 173(2) of the Cr.P.C. in the court. After going through the allegations made in the FIR and the materials collected in course of investigation, the learned Additional Chief Judicial Magistrate took cognizance of the offence under Section 188 of the IPC vide impugned order dated



09.07.2015 against the petitioners.

5. Assailing the aforesaid order dated 09.07.2015, learned Senior Advocate appearing for the petitioners submitted that the order is bad on three counts. Firstly, because the police had no jurisdiction to investigate a case and submit its report before the court in a case under Section 188 of the IPC. Secondly, because in terms of Section 468 (2)(b) of the Cr.P.C. there was a clear bar to taking cognizance of the offence under Section 188 of the IPC and thirdly, because the learned Magistrate did not apply his judicial mind while taking cognizance of the offence and has passed the order mechanically. He submitted that cognizance of the offence has been taken by the learned Magistrate by filling up certain blanks on a pre-printed format, which reflects non-application of judicial mind by the learned Magistrate.

6. *Per contra*, learned counsel for the State submitted that the allegations made in the FIR do attract the ingredients of the offence alleged under Section 188 of the IPC. He submitted that the allegations made in the FIR were duly investigated by the statutory investigating agency, which found the same to be true and the court committed no error in taking cognizance of the offence on the basis of materials placed before it. He submitted that even though there was a statutory bar under



Section 468 of the Cr.P.C. for taking cognizance of the offence, the learned Magistrate was vested with the power to condone the delay under Section 473 of the Cr.P.C.

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

8. I find force in the submissions made by Mr. Baxi S.R.P. Sinha, learned Senior Advocate for the petitioners.

9. Disobedience to an order duly promulgated by a public servant has been made an offence under Section 188 of the IPC. This Section states that when an accused knows that a public servant has lawfully promulgated an order which, he is empowered to do by which he has either directed the accused to abstain from a certain act, or directed him to take certain order with certain property in his possession or under his management, and he disobeys such direction, he shall be punished with simple imprisonment for a term extending to one month, or with fine extending upto 200 rupees, or with both. If such disobedience causes or has tendency to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury to any person lawfully employed; and if such disobedience causes or has tendency to cause danger to human being health or safety or causes or a tendency to cause riot or affray, he shall be punished more severely, that is to



say with simple imprisonment or rigorous imprisonment for a term extending to six months or with fine extending upto 1,000/- rupees or with both.

10. At this stage, it is pertinent to note that Section 195(1) of the Cr.P.C. bars the court from taking cognizance of the offence punishable under Section 188 IPC or abetment of criminal conspiracy to commit such offence, unless, there is a written complaint in writing by the public servant concerned or some other public servant to whom he is administratively sub-ordinate for contempt of his lawful order.

11. Section 195(1) of the Cr. P.C. 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.”

12. The provision prescribed under Section 195(1) of the Cr.P.C. has been carved out as an exception to general rule contained under Section 190 of the Cr. P.C. that any person can set the law in motion by making a complaint, as it prohibits the Court from taking cognizance of certain offences until and unless a



complaint has been made by some particular authority or person. The provision of section 195(1)(a) of the Cr. P.C. is mandatory. Only the concerned public servants can make a complaint and initiate proceedings in respect of these offences.

13. Section 195 of the Cr.P.C. requires that without a written complaint of the public servant concerned, no prosecution for an offence under Sections 172 to 188 of the IPC can be launched nor any cognizance of the offence can be taken by the Court.

14. In **C. Muniappan & Ors. Vs. State of Tamil Nadu [(2010) 9 SCC 567]**, the Supreme Court after taking into consideration its earlier decisions in **Govind Mehta Vs. State of Bihar, AIR 1971 SC 1708; Patel Laljibhai Somabhai v. State of Bihar, AIR 1971 SC 1935; Surjit Singh v. Balbir Singh, (1996) 3 SCC 533; State of Punjab v. Raj Singh, (1998) 2 SCC 391; K. Vengadachalam v. K.C. Palanisamy, (2005) 7 SCC 352; Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370; M.S. Ahlawat v. State of Haryana, (2000) 1 SCC 278; Sachida Nand Singh v. State of Bihar, (1998) 2 SCC 493; and Daulat Ram v. State of Punjab, AIR 1962 SC 1206**, observed as under in paragraph no. 28:-

“28. Section 195(1)(a)(i) CrPC bars the court from taking cognizance of any offence



punishable under Section 188 IPC or abetment or attempt to commit the same, unless, there is a written complaint by the public servant concerned for contempt of his lawful order. The object of this provision is to provide for a particular procedure in a case of contempt of the lawful authority of the public servant. The court lacks competence to take cognizance in certain types of offences enumerated therein. The legislative intent behind such a provision has been that an individual should not face criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill will or frivolity of disposition and to save the time of the criminal courts being wasted by endless prosecutions. This provision has been carved out as an exception to the general rule contained under Section 190 CrPC that any person can set the law in motion by making a complaint, as it prohibits the court from taking cognizance of certain offences until and unless a complaint has been made by some particular authority or person. Other provisions in CrPC like Sections 196 and 198 do not lay down any rule of procedure, rather, they only create a bar that unless some requirements are complied with, the court shall not take cognizance of an offence described in those sections.”

(emphasis mine)

15. Thus, having seen the statutory provisions prescribed under Section 195(1)(a)(i) of the Cr.P.C. and the ratio laid down by the Hon’ble Apex Court in the above-noted judgment, it can safely be held that no FIR can be registered by a 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)(a)(i) of the Cr.P.C., which clearly prescribes that where an offence is committed under Section 188 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. It would not be within the domain of the police to register FIR under Section 188 of the IPC and investigate the same, as registration of an FIR for an offence under Section 188 IPC is not permitted by the Cr.P.C.

16. In **Jiwan Kumar vs. State of Punjab & Ors.** [2008 Cr. L.J. 3576], a Division Bench of the Punjab and Haryana High Court has held that proceedings for offence under Section 188 IPC can be started on the basis of complaint filed by the public servant concerned and not on the basis of FIR culminating in filing of the charge-sheet.

17. So far as the other two points pleaded by the learned Senior Advocate appearing for the petitioners are concerned, they also carry force. From the allegations made in the FIR, it would be apparent that the alleged occurrence took place on 24.03.2014 whereas cognizance has been taken by the learned Magistrate vide order dated 09.07.2015.

18. Section 468 of the Cr.P.C. creates bar to taking cognizance of the offence after lapse of period of limitation.



The period of limitation shall be one year if the offence is punishable with imprisonment for a term not exceeding one year in terms of Section 468(2)(b) of the Cr.P.C.

19. In the present case, the learned Magistrate has taken cognizance of the offence after lapse of more than 15 months. As seen above, the maximum sentence, which could have been awarded for committing the offence under Section 188 of the IPC is six months and, hence, the impugned order is clearly barred by law of limitation.

20. As far as contention of the learned counsel for the State that the learned Magistrate was vested with the power to condone the delay in taking cognizance is concerned, it is true that such power is vested in the court of Magistrate under Section 473 of the Cr.P.C, but in the present case, it does not appear from the order impugned that the prosecution made any satisfactory explanation for the delay or the court deemed it appropriate to condone the delay in the interest of justice. Section 473 of the Cr.P.C. casts a duty on the court to examine not only whether such delay has been explained but as to whether it is in the interest of justice to condone such delay. Thus, in the present case, it can safely be held that the learned Magistrate did not exercise his power under Section 473 of the Cr.P.C. while taking cognizance of the offence.



21. I also find that the learned Magistrate has taken cognizance of the offence on a pre-printed format by filling up the case number, name of the accused and section 188 of the IPC. Such an order clearly reflects total non-application of judicial mind. Such a practice is totally impermissible in law.

22. Having regard to the discussions made above, the impugned order passed by the learned Magistrate cannot be sustained.

23. Accordingly, the application is allowed. The impugned order dated 09.07.2015 passed in Trial No.120 of 2015 arising out of Lauriya P.S. Case No.40 of 2014 and the entire criminal proceedings of the said case are hereby set aside.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.11.2017
Transmission Date	07.11.2017

