

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.46987 of 2013

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

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Manjula @ Dr. Manjula, wife of Sunil Kumar Singh, resident of Mohalla- Maharaja Hata, Lane No. 2, (Zed Computer Centre), Police Station- Ara Nawada. District- Bhojpur at Ara.

.... Petitioner/s

Versus

1. State of Bihar
2. Neelam Singh @ Nilam Devi, wife of Late Bisheshwar Prasad Singh, resident of Mohalla- K.G.Road, Police Station- Ara Nawada, District- Bhojpur at Ara.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rahul Nath, Advocate.

For the Opposite Party/s : Mr. Vinod Shankar Modi, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL JUDGMENT
Date: 23-06-2017

Heard learned counsel for the petitioner and the State.

Learned counsel for the O.P. No. 2 is not present.

This petition has been filed for quashing order dated 18.06.2013 passed by learned Sessions Judge, Bhojpur at Ara in Cr. Revision No. 87 of 2013 whereby he set aside the order taking cognizance dated 23.02.2013 against the O.P. No. 2, Neelam Singh on the ground that the Executive Magistrate has no authority to file a complaint under Section 188 of the Indian Penal Code to launch a prosecution for violation of the order passed under Section 144 Cr.P.C.



Learned counsel for the petitioner submits that earlier a proceeding under Section 144 Cr.P.C. was initiated and the parties were restrained from going over the land, but the said order was violated by the O.P. No. 2. An enquiry in that regard was made by the police and finding substance in it, a complaint was filed by the Executive Officer-cum-Sub Divisional Magistrate, as he was Incharge of the Sub Divisional Magistrate at the relevant time, so, the complaint was filed by the Incharge Sub Divisional Magistrate and not in the capacity of Executive Officer.

Learned A.P.P. submits that in cognizance order there is no illegality.

Having considered the rival submissions of the parties and on perusal of the record, in particular, the complaint dated 12.02.2013 for launching prosecution against O.P. No. 2 under Section 188 of the Indian Penal Code, was filed in the court of Chief Judicial Magistrate by Incharge Sub Divisional Magistrate, Sadar Ara. In other words, the complaint was filed not in the capacity of Executive Officer, as the said officer was Incharge of Sub Divisional Magistrate at the relevant point of time. The prosecution report was filed, pursuant to enquiry report submitted by the police, recommending for initiating a proceeding under Section 188 of the Indian Penal Code, so there is no illegality in the cognizance order. Therefore, in the facts and



circumstances of the case, the said revisional order dated 18.06.2013 is set aside and the order dated 23.02.2013 is restored.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	10.07.2017
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