

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29074 of 2014

Arising Out of PS.Case No. -85 Year- 2013 Thana -SIWAN COMPLAINT CASE District- SIWAN

Dr. Dabir Ahmad Rizvi, son of Dr. Jalil Ahmad, Azad Homeo Hall, Siwan Chapra Road, Naya Bazar, Siwan, Police Station - Siwan Town, District - Siwan

.... Petitioner/s

Versus

1. The State of Bihar
2. The Sub Divisional Officer, Siwan, District - Siwan

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Shailendra Kumar Singh, Advocate.

For the Opposite Party/s : Mr. Ajit Kumar A.P.P.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 29-06-2017

Heard learned counsel for the parties.

2. The petitioner has challenged the order dated 06.02.2014 passed by the learned Sessions Judge, Siwan in Criminal Revision No. 259 of 2013, whereby he has rejected the prayer for setting aside the order taking cognizance dated 19.10.2013 passed by the learned Chief Judicial Magistrate, Siwan under Section 188 of the Indian Penal Code in Complaint Case No. C-II-85 of 2013.

3. Learned counsel for the petitioner submits that order taking cognizance is barred by limitation for the alleged violation of order dated 09.07.2012 passed under Section 144 of the Cr.P.C. is alleged to be violated on 15.08.2012 moreover cognizance in the matter has been taken after lapse of a year and the delay has not been condoned by the impugned order. The learned Sessions Judge has



assigned reason that an enquiry was going on in the matter by the S.D.M., under Section 340 Cr.P.C. therefore, the period undertaken in the enquiry has to be excluded, but that is against the provision of law. Under Section 340 of the Cr.P.C., enquiry has to be made by the court only with respect to the alleged offences related to clause (b) of sub-section (1) of Section 195 but Section 188 IPC is not included in that provision.

4. Learned APP submits that there is no illegality in the impugned order.

5. The provision, as laid down under Section 340 Cr.P.C., is that in case of any application filed in the court for doing enquiry, the court is of the opinion and comes to conclusion that it is expedient in the interest of justice which requires holding an inquiry then the court can proceed but only with respect to the offence referred to in clause (b) of sub-section (1) of Section 195 which appears to have been committed in or in relation to a proceeding in the court. The offences enumerated in clause (b) of sub-section (1) of Section 195 Cr.P.C. are Sections 193 to 196, 199, 200, 205 to 2011 and 228 of the Indian Penal Code, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court.

6. Obviously, offence under Section 188 of the Indian Penal Code is not included in clause (b) of sub-section (1) of Section



195 Cr.P.C. Therefore, the reasoning given by the learned Sessions Judge that enquiry was going on under Section 340 Cr.P.C. is contrary to legal provision and the fact remains that cognizance has been taken in the matter after a lapse of one year. The punishment under Section 188 of the Indian Penal Code is simple imprisonment for one year or fine of Rs. 200/- or both and limitation for taking cognizance in such case, according to Section 468 of the Cr.P.C., is within one year from the date of commission of the offence but cognizance in the present case was taken after lapse of one year so taking cognizance in the present case is barred by limitation.

7. Hence, the criminal proceeding including order taking cognizance dated 19.10.2013 as well as order dated 06.02.2014 passed by learned Sessions Judge, Siwan in Criminal Revision No. 259 of 2013 are set aside. This petition stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	13.07.2017
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