

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.47998 of 2016

Arising Out of PS.Case No. -373 Year- 2013 Thana -WAJIRGANJ District- GAYA

- =====
1. Jagdish Singh @ Jagdish Prasad Singh @ Jageshar Singh son of Late Chito Singh.
 2. Anugrah Singh son of Jagdish Singh @ Jagdish Prasad Singh @ Jageshar Singh
Both resident of village- Chulhai Bigha, P.S. -Wazirganj, District- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Sanjan Singh son of Ambika Singh, resident of village- Bishunpur (Baniyadih),
P.S.- Wazirganj, District- Gaya.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Shanti Pratap, Advocate
: Mr. Ajit Ranjan, Advocate
For the State : Mr. Ram Anurag Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 31-08-2017

By way of the present application preferred under Section 482 of the Code of Criminal Procedure (for short 'the CrPC'), the petitioners seek quashing of the order dated 06.11.2015 passed in Wazirganj P.S. Case No.373 of 2013 by which the learned Judicial Magistrate, 1st Class, Gaya has summoned the petitioners after taking cognizance of the offence under Section 188 of the Indian Penal Code (for short 'the IPC').

2. Learned counsel for the petitioners has submitted that the impugned order taking cognizance of the offence is bad in law in view of the fact that cognizance has been taken on the basis of the First



Information Report (for short 'the FIR'), which is barred in law in view of Section 195(1)(a) of the CrPC. He has submitted that the proceeding under Section 188 of the IPC can be started only on the basis of a complaint filed by the public servant concerned before the court and not on the basis of FIR. He has submitted that even otherwise, the ingredients of the offence punishable under Section 188 of the IPC are not attracted in the present case.

3. On the other hand, learned counsel for the State has submitted that there is specific allegation against the petitioners that while a proceeding under Section 144 CrPC was pending, the petitioners along with others forcibly entered into property and ploughed the field.

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

5. The FIR is based on the written report submitted by one Sanjay Singh to the Officer-in-Charge, Wazirganj Police Station wherein it is alleged that he owns and possess a Khatiani land upon which he has filed a case under section 144 of the CrPC in the court of Sub Divisional Judicial Magistrate, Wazirganj. He has alleged that during pendency of the proceeding the petitioners along with other accused persons are forcibly ploughing the land.

6. On the basis of the said written report submitted by the



informant Sanjay Singh, Wazirganj P.S. Case No.373 of 2013 was registered under Section 188 of the IPC against the petitioners and others and investigation was taken up.

7. On completion of investigation, the police submitted charge-sheet under Section 188 of the IPC against the petitioners and others vide charge-sheet no.271 of 2013 dated 31.10.2013. After receipt of the police report, the learned Judicial Magistrate took cognizance of the offence under Section 188 of the IPC against the petitioners and other FIR named accused, vide impugned order dated 06.11.2015, which is under challenge before this Court.

8. The point for consideration before this Court is as to whether the jurisdictional Magistrate could have proceeded against the petitioners and other accused persons under Section 188 of the IPC on the basis of the police report submitted on completion of investigation of the police case.

9. So far as Section 188 of the IPC is concerned, it refers to the penalty for disobedience to an order duly promulgated by a public servant. Its pre-requisites are (i) Lawful order promulgated by a public servant empowered to promulgate it; (b) Knowledge of the order; (c) Disobedience of the order; and (d) The result that is likely to follow out of such disobedience is to cause obstruction, annoyance or injury to any person lawfully employed.



10. Applying the aforesaid pre-requisites for constituting an offence under Section 188 of the IPC, when I look to the allegations made in the FIR , I find that there is neither any specific allegation nor any finding to the effect that there was lawful order promulgated by a public servant empowered to promulgate it. The only allegation made in the FIR is that the informant has filed an application in the court of Sub Divisional Judicial Magistrate for initiating a proceeding under Section 144 CrPC in respect of certain land. Even the details of the land have not been mentioned. It is also not known whether any order was promulgated by the learned Sub Divisional Judicial Magistrate or not. There is also nothing to suggest that ploughing of the land by the accused persons caused annoyance, disturbance or injury to any person lawfully employed. Thus, apparently, the ingredients of the offence under Section 188 of the IPC are not attracted in the present case.

11. Moreover, Section 195(1) of the CrPC bars the court from taking cognizance of the offence punishable under Section 188 of the IPC unless there is a complaint in writing by the public servant concerned or some other public servant to whom he is administratively subordinate for contempt of his lawful order.

12. Section 195(1)(a) of the CrPC 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.”

13. Thus, it would be manifest that the provision prescribed under Section 195 of the CrPC has been carved out as an exception to the general rule contained under Section 190 of the CrPC that any person can set the law into motion by making a complaint.

14. It prohibits the Court from taking cognizance of offence under Section 188 of the IPC until and unless a complaint has been made by some particular authority or person. It 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.

15. In the present case, the FIR has been instituted on the basis of the written report of a private person. It is totally against the



legislative intent, as it is neither by the public servant concerned nor some other public servant to whom he is administratively subordinate.

16. Furthermore, it would not be within the domain of the police to register a case for an offence alleged 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 Section 195 of the CrPC.

17. In that view of the matter, the impugned order passed by the learned Magistrate cannot be sustained.

18. Accordingly, the impugned order dated 06.11.2016 passed in Wazirganj P.S. Case No.373 of 2013 by the learned Judicial Magistrate, 1st Class, Gaya, is set aside.

19. The application stands allowed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	07.09.2017
Transmission Date	07.09.2017

