

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36144 of 2012

Arising Out of PS.Case No. -178 Year- 1999 Thana –Laheri District- NALANDA (BIHARSHARIFF)

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Akhilesh Dutta Verma @ Akhilesh Prasad Sinha S/o Dr. Janardan Prasad Verma,
resident of mohalla- Katra, P.O.- Biharsharif, P.S.- Bihar, Town & District-
Nalanda, at present residing at Ganga Bihar Colony, Beur Town & District- Patna.

.... Petitioner/s

Versus

The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Laxmi Narayan Das, Advocate

For the Opposite Party/s : Mr. Suraj Pd. Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 06-09-2017

1. Heard both sides and perused the record.

2. This criminal miscellaneous application under section

482 of the Code of Criminal Procedure has been filed to quash the
order dated 13.10.2003 passed by the learned Chief Judicial
Magistrate, Bihar Sharif at Nalanda in G.R. No. 2285 of 1999 arising
out of Laheri Police Station Case No. 178 of 1999 whereby and
whereunder the learned Magistrate finding *prima facie* case for the
offences under sections 153(A), 295(A)/34 of the Indian Penal Code,
took cognizance against the petitioner and three others.

3. A Police case, vide Laheri Police Station Case No.

178 of 1999, was registered on the self statement of S.H.O. of Laheri
Police Station. It is said that on the day of occurrence, the informant



was on duty to maintain the law and order on the occasion of immersion of idol of goddess Laxmi Jee. This petitioner and other co-accused in a procession reached at the place of occurrence while proceeding for immersion of idol. The informant alleged that the place where the procession reached, was prohibited area on account of serious apprehension of breach of peace as an occurrence of riot had taken place last year 1998. The petitioner happens to be an Advocate and he reached at the place of occurrence and said that as per order of Patna High Court, the procession will cross the route of pipe line Katra to Baba Mani Ram Akhara. This petitioner misrepresented the processionist and tried to provoke the people in order to disturb the public harmony. On the basis of self statement of S.H.O., a case was registered for the offences under sections 153(A), 295(A)/34 of the Indian Penal Code. After investigation, Police submitted charge sheet and the learned Magistrate took cognizance of offence on the basis of material produced by Police.

4. The learned counsel for the petitioner submits that the petitioner is an Advocate and had filed a Public Interest Litigation bearing CWJC No. 1813 of 1999 challenging the order of the District Magistrate by which he had illegally and arbitrarily changed the route of the religious procession of two communities. The District Magistrate had issued administrative order banning the old traditional



route of the religious procession few months back. Two communities of Bihar Sharif town were annoyed with the said order and so, a Public Interest Litigation case was filed in Patna High Court by the Members of both the communities. The said writ was heard by the Division Bench and considering the matter, this Court admitted the writ application and ordered the rule returnable within six months. On account of passing of said order, the District Magistrate became annoyed and in order to teach lesson, has lodged the present case against the petitioner and the Members of Puja Committee. This petitioner did not withdraw the Public Interest Litigation in spite of repeated request of the District Magistrate. It has been further submitted that the cognizance order is barred under the provision of section 468 (C) of the Code of Criminal Procedure. The maximum punishment is three years imprisonment and for the said offence, the learned Magistrate has taken cognizance after four years. The learned Magistrate without applying judicial mind, has passed the impugned order and so, the said order is fit to be quashed.

5. The learned Additional Public Prosecutor, on the other hand, opposed the submission.

6. On perusal of FIR, impugned order and documents on record, I find that the petitioner is an Advocate who had filed a Public Interest Litigation bearing CWJC No.1813 of 1999 challenging



the order of District Magistrate whereby and whereunder the route of religious procession of both the communities was changed. The allegation is that this petitioner who is an Advocate came and stated that the Patna High Court has ordered that the procession will cross through pipe line Katra road to Baba Mani Ram Akhara and except this there is nothing in FIR or in the statement of witnesses. The allegation appears vague. The witnesses examined by the informant during investigation are police forces and not a single independent witness has been examined. There are contradictions also in the statement of the witnesses.

7. Section 153A of IPC was amended by Criminal Law (Amendment) Act, 1969 (Act 35 of 1969). It consists of three clauses of which clauses (a) and (b) alone are material for the case on hand, which read as under:

"153-A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.(1)
Whoever-

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or



any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquility, or

(C) * * * shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Section 153-A of IPC, as extracted hereinabove, covers a case where a person by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities or acts prejudicial to the maintenance of harmony or is likely to disturb the public tranquility. The gist of the offence is the intention to promote feelings of enmity or hatred between different classes of people. The Hon'ble Apex Court in a case of Balwant Singh vs. State of Punjab reported in AIR 1995 SC 1785 has observed that "the intention to cause disorder or incite the people to violence is the sine qua non of the offence under Section 153A of IPC and the prosecution has to prove prima facie the existence of mens rea on the part of the accused." The intention has to be judged primarily by the language of the FIR and the attending circumstances. The petitioner merely uttered that the Hon'ble High Court has passed



an order on his public interest litigation writ petition.

8. In view of the above facts, I find that criminal prosecution of this petitioner would be an abuse of the process of the Court. As such, this criminal miscellaneous application is allowed and order dated 13.10.2003 passed by Judicial Magistrate, Ist Class, Biharsharif at Nalanda in G.R. Case No.2285 of 1999 arising out of Laheri P.S.Case No.178 of 1999 as well as criminal prosecution of this petitioner on the basis of said order, is hereby quashed.

(Sanjay Kumar, J)

Brajesh/Mahesh

AFR/NAFR	NAFR
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