

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.28147 of 2012

Arising Out of PS.Case No. -218 Year- 2011 Thana -null District- BHAGALPUR

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Dr. Sanjeev Kumar Singh, s/o late Sharda Prasad Singh, r/o village + Post -
Madrauni, P.S. Rangra Chowk, District - Saharsa

.... Petitioner/s

Versus

1. The State of Bihar
2. The Block Development Officer, Block Jagdishpur, District - Bhagalpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. SBK Manglam, Advocate. Mrs. Anita Kumari, Advocate Mr. Ravi Ranjan, Advocate
For the State	:	Mr. Nawal Kishore Prasad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 25-08-2017

1. This application under Section 482 Cr. P.C. has been filed for quashing the First Information Report of Kotwali (Aadampur) P.S. Case No. 218 of 2011 instituted under Section 188 of the Indian Penal Code.

2. Heard learned counsel for the petitioner and learned counsel for the State.

3. In the instant case, the prayer has been made to quash the First Information Report lodged by the Block Development Officer for the offence under Section 188 of the Indian Penal Code for disobedience of the order duly promulgated by public servant.

4. During course of argument, learned counsel for the



petitioner has submitted that in terms of provision of Section 195(1)(a), no court shall take cognizance of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate.

5. Learned counsel for the petitioner has further submitted that the word “complaint” as mentioned in Section 195(1)(a) of Cr. P.C. has to be filed before the learned Magistrate and no case can be registered before the Police. Therefore, the First Information Report lodged before the Police is not in accordance with law.

6. Learned counsel for the petitioner has pointed out definition of complaint as mentioned in Section 2(d) of the Criminal Procedure Code clearly which clearly mentions that:

“complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation. – A report made by a police officer in a case which discloses, after investigation, the commission of a non-



cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;

7. The counsel for the petitioner has further submitted that the offence under Section 188 Indian Penal Code is cognizable. Therefore, the registration of First Information Report by the police on the basis of written report filed by the Block Development Officer was illegal and not within the provision of law in terms of Section 195(1)(a) of the Code of Criminal Procedure.

8. This Court after perusing the aforesaid provision of law, finds that Section 195(1)(a) of the Code of Criminal Procedure specially speaks that no Court shall take cognizance of any offence under Sections 172 to 188 (both inclusive) of the Indian Penal Code except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate.

9. The counsel for the petitioner has not challenged the competency of the Block Development Officer to lodge the complaint. He has merely challenged that the complaint should have been filed before the learned Magistrate in terms of provision of Section 195(1)(a) of the Cr. P.C. and not before the police.



10. In view of clear definition as mentioned in Section 2 (d) of the Code of Criminal Procedure, complaint is to be filed orally or in writing before the Magistrate.

11. In such circumstances, this Court is of the view that the instant First Information Report lodged before police on the basis of written report of Block Development Officer, is not in accordance with law and is accordingly quashed.

12. This Criminal Miscellaneous application is therefore allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	09/09/2017
Transmission Date	09/09/2017

