

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.21959 of 2014

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

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Binay Kumar Singh S/o Late Shambhu Sharan Singh R/o Village -
Sarathuwa, P.S. - Udwant Nagar, District - Bhojpur

.... Petitioner

Versus

1. The State of Bihar

2. Ram Dayal Singh S/o Late Rambilash Singh Resident of Village -
Sarathuwa, P.S. - Udwant Nagar, District - Bhojpur

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Ravindra Kumar, Advocate

For the O.P. NO.2 : Mr. Uday Kumar, Advocate

For the State : Mr. Pradeep Narain Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 13-10-2017

Heard learned counsel for the petitioner, learned
counsel for the opposite party no. 2 and learned Additional
Public Prosecutor for the State.

2. The petitioner is aggrieved by the revisional order
dated 31st October, 2013 passed by learned *Ad hoc* Additional
Sessions Judge-V, Bhojpur at Ara, by which he has rejected the
Revision Application preferred by this petitioner for setting
aside the order dated 23.02.2013 passed by learned Chief
Judicial Magistrate, Bhojpur at Ara in Case No. 01(O)/2013, in
which he has taken cognizance under Section 188 of the Indian
Penal Code and issued summon to the petitioner.



3. Learned counsel for the petitioner submits that the plea of limitation raised by this petitioner before the revisional court has not been correctly appreciated and the revisional court could not appreciate that the learned Chief Judicial Magistrate, while taking cognizance after the period of limitation of one year from the date of cause of action for an offence under Section 188 of the I.P.C. has committed error. There is no order of learned Chief Judicial Magistrate condoning the delay in the interest of justice as has been held by the learned revisional court.

4. Learned counsel submits that the revisional court on its own held that the cognizance taken after the period of limitation was in the interest of justice under Section 473 Cr.P.C., even though there is no such mention in the order-sheet of the learned Chief Judicial Magistrate.

5. Learned counsel further submits that the complaint in question was filed by the Executive Magistrate who had no *locus standi* to file the said complaint in terms of Section 195(1)(a) of the Code of Criminal procedure, the complainant is neither the authority who had passed the prohibitory order under Section 144 Cr.P.C. nor he is a superior



authority to the public officer who passed the prohibitory order. According to him, the allegation was of cutting the crops during the prohibition period from 05.12.2011 to 06.12.2011, therefore, the cognizance taken on 23.02.2013 would be barred by limitation in terms of Section 438(2)(b) Cr.P.C.

6. Learned counsel further submits that the another ground on which the learned *Ad hoc* Additional Sessions Judge-V, Bhojpur at Ara rejected the application is that the order issuing summon is an interlocutory order and criminal revision against such order of summoning is not maintainable.

7. Learned counsel submits that this aspect of the matter is no longer *res integra* inasmuch as the test for maintaining a Revision Application as held by Hon'ble Supreme Court is that, if by allowing the Revision Application the very proceeding comes to an end, the Revision Application would be maintainable.

8. In the present case, if the order of summoning could have been set aside, the complaint case would have come to an end and, therefore, Revision Application was very much maintainable. In the case of ***Rajendra Kumar Sitaram Pande Vs. Uttam reported in (1999) 3 SCC 134***; the test in this regard



has been laid down by Hon'ble Supreme Court.

9. On the other hand, learned counsel for the opposite party no. 2 submits that there is no illegality or infirmity in the order impugned in the present application. He has drawn my attention towards the statement made in paragraph 10 of the complaint petition to show that the complaint in question was filed on 31.12.2012 in which cognizance was taken on 23.03.2013. Learned counsel is, however, unable to controvert the submissions of learned counsel for the petitioner that it was barred by limitation and the complainant had no *locus standi*.

10. Having heard learned counsel for the parties and upon perusal of the record, this court finds that the violation of the order under Section 144 Cr.P.C. allegedly took place between 05.12.2011 and 06.12.2011, whereas the complaint case came to be filed on 31.12.2011, i.e., after more than a year and thereupon cognizance has been taken on 23.03.2013.

11. Section 468(2)(b) prescribes a limitation period of one year for taking cognizance if the offence is punishable with imprisonment for a term not exceeding one year. Section 188 of the I.P.C. provides punishment for a maximum period up to



six months or with fine which may extend to Rs. 1,000/- or with both. So far as Section 468(2)(b) is concerned, it will apply only in a case where the punishment prescribed is not exceeding one year.

12. In the present case, however, the punishment prescribed is not only imprisonment for a term which may extend to six months but is also punishable with fine and both imprisonment and fine may be imposed. Therefore, in the opinion of this Court Section 468(2)(b) cannot be invoked by the petitioner for his rescue in the present case.

13. The another ground taken by the petitioner is about the *locus standi* of the complainant, Section 195(1)(a) says that no court shall take cognizance of any offence punishable under Sections 172 to 188 (both inclusive) of the I.P.C. except on the complaint in writing of the public servant concerned or some other public servant to whom he is administratively subordinate.

14. In the present case, the Sub-Divisional Officer has passed the prohibitory order under Section 144 Cr.P.C. which has been taken note of by the learned *Ad hoc* Additional Sessions Judge-V, Bhojpur at Ara in the impugned order. If the



prohibitory order under Section 144 Cr.P.C. was passed by Sub-Divisional Officer, it was either he or a public officer to whom he was subordinate could have filed the complaint. The complaint filed by the Executive Magistrate in the present case who is neither the concerned officer nor to whom the Sub-Divisional Officer is a Subordinate Officer would not be maintainable.

15. The impugned order, therefore, suffers from illegality and infirmity which the learned *Ad hoc* Additional Sessions Judge-V, Bhojpur at Ara could not appreciate. In the opinion of this Court, the conclusion reached by the learned revisional court that the revisional application would not be maintainable under Section 397 Cr.P.C. is equally wrong and the same is fit to be set aside.

16. In the result, the order taking cognizance as well as the revisional order are hereby set aside and the application is allowed.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
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