

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.737 of 2015

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

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Farah Ali Khan @ Farah Khan Ali, d/o of Sanjay Khan, resident of Sanjay Plaza,
1st Floor, A.B. Nair Road, Juhu, Mumbai-400049

.... Petitioner/s

Versus

1. The State of Bihar through the Superintendent of Police, Muzaffarpur.
2. Mr. Sudhir Kumar Ojha, S/o Krishnadev Ojha, resident of village-Lehladpur,
P.S.- Sadar, District- Muzaffarpur, Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Chittranjan Sinha, Sr.Adv.
Mr.Ankit Katriar, Adv.
Mr.Shakib Ayaz, Adv.

For the Respondent no.1 : APP

For the Respondent no.2 : Mr.Sudhir Kumar Ojha (in person).

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 30-05-2017

Heard the parties.

2. The petitioner has invoked the jurisdiction of this Court under Article 226 and 227 of the Constitution of India for quashment of order dated 08.05.2015 passed in Complaint Case No.1089 of 2015 by the learned Additional Chief Judicial Magistrate, Muzaffarpur, whereby the learned Magistrate has directed institution of an FIR against the petitioner in exercise of power under Section



156(3) Cr.P.C., vide Annexure-4. Further prayer is for quashment of Kazi Mohammadpur P.S. Case No.209 of 2015 (Annexure-1) registered under Sections 504, 506, 153 and 153(A) of the Indian Penal Code in pursuance of the order passed vide Annexure-4.

3. Prayer is on the ground that the Complaint Case No.1089 of 2015 brought by the respondent no.2 does not disclose offences alleged against the petitioner rather is based on information gathered through print and visual media, made in frivolous manner by misinterpreting the facts and with a malafide intention to garner cheap publicity. Submission is that the petitioner is a renowned Bollywood actor, producer and fashion designer, whereas opposite party no.2 is an advocate practicing in Muzaffarpur district court.

4. The second ground is that the complaint petition is not on affidavit nor there is averment that against non-institution of the FIR by the police the higher authorities were approached in view of the provisions of Section 154(3) Cr.P.C. Therefore, the order dated 08.05.2015 suffers from non-application of judicial mind as held in different pronouncements by the Hon'ble Apex Court and the latest one is **Priyanka Srivastava & Anr. Vs. State of U.P. & Ors. reported in AIR 2015 SC 1758.**

5. The allegation against the petitioner, as disclosed in the Complaint Case No.1089 of 2015, vide Annexure-3, is that on



06.05.2015 Bollywood actor Salman Khan was convicted. Thereafter, the accused persons under a conspiracy came out in his favour and gave controversial statement in media that footpath is not for sleeping of pavement dwellers. The driver or drunkard are not wrong and the roads are only for cars and dogs and not for people. If some people have interest in sleeping on footpath they should go to the villages where there is no vehicle. The respondent no.2 has watched the aforesaid statement on T.V. on 07.05.2015 as well as in all the newspapers. According to respondent no.2 the aforesaid statement of the petitioner touched the sentiment of the poor of whole of this country and the statement might have caused riot.

6. Submission of the petitioner is that the aforesaid statement is distorted version not supported by any material on the record. In fact, the petitioner is supporter of Bollywood actor Salman Khan and on his punishment different peoples were voicing their vivid opinions in the cyber world. The petitioner being the well-wisher and friend of Salman Khan also discussed her view in one of the social media platform namely twitter and nowhere else.

7. Hard copy of the twitter statement of the petitioner is annexed as Annexure-2. The relevant portion of the twitter statements are reproduced herein below:-

“ The law is penalizing drunk drivers. What is



the law doing for pavement dwellers to prevent more deaths? Don't they need defined places to sleep."

"Look at this picture. Don't you all feel sorry for the plight of these pavement dwellers whose life is at risk every night." "The government should be responsible for housing people. If no one was sleeping on the road in any other country Salman would not have driven over anybody." "It is like penalizing a train driver because someone decided to cross the tracks and got killed in the bargain." "Salman is genuinely a very good human being and he made a mistake. He did not intentionally want to kill someone and now he has to pay a price."

8. Submission is that a bare perusal of the aforesaid statement would reveal that it is within the limits of the right to free expression under Article 19 of the Constitution of India. Nothing is there to hurt the sentiment of anyone unless someone chose to show himself hurt as done in the present case by the respondent no.2. His next submission is that at no place of India any incident or occurrence was reported due to aforesaid statement.

9. The State respondent has filed counter affidavit controverting the prayer of the petitioner and asserting that the petitioner has transgressed the freedom under Article 19 of the Constitution of India and is not entitled to any relief.



10. The respondent no.2 in his separate counter affidavit asserted that the petitioner is not entitled to any relief as the complaint petition discloses the offence of intentional insult committed by the petitioner against the members of the weaker sections of the society. The statement was intended to break the public peace and was an attempt to break the integrity and sovereignty of the India through speech and expression.

11. On consideration of the precedent on the line, the Hon'ble Apex Court in paragraph 24 to 27 of the judgment in **Priyanka Srivastava case (supra)** observed as follows:-

“24. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order.”

“25. Issuing a direction stating “as per the application” to 27 CRL.A.781/12 lodge an FIR creates a very unhealthy situation in the society and also reflects the erroneous approach of the learned Magistrate. It also encourages the unscrupulous and unprincipled litigants to take adventurous steps with courts to bring the financial institutions on their knees.”



“26. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same.”

“27. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is



determined to settle the scores. We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

12. Considering the aforesaid observations, what I find in the present case is that the complaint petition is not on affidavit.



There is no averment that the respondent no.2 had approached the police for institution of a police case or had sent the complaint to the superior police officer in view of the provisions under Section 154(3) Cr.P.C. against non-institution of the case.

13. The learned Magistrate has passed the following orders on 08.05.2015:-

“ Let the copy of the complaint petition be sent to O/C (officer in-charge) Kazi Mohammadpur P.S. through S.P. Muzaffarpur for institution of case under Section 156(3) Cr.P.C. and to investigate the same and submit final form.”

14. Apparently, the impugned order suffers from non-application of judicial mind as to whether the complaint petition discloses any offence or there is statutory compliance of the requirement before directing institution of an FIR under Section 156(3) Cr.P.C. Hence, the impugned order contained in Annexure-4 as well as subsequent FIR instituted on the basis of the impugned order, vide Annexure-1, are fit to be quashed on this ground alone.

15. Now, let this Court examine whether the offences for which FIR has been registered are made out in the facts and circumstances of this case. Section 153 of the Indian Penal Code reads as follows :-

153. Wantonly giving provocation with intent to



cause riot--if rioting be committed- if not committed.-
Whoever malignantly, or wantonly by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both, and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

16. A bare perusal of the complaint petition does not reveal that the statement of the petitioner on the issue above was malignantly or willingly made which was illegal. The same was not intended to give any provocation to any person knowing that the provocation would cause riot. Therefore, apparently the ingredients of the aforesaid offence are not disclosed in the FIR.

17. Section 153-B of the Indian Penal Code reads as follows:-

153-B. Imputations, assertions prejudicial to national integration.--*(1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise,-*

(a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or



community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or

(b) asserts, counsels, advises, propagates or publishes that any class of persons by reason of their being members of any religious, racial, language or regional group or caste or community be denied, or deprived of their rights as citizens of India, or

(c) makes or publishes and assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Whoever commits an offence specified in sub-section (1), in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

18. A bare perusal of the complaint petition does not reveal that any imputation prejudicial to the national integrity was there save and except bald statement of the complainant.

19. Section 503 of the Indian Penal Code defines criminal intimidation as follows:-

503. Criminal intimidation.--Whoever threatens



another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

20. The present case does not disclose that the petitioner had threatened anyone of the referred injuries. Therefore, ingredients of offence under Section 506 IPC which provides for punishment for criminal intimidation is not prima facie made out.

21. Section 504 of the Indian Penal Code reads as follows:-

504. Intentional insult with intent to provoke breach of the peace.--Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

22. The complaint petition does not disclose that any provocation was given to any individual nor there is material that intentional provocation was there or knowingly it was given rather the petitioner twitted as follows:-

“And so, I would like to offer an unconditional apology for my tweets referred the homeless sleeping on



the streets.”

23. Therefore, there is complete lack of material disclosing the ingredients of offences for which FIR has been instituted against the petitioner. Consequently, in my view, continuance of the criminal proceeding against the petitioner would amount to an abuse of the process of the Court. Accordingly, the impugned order, as contained in Annexure-4, and the FIR of Kazi Mohammadpur P.S. Case No.209 of 2015, as contained in Annexure-1, stands quashed and the writ application allowed.

Arvind/-

(Birendra Kumar, J)

AFR/NAFR	AFR
CAV DATE	08.05.2017
Uploading Date	30.05.2017
Transmission Date	30.05.2017

