

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No. 786 of 2016

Arising out of P.S. Case No. - null Year - null Thana - null District - NALANDA (BIHARSHARIFF)

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Dr. Sunil Kumar, S/o Sri Bhagwat Prasad, resident of Mohalla - Soh Sarai, P.S. -
Soh Sarai, District Nalanda

.... Petitioner

Versus

1. The State of Bihar through the Superintendent of Police, Nalanda
2. Sunil Kumar Verma, Son of Sri Raghunath Prasad Srivastava, resident of South Chitragupta Nagar, Kankarbagh, P.S. Kankarbagh, Patna – 800020, at present working as Circle Officer, Bihar, P.S. Biharsharif, Nalanda

.... Respondents

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Appearance :

For the Petitioner : Mr. Subodh Kumar Jha, Advocate
Mr. Pranav Kumar Jha, Advocate

For the Respondents : Mr. Iqbal Asif Niazi, A.C. to G.P. 5

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 13-09-2017

Heard learned counsels for the parties.

2. The petitioner has challenged, in this writ application, the order dated 04.03.2016 passed by the learned Chief Judicial Magistrate, Nalanda at Biharsharif in Bihar P.S. Case No. 488 of 2015 corresponding to G.R. No. 4107 of 2015 whereby cognizance has been taken against the petitioner for offence under Section 188 of the Indian Penal Code.

3. According to First Information Report, lodged on the basis of written report of the Circle Officer, the petitioner was a candidate of the referred political party for Legislative Assembly Election. On 13.10.2015, the petitioner had convened a meeting in the campus of Shram Kalyan Maidan and in his application, for permission the petitioner had disclosed that about five thousand people are likely to



assemble. However, in fact, forty thousand people assembled thereat which caused problem of law and order.

4. Learned counsel for the petitioner submits that a bare perusal of the provisions, Section 188 of the Indian Penal Code would reveal that ingredient of the offence alleged is not attracted in the facts and circumstances of this case nor the informant is a competent person to lodge FIR of the matter. Therefore, the cognizance order is barred under Section 195(1)(a)(i) of the Code of Criminal Procedure.

Section 188 of the Indian Penal Code reads as follows:-

“Section 188. Disobedience to order duly promulgated by public servant. --- Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

5. The FIR does not disclose that there was any order



promulgated by the informant directing abstinence as referred in the provisions above nor there is material to substantiate that disobedience of such direction caused or tend to cause obstruction, annoyance or injury or risk of obstruction, annoyance or injury to any person lawfully employed. Further, there is no material disclosed in the FIR that permission to assemblage of only five thousand people was granted. If more people assembled, the petitioner was not responsible for that. Moreover, vague statement is there in the FIR that forty thousand people caused problem of law and order. There is no specific mention that what problem was caused.

6. Now coming to the requirement of Section 195 of the Code of Criminal Procedure which reads as follows:-

“195(1) 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.”

7. In the present case, the criminal prosecution has not been lodged by the public servant concerned who promulgated the prohibitory order nor it has come on the record that the petitioner is subordinate to that public servant. Therefore, initiation of police case is itself bad in view of the requirement of Section 195 of the Cr.P.C.

8. The State-respondent in the counter affidavit have detailed the act and omission committed by the petitioner leading to the FIR



and has stated that after investigation, the case has been found true. The counter affidavit further reveals that news had flashed that Ajay Devgan, a film actor was to participate in the meeting dated 13.10.2015. In the circumstances, a large number of people had assembled.

9. Thus, it was the duty of the administration to foresee the chances of people coming in large number.

10. In the facts and circumstances of this case, no criminal liability can be raised against the petitioner. For the reasons aforesaid, in my view, the impugned order is not sustainable in law. Accordingly, the impugned order as well as the entire criminal prosecution against the petitioner is hereby quashed.

11. This writ application is allowed.

(Birendra Kumar, J)

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AFR/NAFR	A.F.R.
CAV DATE	N.A.
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