

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.816 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District-
EASTCHAMPARAN(MOTIHARI)

- =====
1. Keshar Devi Wife of Raju Prasad @ Raju Kumar Resident of Village - Sugauli Bazar, P.S. Sugauli, District East Champaran.
 2. Payal Devi Wife of Chandeshwar Singh resident of Village - Lal Parsa, P.S. Sugauli, District - East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Collector, East Champaran.
3. The Sub Divisional Officer, Motihari, Sadar, District - East Champaran.
4. The Circle Officer, Sugauli, District - East Champaran.
5. The Superintendent of Police, District - East Champaran.
6. The Police Incharge, Sugauli Police Station, District - East Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Devi Das Srivastava, Advocate
For the Respondent/s : Mr. Nadim Seraj, GP-5

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 16-11-2017

The petitioners are accused in connection with Sugauli P.S. Case No.154 of 2016 registered under Sections 188/34 of the Indian Penal Code.

2. The petitioners have sought for quashing of the F.I.R. on two grounds; (i) that the offence alleged is not made out and (ii) the informant is not competent to lodge the F.I.R. nor an F.I.R. of the occurrence can be lodged rather a complaint to Court should have been filed in view of the provisions under Section 195(1) Cr.P.C.

3. Heard learned counsel for the petitioners as well as the



State-respondents.

4. The First Information Report at Annexure-1 would reveal that Anchala Adhikari, Sugauli, is informant of the case. He lodged written report on 01.07.2016 stating therein that a notice was sent prohibiting any work on Plot No.3207 under Khata No.597. In spite of prohibition the petitioners put boundary wall and iron gate on the land.

5. Submission of the learned counsel for the petitioners is that the proceeding under Section 144 Cr.P.C. vide Case No. 154M/2016, Ratan Tiwari V. Raju Kumar and Others, was already dropped by the Sub-Divisional Magistrate, Sadar, Motihari, on 31.03.2016 vide Annexure-3. Thereafter, no proceeding was pending nor the petitioners were party to that proceeding in respect of the referred land nor the petitioners were party to any other such proceeding nor the petitioners had knowledge of prohibitory order. The petitioners have stated the aforesaid fact in para-13 of the writ application, which has not been controverted by the State-respondents.

6. Learned counsel for the State-respondent resisted the prayer of the petitioner. However, does not controvert that on the date of lodging of the F.I.R. no prohibitory order was there which was duly served to the petitioners and the petitioners knowingly and deliberately disobeyed the same. Hence, offence under Section 188 of



the Indian Penal Code is apparently not attracted. There is no material that the petitioners acted in furtherance of their common intention; hence, the allegation under Section 34 of the Indian Penal Code is also not made out.

7. Learned counsel for the petitioners placed reliance on the judgment of this Court reported in **1997(1) PLJR page-202 (Kapileswar Singh @ Kapileshwar Singh and Others V. The State of Bihar)**, for his submission that offence under Section 188 of the Indian Penal Code can be instituted only against the person who are party to the proceeding under Section 144 Cr.P.C.

8. The complaint for offence under Section 188 of the Indian Penal Code could have been filed only by the public servant whose order has been disobeyed or by some other public servant to whom he is administratively subordinate. Even if it is assumed that a proceeding under Section 144 Cr.P.C. was there that was before the Sub-Divisional Magistrate concerned. Sub-Divisional Magistrate has not filed any complaint nor he is subordinate to the circle officer. Therefore, the informant is incompetent to file an F.I.R. of the aforesaid allegation in view of specific bar under Section 195(1)(a) of the Cr.P.C., which reads as follows:

“(1) No Court shall take cognizance-

(a)(i) of any offence punishable under Section 172 to 188



(both inclusive) of the Indian Penal Code (45 of 1860), or
(ii) of any abetment of, attempt to commit, such offence,
or
(iii) of any criminal conspiracy to commit such offence,
except on the complaint in writing of the public servant
concerned or of some other public servant to whom he is
administratively subordinate;”

9. In view of the finding aforesaid, the whole criminal prosecution of the petitioners is an abused of the process of the Court. Hence, the F.I.R. and its subsequent criminal proceeding stand quashed and this writ application allowed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.11.2017
Transmission Date	17.11.2017

