

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.9178 of 2014

Arising Out of PS.Case No. -53 Year- 2010 Thana -GAUNAHA District- WESTCHAMPARAN
(BETTIAH)

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Shatrughan Prasad Sinha, Son of Late Bhuvneshwar Prasad Sinha, R/O
Bhuvneshwar Niwas, D. Block, Kadamkuan, P.S. Kadamkuan, District- Patna

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajiv Kumar Verma, Sr. Advocate.

Ms. Meeta Sinha, Advocate.

Mr. Prashant Sinha, Advocate.

For the Opposite Party/s : Mr. Amit Kumar Rakesh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 23-08-2017

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

2. The petitioner by filing this application under Section
482 Cr.P.C. 1973, seeks for setting aside entire criminal proceeding of
G.R. No. 3476 of 2010 (Tr. No. 1851 of 2013) inclusive of FIR
bearing Gaunaha P.S.Case No. 53 of 2010 registered under Sections
188 of the Indian Penal Code and Section 123 of the Representation
of the People Act, 1951, pending in the court of Judicial Magistrate,
1st Class, West Champaran at Bettiah.

3. Allegation levelled in the FIR, in brief, is that
accused-petitioner, being the member of Parliament of B.J.P., arrived
by Helicopter at Belwa Bhauari Campus, where Navjot Singh Siddhu



another B.J.P. leader was to address a public meeting in ensuing election and addressed public gathering for 15 minutes without any permission so committed violation of election code of conduct. The police, on conclusion of investigation, submitted charge sheet also in this case under the aforesaid sections.

4. Learned counsel appearing on behalf of the petitioner submits that allegation even if taken into entirety, as levelled in the FIR, no ingredient of offence under Section 188 of the Indian Penal Code as well as Section 123 of the Representation of People Act, 1951 is made out. Section 188 of the Indian Penal Code relates to violation of any prohibitory order promulgated by a public servant, but it is not alleged that which order was promulgated by a public servant and the nature of violation. However, it is further contended that in case of any alleged offence committed under Section 188 of the Indian Penal Code a private person cannot launch prosecution, the present complaint was not filed by any public servant so cognizance cannot be taken by the court under Section 188 of the Indian Penal Code. Further contention is that the entire allegation levelled in the FIR does not disclose that any offence under Section 123 of the Act was committed by the petitioner and there is no any allegation of bribery offered by the petitioner to the elector even by making of any promise to go in favour of a particular candidate or any of the



omission and commission as mentioned in Section 123 of the Act.

5. Having considered rival submissions and on perusal of record as well as the allegations levelled in the FIR, the court is of the view that even taking into account the entire allegation levelled in the FIR, no any ingredient of offence under Section 123 of the act is made out. There is complete absence of any allegation of doing corrupt practices, which is defined under the said section of the Act. There is no allegation of giving bribery or offering or promising any elector or any person to stand or not to stand or to withdraw his candidature or influencing of an elector to vote or refrain from voting at an election. There is also no allegation of making any undue influence in context of free exercise of any electoral right i.e., of threatening any candidate or any elector or inducing or attempt of inducement to a candidate or an elector or declaration of any public policy or making an attempt to promote feeling of enmity or hatred between different classes of citizens of the country on grounds of religion, race, caste, community, or language .

6. The case of the petitioner is that he was to address a public gathering at a nearby place but the pilot of the helicopter inadvertently landed at the public gathering where another leader of the B.J.P namely Navjot Singh Siddhu was to address there. Since he landed there, the people requested to address them but no promise or



allurement was given to the gathering hence no offence under Section 123 of the Act was committed by the petitioner because no such allegation is levelled in the contents of the FIR. Moreover, this case is based on the FIR, so no court can take cognizance of offence under Section 188 of the Indian Penal Code unless a complaint in writing is filed by a public servant, which is promulgated any order by which any violation was made by the accused or by person who is administratively subordinate to him, so, the case cannot proceed under Section 188 of the Indian Penal code on the basis of an FIR against which cognizance has been taken by the court.

7. A complaint is defined under Section 2(d) of the Code of Criminal Procedure, 1973, which reads as under:

“2(d). “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.”

8. It is apparent from the definition itself that complaint does not include a police report so proceeding in the matter of lodging offence under Section 188 of the Indian Penal Code on the basis of an FIR is against the spirit of law. As no court can take cognizance under the said offence unless a complaint in writing is filed by the concerned public servant, whose order was violated or by some other



public servant to whom he is administratively sub-ordinate. Therefore, the Court finds that no *prima facie* case under Section 123 of the Act is disclosed in the FIR even taking into account entire allegation alleged under Section 188 of the Indian Penal Code, only a complaint in writing is to be entertained filed by the public servant concerned, but in the present case a police case has been registered. So the entire criminal proceeding including the FIR of Gaunaha P.S. Case No. 53 of 2010 (G.R. No. 3476 of 2010, Tr. No. 1851 of 2013) is set aside.

9. The application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
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