

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.30679 of 2017

Arising Out of PS.Case No. -85 Year- 2017 Thana -RAJGIR District- NALANDA
(BIHARSHARIFF)

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1. Naresh Prasad, son of Late Ramkeshwar Prasad, resident of Mahapati Palace,
Near L.I.C. Office, Kamruddinganj, P.S.- Laheri, Bihar Sharif, District- Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Satish Kumar, son of Prakash Lal, resident of Manpur, Post- Sadipur Ghat,
District- Samastipur at present Circle Officer Rajgir, P.S.- Rajgir, District- Nalanda.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Singh, Adv.
Mr. Pankaj Kumar Singh, Adv.
For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 26-02-2018

This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed by the petitioner for quashing of the First Information Report (for short 'FIR') of Rajgir P.S.Case No. 85 of 2017 dated 17.04.2017 registered for the offences punishable under Section 188 read with 34 of the Indian Penal Code (for short 'IPC').

2. It is submitted by the learned counsel for the petitioner that no FIR should have been registered for the offence under Section 188 of the IPC in view of the provisions prescribed under Section 195 of the Cr.P.C. In support of his submission he has placed reliance on the decisions of this Court in *Pratik Sinha Vs. State of Bihar & Ors.*



[2016(4) PLJR 275] and Parveen Amanullah Vs. State of Bihar [2017(3) PLJR 101].

3. Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor appearing for the State admitted that this Court in its earlier decisions had clearly held that an FIR under Section 188 of the IPC would not be permissible. He conceded that in view of Section 195(1) of the Cr.P.C. the Court cannot take cognizance of an offence under Sections 172 to 188 of the IPC except on the complaint in writing.

4. I have heard learned counsel for the parties and perused the record.

5. Section 195(1) of the Cr.P.C., which is relevant in the present case, reads as under :-

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence –

(1) No Court shall take cognizance—

(a) (i) of any offence punishable under sections 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;
(b) (i) of any offence punishable under any of the



following section of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.”

6. A reading of sub-section (1) of Section 195 of the Cr.P.C. would make it clear that criminal courts are mandated not to take cognizance of the offence except on a complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate.

7. The word “complaint” used in Section 195(1)(a)(iii) of the Cr.P.C. has been defined under Section 2(d) of the Cr.P.C., 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. Thus, from a reading of definition of the word



“Complaint”, it is crystal clear that the complaint does not include a police report.

9. Having seen the ambit and scope of Section 195(1) of the Cr.P.C. and the ratio laid down by this Court in *Pratik Sinha Vs. State of Bihar* (Supra) and *Parveen Amanullah Vs. State of Bihar* (Supra), I am of the opinion that the investigating authority acted without jurisdiction in registering the FIR under Section 188 of the IPC on the basis of the written report submitted before the Circle Officer, Rajgir, Nalanda. The investigation conducted by the police pursuant to the institution of the FIR is also without jurisdiction.

10. In that view of the matter, the FIR of Rajgir P.S.Case No. 85 of 2017 and ongoing investigation are quashed.

11. The application stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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