

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.55807 of 2016

Arising Out of PS.Case No. -129 Year- 2012 Thana -ROSERA District- SAMASTIPUR

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1. Usha Devi wife of Rajendra Prasad Sahni, Muhalla - Kabharbanni, Ward No. 10
 2. Sanjeev Kumar Pradhan son of Yogi Pradhan, Muhalla - Prabhu Thakur, Ward No. 8.
 3. Manish Kumar Mani son of Yogendra Mandal, Muhalla - Mahavir Asthan, Ward No. 14.
 4. Shashi Devi wife of Pradeep Kumar Purvey, Muhalla - Laxmipur, Ward No.- 17.
 5. Kiran Devi wife of Kishore Kumar, Muhalla- Dagbar Toli, Ward No. 13
- All resident of Nagar Panchayat Rosera, P.O.+ P.S.- Rosera, District- Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Block Development Officer-Cum-Assistant Election Officer, Rosera, Samastipur.
3. The Director of M/S Sinha Vigyapan Centre, Mohalla - 12, Pathar, P.S.- Town Samastipur, District- Samastipur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mritunjay Kumar, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 26-03-2018

Heard Mr. Mritunjay Kumar, learned counsel for the petitioners and Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor appearing for the State.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.') has been filed by the petitioners for quashing the order dated 30.08.2013 passed by the learned Additional Chief Judicial Magistrate, Rosera in Rosera P.S. Case No.129 of 2012 by



which cognizance has been taken for the offences punishable under Sections 188, 171-C and 171-F of the Indian Penal Code (for short 'the IPC').

3. The first information report (for short 'the FIR') in connection with Rosera P.S. Case No.129 of 2012 was registered on 16.05.2012 on the basis of written report submitted by the Block Development Officer, Rosera. In his written report, the informant alleged that in Rosera Nagar Panchayat Election, 2012 the petitioners after expiry of the time for canvassing in election, the petitioners continued to canvass through newspaper publication about their candidature.

4. Learned counsel for the petitioners submitted that the FIR relates to an offence which is alleged to have been committed on 16.05.2012. He submitted that the order of cognizance and summoning of the petitioners in the case is bad in law as well as on facts on two grounds. The first because the maximum punishment prescribed for the offences alleged is one year or with fine or with both and the cognizance has been taken after expiry of the period of limitation prescribed under Section 468 of the Cr.P.C. on 30.08.2013 and the second because no FIR could have been entertained in respect of the offence under which prosecution has been launched against the petitioners as the offence punishable under Section 171-F of the IPC is not cognizable and for the offence under Section 188 of the IPC in view of requirement of Section 195(1)(a)(i) of the Cr.P.C., only



a complaint could have been filed.

5. Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor appearing for the State though tried to defend the impugned order, he fairly conceded that this Court in several other cases has previously held that in case under Section 188 of the IPC only a complaint would be maintainable.

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

7. Disobedience to an order duly promulgated by a public servant has been made an offence punishable under Section 188 of the IPC. This Section contemplates that when an accused knows that a public servant has lawfully promulgated an order, which he is empowered to do, by which he has either directed the accused to abstain from a certain act or directed to take certain order with certain property in his possession or under his management and disobeys such direction, he shall be punished with simple imprisonment for a term extending to one month or with fine extending to rupees two hundred or with both. If such disobedience causes or has tendency to cause obstruction, annoyance or injury or risk of obstruction, annoyance or injury to any person lawfully employed, and if such disobedience causes or has tendency to cause danger to human life, health or safety or causes or has tendency to cause riot or affray, he shall be punished more severely, that is to say with simple or rigorous



imprisonment for a terms extending to six months or with fine or extending to rupees one thousand or with both.

8. At this stage, it would be pertinent to note that Section 195(1) of the Cr.P.C. bars the court from taking cognizance of the offence punishable under Section 188 of the IPC.

9. Section 195(1) of the Cr.P.C. reads as under:-

“195(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, or 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.”

10. From a reading of Section 195(1) of the Cr.P.C., it is manifest that it bars the court from taking cognizance of the offence punishable under Section 188 IPC or abetment of criminal conspiracy to commit such offence, unless, there is a written complaint in writing by the public servant concerned or some other public servant to whom he is administratively sub-ordinate for contempt of his lawful order.

11. The provision prescribed under Section 195 of the Cr.P.C.



requires that without a written complaint of the public servant concerned, no prosecution for an offence under Sections 172 to 188 of the IPC can be launched nor any cognizance of the offence can be taken by the Court.

12. Hence provision prescribed under Section 195(1) of the Cr.P.C. has been carved out as an exception to general rule contained under Section 190 of the Cr. P.C. that any person can set the law into motion by making a complaint, as it prohibits the Court from taking cognizance of certain offences until and unless a complaint is made by some particular authority or person.

13. Section 171-C of the IPC defines the offence of undue influence at elections. The punishment for undue influence at elections has been prescribed under Section 171-F of the IPC. The maximum punishment prescribed for the offence punishable under Section 171-F of the IPC is imprisonment of either description for a term which may extend to one year or with fine or with both. The offence punishable under Section 171-F of the IPC is not a cognizable offence. The maximum punishment prescribed for the same is one year.

14. Section 155(2) of the Cr.P.C. clearly stipulates that no police officer shall investigate a non-cognizable case without the order of the Magistrate having power to try such case or commit the case for trial. In view of the express provision prescribed under Section 155(2) of the Cr.P.C., registration of the FIR and the investigation by the police in



respect of an offence under Section 171-F of the IPC without any order of the Magistrate in the present case was completely without jurisdiction.

15. Another point argued by the learned counsel for the petitioner also carries force. Apparently, the alleged offence is said to have been committed on 16.05.2012 for which FIR was also instituted on the same date. The cognizance of the offence has been taken after more than one year from the date of occurrence on 30.08.2013. Section 468 of the Cr.P.C. creates bar to taking cognizance of the offence after lapse of period of limitation. The period of limitation shall be one year if the offence is punishable with imprisonment for a term not exceeding one year in terms of Section 468(2)(b) of the Cr.P.C. Hence, the order of cognizance is also bad as it was passed after the period of limitation.

16. The application is allowed. The impugned order dated 30.08.2013 passed by the learned Additional Chief Judicial Magistrate, Rosera in Rosera P.S. Case No.129 of 2012 is set aside.

(Ashwani Kumar Singh, J)

Md.S./-

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