

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.28008 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- DARBHANGA

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1. Mundrika Devi W/O Late Amar Nath Jha Resident Of Mohalla R.S. Tank, Balbhadrapur, P.S. Bahadurpur, District Darbhanga.
 2. Ramanjee Jha @ Raman Kumar Jha S/O Late Amar Nath Jha Resident Of Mohalla R.S. Tank, Balbhadrapur, P.S. Bahadurpur, District Darbhanga.
 3. Shiv Kumar Jha S/O Amar Nath Jha Resident Of Mohalla R.S. Tank, Balbhadrapur, P.S. Bahadurpur, District Darbhanga.
 4. Suman Kumar Jha S/O Late Amar Nath Jha Resident Of Mohalla R.S. Tank, Balbhadrapur, P.S. Bahadurpur, District Darbhanga.

.... Petitioners.

Versus

1. The State Of Bihar
2. Surendra Narayan Singh, S/o Late Brahmdeo Narayan Singh, resident of Mohalla Rai Saheb Pokhar, Balbhadrapur, P.S. Bahadurpur, District-Darbhang.

.... Opposite Parties.

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Appearance :

For the Petitioners : Mr. D. N. Jha, Advocate.

For the Opposite Party : Mr. Nawal Kishore Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 09-01-2018

Heard learned counsel for the petitioners and learned counsel appearing for the complainant.

This petition has been filed by the petitioners for quashing the order dated 10-12-2012 passed by learned SDJM, Darbhanga in T.R. No. 660/2012/G.O. Case No. 304/05 by which, he has rejected the petition filed by the petitioners u/Ss 258 & 245 of the Cr. P. C. for stoppage of the proceeding/discharge from the case.

Counsel for the petitioners has submitted that initially, a proceeding u/S 144 Cr.P.C. was initiated by the learned Executive Magistrate by order dated 09-11-2004 and the rule was made absolute against the petitioners by order dated



18-12-2004/07-01-2005.

The opposite party No. 2 has filed complaint against petitioners for violating the prohibitory order dated 09-11-2004 passed by learned S.D.M. in the said proceeding on the basis of petition filed by the opposite party No. 2. By order dated 09-11-2004 passed by the Executive Magistrate, both parties were restrained to go over the land and to do any construction work and notice was sent to the petitioners which was duly served upon them on 21-11-2004.

The complaint has been filed by the State of Bihar (SDM, Darbhanga) before the learned CJM u/S 195(1) of the Cr.P.C. alleging therein that in spite of service of notice on 21-11-2004 in a proceeding u/S 144 Cr.P.C. petitioners knowingly and willfully disobeyed the said order duly promulgated by a public servant, by forcefully entering into land on 29-11-2004 and started filling up the soil and on protest, went upon to assault the members of first party and thereby committed an offence u/S 188 of the Indian Penal Code.

Learned CJM has on the basis of aforesaid official complaint filed by learned Sub Divisional Magistrate, Sadar Darbhanga took cognizance against the petitioners on 07-10-2015 for the offence under Section-188 of the Indian Penal Code. The petitioners have challenged the very initiation of proceeding u/S 144 Cr.P.C. before the learned Sessions Judge, Darbhanga by filing Cr. Rev. No. 60 of 2005. The petitioners have also challenged the order of cognizance dated 07-10-2005 taken by the learned Chief Judicial Magistrate, u/S 188 of the Indian Penal Code by filing Cr. Rev. No. 541 of 2005.

Both the revisions were heard together by the learned Sessions



Judge and disposed off by order dated 04-03-2009 by a common order. The learned Sessions Judge has mentioned in the impugned order that no doubt due to lapse of statutory period the impugned order has become infructuous but at the same time this fact cannot be ignored that the police report itself finds mention the pendency of First Appeal No. 712 of 1998 before the Hon'ble Court alongwith the order of maintaining status quo but the learned S.D.M. without applying his judicial mind initiated a proceeding u/S 144 Cr.P.C. finding apprehension of breach of peace whereas in view of pendency of matter before the competent civil Court and prohibitory order such proceeding is barred under law. At best if situation so arises competent authorities are at liberty to initiate other preventive proceeding like 107 Cr.P.C. but by a mechanical order proceeding u/S 144 Cr.P.C. was initiated and also made absolute by order under challenge. The entire proceeding stands vitiated.

At the same time, it has been mentioned in the impugned order that no doubt, the proceeding u/S 144 Cr.P.C. since its inception was bad in law but so far order taking cognizance is concerned, no such material was available before the court in a complaint filed by the public authority well within time. The Sessions Judge has accordingly held that no illegality has been committed by the learned Chief Judicial Magistrate, by taking cognizance u/S 188 of the Indian Penal Code. The learned Sessions Judge has given liberty to the parties to take all necessary points at the time of commencement of trial i.e. framing of charge and the court below will pass appropriate order in accordance with law taking into consideration the



validity of the prohibitory order allegedly violated.

The petitioners in compliance of the aforesaid order filed a petition u/S 258 & 245 Cr.P.C. for stopping of the proceeding/discharge of the accused from the case, which was rejected by the court below by impugned order dated 10-12-2012 only on the ground that on the basis of prosecution report of SDM, learned CJM, Darbhanga has taken cognizance of the offence, which has been affirmed by the learned Sessions Judge in Cr. Rev. No. 541 of 2005.

Learned counsel for the petitioners has filed supplementary affidavit stating that they have brought the entire documents of the case to the knowledge of the court below in the petition filed before the court. The Xerox copy of the petition filed in the court below by the petitioners for discharge u/S 258 & 245 Cr.P.C. has been enclosed as Annexure-7 to the supplementary affidavit.

From perusal of the aforesaid copy of the petition, it appears that the petitioners have mentioned in detail about the entire background of the case and also the fact that very initiation of the proceeding u/S 144 Cr.P.C. was held by the learned Sessions Judge to be vitiated and bad in law.

The supplementary counter affidavit has been filed on behalf of opposite party No. 2 wherein at paragraph-6, it has been submitted that the learned Sessions Judge has given liberty to raise all points at the time of framing of charge but the petitioners approached the Hon'ble Court without availing the opportunity in the court below and on that ground, petition is



fit to be dismissed.

This court after looking into impugned order finds that such statement made by opposite party No. 2 in supplementary counter affidavit is not correct. Petitioners have filed the petition u/Ss 258 & 245 Cr.P.C. in the court below stating all these facts, which was rejected by the impugned order and thereafter, the instant petition has been filed.

The short question required to be decided by this court is whether in the event proceeding u/S 144 Cr.P.C. is held to be nullity and bad in law, a proceeding u/S 188 of the Indian Penal Code is maintainable before the learned CJM.

This court after looking into the facts of this case as discussed above in detail finds that the learned Sessions Judge in his order dated 04-03-2009 passed in Cr. Rev. 60 of 2005 held very initiation of proceeding u/S 144 Cr.P.C. to be vitiated and null and void, because there was prohibitory order already passed by the Hon'ble High Court in First Appeal No. 712 of 1998 making direction to the parties to maintain status quo. The learned SDM, Darbhanga without applying judicial mind initiated a proceeding u/S 144 Cr.p.C.

In such circumstances, when very initiation of the proceeding u/S 144 Cr.P.C., was declared bad in law by order dated 04-03-2004, then, any subsequent order passed by the court below taking cognizance u/S 188 of the Indian Penal Code, for violation of the prohibitory order passed by learned S.D.M. in such proceeding as alleged in the complaint is not in



accordance with law.

Therefore, this court finds that the impugned order passed by the court below suffers from illegality and has been passed without application of judicial mind and appreciation of facts of the case as well as the observation of learned Sessions Judge made in Cr. Rev. No. 541 of 2005 which was disposed of along with Cr. Rev. No. 60 of 2005 by order dated 04-03-2009 (Annexure-6).

This court holds that a proceeding u/S 188 of the Indian Penal Code was not maintainable against these petitioners after holding proceeding u/S 144 Cr.P.C. itself to be nullity by the learned Sessions Judge by order dated 04-03-2009 passed in Cr. Rev. No. 60 of 2005. The continuance of the proceeding u/S 188 I.P.C. will only amount to an abuse of process of the court and harassment to the petitioners.

Accordingly, the impugned order dated 10-12-2012 passed by learned SDJM, Darbhanga in T.R. No. 660/2012/G.O. Case No. 304/05 along with entire criminal proceeding against the petitioners are hereby quashed.

This Cr. Misc. Application is allowed.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	18-01-2018
Transmission Date	18-01-2018

