

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.6325 of 2016

Arising Out of PS. Case No.-253 Year-2015 Thana- GARKHA District- Saran

Muneshwar Chaudhary, son of Late Mishri Lal Chaudhary, Resident of Village- Mithepur, P.O and P.S. Garkha, District- Saran at Chapra.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Anita Kumari

For the Opposite Party/s : Mr. S.Dayal(App)

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

10 30-11-2018 Heard learned counsel for the petitioner as well as learned AAG-3.

2. Petitioner has prayed for quashing of order dated 18.01.2016 passed by ACJM-II, Saran at Chapra in connection with Garkha PS Case No. 253 of 2015 whereby and whereunder, petitioner has been summoned to face trial for an offence punishable under Section 171(F), 171(G) and 188 of the IPC.

3. Learned counsel for the petitioner has submitted that no offence, whereunder cognizance has been taken, is made out right from written report as well as from the materials having been collected during course of investigation. Learned counsel has further submitted that learned lower court had acted in a mechanical manner whereunder, it failed to appreciate and further, to trace out whether prima facie case is subsisting on the basis of materials having been collected during course of investigation and that being so, the order impugned is fit to be set aside. It has further been submitted that the only allegation



whatsoever alleged at the end of the informant, a Magistrate that firstly a meeting was organized and then thereafter, a feast was provided at large level. There happens to be no allegation that the aforesaid feast was in a way to induce the voters to vote in favour of petitioner, nor there happens to be an allegation of allurements of the voters to vote in favour of the petitioner and for that feast was organized and that being so, the aforesaid activity could not be perceived to be a corrupt practice under the Representation of People's Act nor under the guise of Section 171© of the IPC whereupon, there would not be applicability of Section 171(F) of the Penal Code. Furthermore, it has also been submitted that there happens to be no ingredients to justify applicability of Section 171(G) as well as Section 188 of the IPC and so, in sum and substance, the allegation whatsoever attributed at the end of prosecution did not justify summoning of the petitioner for an offence punishable under Sections 171©, 171(F) and 188 IPC.

4. It has further been stated that in worst case, even accepting for arguments' sake though not admitting that Section 171 (F) of the IPC is made out, then in that circumstance, prescribing sentence to the extent of one year as per schedule appears to be non cognizable offence and that being so, is found



duly barricaded in terms of Section 155 of the CrPC as being non cognizable case, the investigation has to be carried out after obtaining order of the Magistrate and so, the prosecution being deficient on that very score, did not justify the order impugned.

5. In order to buttress such plea, learned counsel for the petitioner has relied upon the case of *Prakash Jha v. State of Bihar* as reported in **2017 (4) PLJR 342**.

6. Learned AAG-3 strenuously argued that the argument having been raised on behalf of petitioner happens to be fallacious. In order to justify the same, it has been submitted that after promulgation of date of election in terms of Section 15 of the R. P. Act, the candidates are forbidden to do certain activity and for that, apart from having penal provision, in case there happens to be violation as provided under Section 171 of the IPC, the R.P. Act also contains and explains the exigency at that very score coupled with the fact that reliability of the allegation, is to be tested during trial. More or less, the germane of Section 123 of the R.P. Act in consonance with Section 171© of the IPC are the same. So far this particular activity is concerned, that means to say, organizing feast by a candidate after notification of the election has been perceived as corrupt practice as held by three Judges Bench decision in the case of



C. Narayanaswamy v. C.K. Jaffer Sharief with Pramila Nesargi (Smt) v. C.K. Jaffer Sharief as reported in *1994 Supp (3) SCC 170* and further referred paragraphs, 2, 3, 4, 5, 6, 7, 8 and 9 thereof, to substantiate his submission.

7. Learned AAG-3 has also submitted that from the allegation whatsoever been, none of the ingredients under Section 177 (G) as well as 188 of the IPC is made out in the background of the fact that there happens to be no material on record that there was any kind of promulgation of order persisting since before which has been violated at the end of the petitioner and so, no offence under Section 188 IPC is made out. In likewise manner, no false statement has been made on behalf of petitioner and that being so, no offence under Section 171(G) would be made out.

8. On other aspect, learned AAG-3 is fair in submitting that being non cognizable case, investigation should have been carried out in accordance with Section 155 of the CrPC, that means to say, after obtaining permission from the Magistrate which is lacking in the present case and that being so, the investigation happens to be in utter violation thereof.

9. From Annexure-1, it is evident that the informant, a Magistrate filed the written report disclosing therein that a



meeting was organized at the end of petitioner, a RJD candidate and for that, he was deputed. When they reached, they have seen feast was being organized in order to allure the persons. On the basis of the aforesaid written report, Garkha PS Case No. 253 of 2015 was registered under Sections 171(F), 177(G) and 188 of the IPC, investigated upon and submitted charge-sheet followed with the order impugned. From the case diary, it is evident that no permission was taken from the Magistrate in terms of Section 155 CrPC which at that very moment, was right step at the end of the I.O. in the background of registration of case under Section 188 of the IPC but, for that there should have been a prima facie material depicting violation of the order promulgated by the public servant. Furthermore, there happens to be no material to justify applicability of Section 177(G) of the IPC. In the aforesaid background, mere registration of the case under the aforesaid Section, when no substance is found, will not reclude the prosecution from inherent defect. Because of the fact that right from the inception, no such allegation has been attributed, on account thereof, registration of case under Section 188 of the IPC could not rescue prosecution away from the mandate of Section 155 of the CrPC.

10. That being so, the order impugned suffers from



inherent defect, consequent thereupon, is set aside. Petition is allowed.

(Aditya Kumar Trivedi, J)

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