

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Writ Jurisdiction Case No.400 of 2017**

Arising Out of PS. Case No.-393 Year-2005 Thana- GOPALGANJ TOWN District-  
Gopalganj

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Ram Pravesh Rai, Son of Late Raj Kishore Rai, Resident of Village-Koini,  
Police Station- Manjhagarh, District- Gopalganj.

... .. Petitioner

Versus

The State of Bihar through Home Secretary, Department of Home.

... .. Respondent

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**Appearance :**

|                            |   |                                                                                                                                    |
|----------------------------|---|------------------------------------------------------------------------------------------------------------------------------------|
| For the Petitioner         | : | Mr. Bindhyachal Singh, Advocate<br>Mr. Satya Prakash, Advocate<br>Mr. Vipin Kumar Singh, Advocate<br>Mr. Ram Binod Singh, Advocate |
| For the Respondents-State: |   | Mr. Ajay Kumar Sharma, AC to AG                                                                                                    |

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**  
**ORAL JUDGMENT**

**Date : 01-08-2019**

The issue involved in the present writ petition is whether a court can take cognizance of an offence punishable under Section 188 of the Indian Penal Code (for short 'IPC') on the basis of a police report submitted under Section 173(2) of the Code of Criminal Procedure (for short 'CrPC').

2. In the instant application preferred under Article 227 of the Constitution of India, the petitioner has challenged the order dated 09.09.2016 passed in Criminal Revision No.586 of 2014 by the learned Additional Sessions Judge-V, Gopalganj whereby the order dated 06.02.2010 passed by the learned Judicial Magistrate-1<sup>st</sup> Class, Gopalganj in Gopalganj P.S. Case No.393 of



2005 has been upheld and the revision application preferred against that order has been dismissed.

3. The facts of the case, in short, are that the First Information Report (for short 'FIR') bearing Gopalganj P.S. Case No.393 of 2005 dated 26.10.2005 was registered under Section 188 of the IPC against the petitioner on the written report of the Election Officer, 25-Barauli-cum-S.D.O. Gopalganj alleging therein that at the time of nomination of the Bihar State Legislative Assembly Election the petitioner has disobeyed the guidelines issued by the Election Commission of India for conduct of political parties and candidates during election.

4. After completion of investigation, the police submitted charge-sheet against the petitioner under Section 188 of the IPC.

5. Having perused the FIR, the materials collected in course of investigation including the statement of the witnesses recorded under Section 161(3) of the CrPC and the report submitted under Section 173(2) of the CrPC, the learned Chief Judicial Magistrate, Gopalganj took cognizance of the offence punishable under Section 188 of the IPC against the petitioner vide order dated 24.02.2006 and transferred the case to the court of Judicial Magistrate-1st Class.



6. The petitioner surrendered before the court and was granted bail vide order dated 10.04.2007. He attended the proceedings of the court till 06.02.2010. However, an application under Section 317 of the CrPC was filed by the petitioner on 06.02.2010 for dispensing with his personal attendance. The learned Judicial Magistrate-1st class rejected the application filed by the petitioner and cancelled his bail bond vide order dated 06.02.2010.

7. Being aggrieved by the order dated 06.02.2010 passed by the learned Judicial Magistrate-1st class, the petitioner preferred a revision under Section 397 of the CrPC against the order dated 06.02.2010, which was heard and dismissed vide order dated 09.09.2016 passed by the learned Additional Sessions Judge-V, Gopalganj and the order passed by the learned Judicial Magistrate was upheld.

8. Mr. Bindhyachal Singh, learned counsel appearing for the petitioner submitted that not only the order impugned is bad in law, the entire criminal prosecution launched against the petitioner is an abuse of the process of the court. He contended that in view of the express provisions provided under Section 195(1)(a) of the CrPC, a criminal prosecution under Section 188 of the IPC could not have been launched against the



petitioner on the basis of a written report submitted to the police. He submitted that institution of an FIR in a case under Section 188 of the IPC is impermissible in law. Similarly, the court below completely erred in law in taking cognizance of the offence punishable under Section 188 of the IPC on the basis of a report submitted under sub-section (2) of Section 173 of the CrPC.

9. *Per contra*, Mr. Ajay Kumar Sharma, learned counsel appearing for the State submitted that since the petitioner has already appeared before the court and has surrendered himself to the jurisdiction of the court after taking cognizance of the offence, he is precluded from taking the point that a criminal prosecution on the basis of an FIR or a police report can not be launched against him. He contended that against a revisional order passed by the Sessions Court, an application under Article 227 of the Constitution of India would not be maintainable. In support of his submission, he has placed reliance on the Special Bench judgment of this Court in the matter of **Surendra Singh and Ors. v. The State of Bihar & Ors.**, [1990 (2) PLJR 693].

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

11. As noted above, referring to section 195(1) of the CrPC, the petitioner has contended that it restrained the Court



from taking cognizance of an offence punishable under sections 172 to 188 of the IPC, unless a complaint in writing was made to it by the public servant concerned. Hence, I deem it proper to take note of the provisions prescribed under section 188 of the IPC and section 195(1) of the CrPC first before answering the issue involved in the case.

12. Section 188 of the IPC provides for punishment for disobedience to order duly promulgated by public servant. It reads as under:-

**“188. Disobedience to order duly promulgated by public servant.-**Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with



imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

13. Chapter XIV of the CrPC deals with conditions requisite for initiation of proceedings in a criminal case. Section 195(1) of the CrPC provides that 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.

14. Thus, section 195(1)(a)(i) bars the Court from taking cognizance of any offence punishable under Section 188 of the IPC or abetment of, or attempt to commit the same, unless there is written complaint by the public servant concerned for contempt of his lawful order.

15. This provision prescribed under Section 195(1) of the CrPC has been carved out as an exception to the general rule contained under Section 190 of the CrPC 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 has been made by some particular authority or person.

16. The provision of Section 195(1)(a)(i) of the CrPC being mandatory any prosecution in any other manner than complaint is totally barred.

17. The word complaint used in Section 195(1) has been defined under Section 2(d) of the CrPC, 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’.”

18. From the definition of the word complaint, it would be apparent that the same has to be made orally or in writing to a Magistrate and not the police, with a view to taking action under the CrPC, that some person, whether known or unknown has committed an offence.

19. The term ‘police report’ used in definition of the word complaint has been defined in Section 2(r) of the CrPC, which reads as under:-



“2(r) “police report” means a report forwarded by a police officer to a Magistrate under sub-section (2) of section 173.”

20. From perusal of the aforesaid definition of the ‘police report’, it would be evident that a report made under sub-section (2) of section 173 after completion of an investigation in a police case instituted under section 154 of the CrPC can not be termed to be a complaint.

21. The Supreme Court in **Basir-ul-Haq & Ors v. The State of West Bengal [AIR 1953 SC 293]** held that section 195 of the CrPC requires that without a written complaint of the public servant concerned, no prosecution for an offence under Section 188 can be launched nor any cognizance of the offence can be taken by the Court.

22. In **C. Muniappan and Ors. vs. State of Tamil Nadu [(2010) 9 SCC 567]**, the Supreme Court observed in paragraph no.20 as under:-

“20. Section 195(a)(i) Cr.PC bars the court from taking cognizance of any offence punishable under Section 188 IPC or abetment or attempt to commit the same, unless, there is a written complaint by the public servant concerned for contempt of his lawful order. The object of this provision is to provide for a particular procedure in a case of contempt of the lawful authority of



the public servant. The court lacks competence to take cognizance in certain types of offences enumerated therein. The legislative intent behind such a provision has been that an individual should not face criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill-will or frivolity of disposition and to save the time of the criminal courts being wasted by endless prosecutions. This provision has been carved out as an exception to the general rule contained under section 190 Cr.PC that any person can set the law in motion by making a complaint, as it prohibits the court from taking cognizance of certain offences until and unless a complaint has been made by some particular authority or person. Other provisions in the Cr.PC like sections 196 and 198 do not lay down any rule of procedure, rather, they only create a bar that unless some requirements are complied with, the court shall not take cognizance of an offence described in those Section.”

23. In the instant case, no complaint was ever filed in the court against the petitioner by the public servant concerned. The police investigated the case on the basis of an illegally instituted FIR. The Magistrate took cognizance of the offence punishable under Section 188 of the IPC on the basis of the police report submitted under section 173(2) CrPC on completion of investigation in the case. The police report being not a complaint



could not have been made the basis for taking cognizance of the offence under section 188 of the IPC. The summoning of the petitioner after taking cognizance of the offence and all subsequent proceedings in the court of Magistrate are nothing but an abuse of the process of the court.

24. Learned counsel for the State has submitted that in view of the ratio laid down by the Special Bench in **Surendra Singh (supra)**, an application under Article 227 of the Constitution of India would not be maintainable. However, when I look to the ratio laid down by this Court, I find it otherwise. In para 17, the special Bench has held: “*Where petitioner has already invoked the revisional jurisdiction of the Sessions Judge under section 397 of the Code and his second revision application to this Court is barred under section 397 (3) it would indeed require very exceptional circumstances to warrant interference under Article 227 of the Constitution, since the power of the superintendence is not meant to circumvent the statutory bar*”.

25. In view of the above proposition of law laid down by the Special Bench in **Surendra Singh (supra)**, it can not be held that an application under Article 227 of the Constitution of India against a revisional order passed by the court of session can not be maintainable. On the contrary, the Special Bench has held



that in exceptional circumstances the court may interfere with an order where the petitioner has already invoked revisional jurisdiction of the Sessions Judge under section 397 of the CrPC.

26. In the instant case, since an FIR under Section 188 of the IPC itself was impermissible and cognizance on the basis of a police report was barred and the order of the Magistrate was upheld by the Sessions Court in revision under Section 397 of the CrPC and a second revision was barred under Section 397(3) of the CrPC and the entire proceeding before the Magistrate is completely without jurisdiction, an exceptional case is made out for interference by this Court under Article 227 of the Constitution of India.

27. The judgment in **Surendra Singh (supra)** is of no help to the State.

28. Moreover, Article 227 of the Constitution of India confers on High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction excepting any court or tribunal constituted by or under any law relating to armed forces. The supervisory jurisdiction on the High Court can be invoked at the instance of any person aggrieved or it may be exercised even *suo motu*.



29. Keeping in mind the discussions made above, the order dated 09.09.2016 passed in Cr. Revision No.586 of 2014 by the learned Additional Sessions Judge-V, Gopalganj whereby he has upheld the order dated 06.02.2010 passed by the Judicial Magistrate-1st class, Gopalganj is set aside. Consequently, the order dated 06.02.2010 passed by the learned Judicial Magistrate-1st class, Gopalganj in Gopalganj P.S. Case No.393 of 2005 is also set aside.

30. Since I have already held that entire criminal prosecution against the petitioner is an abuse of the process of the court, the entire criminal prosecution against the petitioner in Gopalganj P.S. Case No.393 of 2005 is hereby quashed.

31. The application stands allowed.

**(Ashwani Kumar Singh, J.)**

Sanjeet/-

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