

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1861 of 2018

Arising Out of PS. Case No.-26 Year-2014 Thana- ROSHANGANJ District- Gaya

Ramadhar Singh Son of Vishnupat Singh Resident of Village - Sokhya, Police Station - Muffasil, District - Aurangabad.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Santosh Kumar

For the Opposite Party/s : Mr. Mustaque Alam

CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
C.A.V. JUDGMENT

Date : 25-09-2019

Heard learned counsel for the parties.

The petitioner, by way of this application under section 482 of the Cr. P.C., has challenged the order dated 15.04.2014 by which the learned Judicial Magistrate, Gaya has taken cognizance under Sections 171(H) of the Indian Penal Code, 3/4 of the Bihar Prevention of Defacement of Property Act, 1985 and 127(A) of Representation of the People Act, 1951 in connection with Raushanganj P.S. Case No. 26 of 2014.

The prosecution story in brief is that the instant F.I.R. has been lodged on the basis of written application of the informant namely Abhimanyu Kumar, the then Block Development Officer, Banke Bazar, Gaya that on 11.03.2014, during the movement of the said area, the informant found that a



poster/banner of Bhartiya Janta Party (Aurangabad Constituency) and name of petitioner, Sri Ramadhar Singh, Ex-Minister, Government of Bihar as Nivedak was hanged on a Pole near Pashupalan Kendra, Banke Bazar, Gaya. It is further alleged that on the occasion of Lok Sabha Election 2014, the Code of Conduct was implemented. The petitioner has violated the Code of Conduct. Thereafter, the informant advised to the S.H.O., Bankebazar P.S. Gaya to register an F.I.R. under the appropriate sections of the Act and Statutes against the Bhartiya Janta Party and the responsible person.

Learned counsel for the petitioner submits that at the time of lodging an F.I.R., the petitioner was Member of the Legislative Assembly, Aurangabad and he has no concern at all with respect to the place where the alleged poster/banner was hanged upon the Pole near about Pashupalan Kendra, Banke Bazar. It is also submitted that the petitioner is the representative of Aurangabad Assembly area and the said F.I.R. had been lodged in Raushanganj P.S., which comes within the area of Imamganj Assembly. The whole prosecution story has been procured by the informant having ill motive and *mala fide* intention towards the petitioner and he has falsely and deliberately implicated the petitioner in the instant case. Further



submission is that the said F.I.R. has been lodged on the basis of the alleged poster/banner, upon which only name of the petitioner was written. It does not mean that the poster/banner was hanged on the Pole situated at Pashupalan Kendra, Bankebazar by the petitioner himself. It is further submitted that it may be presumed that the said allegation, which has been made in the alleged F.I.R. that the poster/banner was hanged on the Pole upon which the name of the petitioner was written is true then what is the motive for the same because the petitioner has no concern with the area. It may be hanged on the Pole by the person, who has ill motive towards the petitioner or the same might be done in connivance with the informant party having malice intention towards the petitioner.

Learned counsel appearing on behalf of the State opposes the application by contending that there is allegation of violation of Code of Conduct against the petitioner and the Court below after going through the materials available on record has rightly taken cognizance. Therefore, the order dated 15.04.2014 passed in connection with Raushanganj P.S. Case No. 26 of 2014 does not require any interference.

Having heard learned counsel for the parties and keeping in view the facts and circumstances of the case, the



arguments advanced by the learned counsel for the petitioner has force. The Hon'ble Supreme Court in the case of *State of Haryana Vs. Bhajan Lal*, reported in *1992 Supp (1) SCC 335* has held as under:

"In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulate and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.



(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the



concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

In view of the above, the present application is covered under clause (7) of the judgment passed by the Hon'ble Supreme Court in the Case of *State of Haryana Vs. Bhajan Lal, reported in 1992 Supp (1) SCC 335*. Accordingly, this application is allowed. The entire proceeding including the order dated 15.04.2014 by which the learned Judicial Magistrate, Gaya has taken cognizance for the offence punishable under sections 171(H) of the Indian Penal Code, 3/4 Bihar Prevention of Defacement of Property Act and 127(A) of Representation of the People Act against the petitioner in connection with Raushanganj P.S. Case No. 26 of 2014, is, hereby, quashed.

(Arvind Srivastava, J)

shailendra/-

AFR/NAFR	NAFR
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