

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.14759 of 2015

Arising Out of PS. Case No.-9 Year-2013 Thana- GOVERNMENT OFFICIAL COMP.
District- Gopalganj

Lalan Yadav, Son of Moti Yadav, resident of village- Jangalia, P.O. and P.S.-
Gopalganj, District- Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Pramod Kumar Srivastav, son of Vijay Kumar Srivastav, resident of village-
Thawe Road, Ward No. 19, P.O. and P.S.- Gopalganj, District- Gopalganj.
3. Sub-Divisional Magistrate, Gopalganj.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Jitendra Kumar, Adv.
For the Opposite Party/s : Mr. J. Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

5 15-11-2019 Heard Mr. Jitendra Kumar, learned Advocate for

the petitioner and Mr. Dharmveer, learned Advocate for the

opposite party No. 2. Mr. Jharkhandi Upadhyay, learned

Addl. Public Prosecutor has also rendered his assistance in

the disposal of this case.

The petitioner has challenged the order dated

29.05.2013 passed by the learned Chief Judicial Magistrate,



Gopalganj in connection with G.C. No. 09 of 2013 (Trial No. 3373 of 2013), whereby cognizance has been taken under Section 188 of the Indian Penal Code (*in short the I.P.C.*).

A perusal of the complaint petition filed by the opposite party No. 3/Sub-Divisional Magistrate, Gopalganj indicates that despite service of notice of the proceeding under Section 144 of the Code of Criminal Procedure (*in short the Cr.P.C.*) on the petitioner, the prohibitory order was violated by him, which makes out an offence under Section 188 of the I.P.C.

The learned counsel for the petitioner has drawn the attention of this Court to the provisions contained in Section 188 of the I.P.C., which reads as hereunder:-

**"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 extent to two hundred rupees, or with both;

and if such disobedience causes or trends 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 moths, or with fine which may extend to one thousand rupees, or with both.

Explanation.-It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm."

The requirement for punishing a person under Section 188 I.P.C. is when any disobedience of an order promulgated by a public servant has caused or tends to cause obstruction, annoyance or injuries or risk of obstruction, annoyance or injury to any person lawfully



employed.

The *explanation* appended to Section 188 I.P.C. further clarifies that it may not be necessary that the offender should intend to produce harm or contemplate his disobedience as likely to produce harm. The ingredients of this section would be satisfied if the charged person knows of, the order which he disobeys and that such disobedience is likely to produce harm.

It has further been submitted that the aforesaid *explanation* seeks to annul a defense of a charged person that if there is no harm or the violation which is complained of has a tendency of causing any annoyance or harm, the offence would be complete if the disobedience can possibly lead to any annoyance or obstruction. However, for an offence to be made out in the complaint petition, it is required to be alleged that such disobedience has caused or tends to cause obstruction/annoyance/injuries or risk of such obstruction, annoyance or injury to any person lawfully employed.

All that the subject complaint indicates is that



despite service of notice of a proceeding under Section 144 Cr.P.C. and the interim prohibitory order, the same was violated by the petitioner, attracting the mischief of Section 188 I.P.C. Thus, the basic allegation to attract the mischief of Section 188 is missing in the complaint petition.

In that view of the matter, the order taking cognizance cannot be sustained in the eyes of law.

The order of cognizance is, therefore, set-aside.

The petition stands allowed.

(Ashutosh Kumar, J)

Praveen-II/-

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