

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.25208 of 2021**

Arising Out of PS. Case No.-461 Year-2019 Thana- BAGHA District- West Champaran

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BHUWNESHWAR NATH TRIPATHI @ B. N. TRIPATHI Son of Mahatam Prasad Tipathi Resident of Railway Station, Khushal Nagar, P.S.- Mednipur, Distt.- Maharajganj (Urrat Pradesh)at Present residing at Tirupati Sugar Limited, P.O. Naraipur, P.S. Bagha (Prakhandi), Distt.- East Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. S.D. Sanjay, Sr. Advocate

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

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**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR**  
**ORAL ORDER**

2      27-07-2023                      Heard Mr. S,D. Sanlay, learned senior counsel for the  
  
petitioner and learned APP for the State.

2. This application has been filed for quashing of the order dated 29.01.2021 by which learned ACJM-1, Bagaha, West Champaran has taken cognizance against the petitioner in Pathkhauli P.S. Case No. 461/2019-G.R. No. 1055/19 registered under Section 2 of the Prevention of Insults to National Honour Act, 1971.

3. As per prosecution, informant in his written application stated that Tirupati Sugar Mill has printed and distributed the invitation cards on the occasion of independence day. It is further alleged that petitioner has insulted the national flag publicly. It is also alleged that on the Saffron part of the flag



the name of their company along with logo was written, in the white part in the middle upon Ashok Chakra. On the green part at the bottom side the details of timing and with the host being all the employees and executives of the company has been mentioned. The informant carried invitation card before police station which was taken on record as production-cum-seizure list.

4. It is further alleged that police made the investigation and submitted charge sheet bearing No. 56/2021 against the petitioner and on other for the offence under Section 2 of the Prevention of Insults to National Honour Act, 1971. It is further alleged that learned A.C.J.M.-I, Bagaha without finding as to whether any prima facie case has been made out or not has taken cognizance against the petitioner vide his order dated 29.01.2021 for the offence under section 2 of Prevention of Insults to National Honour Act, 1971.

5. It is further stated by the petitioner that from the reading of the aforesaid provision it is evident that this section has laid down that the disrespect to the National Flag means that when any person at any public place shows disrespect to the National Flag either by burning, mutilating, defacing disfiguring destroying trampling whether by word either spoken or written.



6. It is further stated by petitioner that the invitation card was printed for attending the 73<sup>rd</sup> Independence Day function and on the said card in the background there was picture looking like National Flag. However, on the perusal of the invitation card it is not mentioned that under whose authority the card has been printed. The petitioner humbly states that no date or year has been mentioned on the card therefore it cannot even be inferred that the card has been printed under the authority of the petitioner. It is further alleged that there is no allegation against the petitioner to have shown any disrespect to the National Flag. It is not mentioned in the card that it was printed and distributed by the petitioner. Thus, no offence is made out against the petitioner. It is further alleged that the company has not been made accused further there is no allegation in the FIR that the petitioner is incharge and responsible for the conduct of day to day affairs of the company and was responsible for the publication, printing and distribution of any such invitation card for the celebration of the Independence day. Thus, the present order taking cognizance against the petitioner is not sustainable in the law. It is further alleged that whenever there is any allegation relating to a company and if the company is not made accused than the prosecution cannot sustain in the eyes of law. It



is further stated by the petitioner that any Director of the company or the Managing Director or even the General Manager is unless alleged to have been incharge and responsible of the day to day affairs of the company the prosecution cannot sustain and is liable to set aside. Learned counsel for the petitioner further submits that even if for the sake of argument it is accepted that the invitation card was printed with similarity of National Flag still it does not constitute any disrespect to the National Flag. There is nothing on the face of the invitation card to suggest that the same was printed with the object and intention of showing any disrespect to the National Flag for constituting any offence. He further submits from bare perusal of F.I.R. and the production-cum-seizure list it is apparent that the alleged invitation card was produced to the police by the informant himself and therefore the police has prepared a presentation cum seizure list while seizing the alleged invitation card. No other invitation card was found by the police from anyone else. Thus there is no material produced by the police that actually any such cards were printed by the company. Learned counsel for the petitioner submits that during course of investigation the police could not find the printing press in which the so-called invitation card was printed to find out at whose instance and under whose



authority the so-called invitation card was printed. The investigation is completely perfunctory and there is no material available in the case diary constituting offence against the petitioner.

7. Learned APP has supported the prosecution case and then submitted that the offence under Section 2 of the Act is made out against the petitioner.

8. I have considered the arguments on behalf of the learned senior counsel and learned APP, Section 2 of the Act reads as follows:

***“Insults to Indian National Flag and Constitution of India:- Whoever in any public place or in any other place within public view burns, mutilates, defaces, difiles, disfigures, destroys, tramples upon or [otherwise shows disrespect to or brings] into contempt (whether by words, either spoken or written or by acts) the Indian National Flag or the Constitution of India or any part thereof, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.”***

9. From reading of the F.I.R., and the invitation card in my opinion, no offence under Section 2 of the Act is made out.

10. In view of the law laid down by Hon’ble Supreme



Court in the case of State of *Haryana vs. Bhajan Lal (1992)*  
*Supp (1) SCC 335* as no offence is made out, this application is  
allowed.

11. The order dated 29.01.2021 by which learned  
ACJM-1, Bagaha, West Champaran has taken cognizance against  
the petitioner in Pathkhauri P.S. Case No. 461/2019-G.R. No.  
1055/19 is hereby quashed.

**(Sandeep Kumar, J)**

Ranjeet/-

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