

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28593 of 2017

Arising Out of PS. Case No.-348 Year-2005 Thana- MUZAFFARPUR TOWN District-
Muzaffarpur

Prabhash Satyarth @ Pragash Satyarth Son of Sri Krishna Kumar Singh,
Resident of Village- Kolwara, Police Station- Saraiya, District- Muzaffarpur.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Neeraj Kumar Alias Sanidh, Adv.
For the Opposite Party/s : Mr. Ravindra Kumar, APP

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

- 2 07-10-2023 1. Heard learned Senior counsel for the petitioner and
learned APP Mr. Ravindra Kumar for the State.
2. The learned Senior counsel submits that the present
quashing application has been filed seeking quashing of the
order dated 16.06.2008 passed by the learned Sub-Judge-III-
cum-Additional Chief Judicial Magistrate, Muzaffarpur in
connection with Town P.S. Case No.348/2005 (Tr.
No.593/2017), whereby cognizance of an offence under Section
188 IPC has been taken on the ground that the petitioner
violated the order passed under Section 144 of the Cr.P.C. The
learned Senior counsel next submits that the stage of the case
from the stage of cognizance till date has not changed and the
case is pending at the stage of cognizance itself. It is next



submitted that the informant alleges that in between 28.09.2005 to 05.10.2005, dates were fixed for filing nomination for the election of Vidhan Sabha, as such, Sub-Divisional Magistrate, Muzaffarpur promulgated an order under Section 144 Cr.P.C. in order to avoid breach of peace, it is next submitted that on 05.10.2005 at about 1.30 P.M. the petitioner along with one Akhilesh Kumar came at the East gate of main Collectorate building and thus violated the order promulgated under Section 144 of the Cr.P.C. by entering the area, where their entry was prohibited. Accordingly, the case was registered. The learned Senior counsel further submits that the police after investigation submitted charge sheet No. 584/2007 dated 31.12.2007 and thereafter cognizance was taken on 16.06.2008.

3. It is next submitted that after cognizance was taken on 16.06.2008, till date nothing has happened in the case nor the prosecution is interested in getting the case decided. It is next submitted that the petitioner has already suffered from 2008 till date as the criminal proceeding is hanging on his head. It is further submitted that the prolonged criminal trial causes mental agony.

4. Learned Senior counsel for the petitioner next submits that informant while instituting the F.I.R. did not record



his satisfaction about the availability of all ingredients constituting the offence under Section 188 of the Indian Penal Code, as such the essential ingredients for instituting F.I.R. under Section 188 of the Indian Penal Code is missing. As such, the order taking cognizance is illegal and liable to be set aside and thus, places reliance on a judgment of this Court in the case of *Gajendra Ojha vs. State of Bihar, reported in 2003(4) PLJR 646*, wherein in a similar circumstance, the case was quashed as the necessary ingredients for constituting the offence under Section 188 of the Indian Penal Code was missing. It is next submitted that from perusal of the allegation, as alleged in the F.I.R., it would manifest that the informant merely alleges that petitioner along with Akhilesh Kumar had entered the Collectorate, thus violated the order promulgated under Section 144 Cr.P.C. but then it is submitted that Section 144 Cr.P.C. mandates prohibition of assembly of more than five persons at one place, which is not the fact of the present case.

5. Learned APP opposes.

6. Considering the submission made by the learned Senior counsel and the fact that case is lingering since 2008 at the stage of cognizance itself, the order dated 16.06.2008 passed by the learned Sub-Judge-III-cum-Additional Chief Judicial



Magistrate, Muzaffarpur in connection with Town P.S. Case
No.348/2005 (Tr. No.593/2017), whereby cognizance has been
taken under Section 188 IPC is hereby quashed.

(Satyavrat Verma, J)

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