

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL MISCELLANEOUS No.19930 of 2015**

Arising Out of PS. Case No.-141 Year-2014 Thana- KALYANPUR District- Samastipur

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Ravi Shankar Singh Son of Late Chandra Shekhar Singh resident of village-  
Kharsand East P.s Kalyanpur, District Samastipur. ... .. Petitioner/s  
Versus

The State Of Bihar

2. Shyam Sundar Bhagat, S/o Ram Saroop Bhagat, Village Maksudpur, P.S.  
Warisnagar, District Samastipur.

... .. Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr.Abhay Shankar Singh, Advocate

For the Opposite Party/s : Mr.Rana Randhir Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE RAJIV ROY  
C.A.V. ORDER**

**Date : 22-02-2023**

Heard learned counsel for the petitioner and  
learned counsel for the State.

This application has been filed for quashing of the  
order of cognizance dated 13.03.2015 in connection with  
Kalyanpur P.S. Case No. 141 of 2014 passed by the learned  
Chief Judicial Magistrate, Samastipur by which he passed over  
for issuance of summons against the petitioner after taking  
cognizance under Section 171(G), 191 and 468 of the Indian  
Penal Code.

2. The prosecution case, in brief, is that:

(i) the informant Shyam Sunder Bhagat being a  
social worker had earlier filed complaint case no. 1064 of 2014  
in the Court of learned Chief Judicial Magistrate, Samastipur.  
He had alleged interalia that he is a voter of his Panchayat and  
during 2011 election of Mukhiya, the accused-petitioner was



candidate;

(ii) the petitioner furnished information required in form prescribed in Schedule-IV (ka) as per Section 5(1) of the Panchayati Raj Act, 2006. He suppressed information about his personal details and gave false information with his signature and also in affidavit filed there;

(iii) it was alleged that the accused concealed information regarding case pending against him and thereby betrayed the complainant and became 'Mukhiya' by doing cheating the electorate;

(iv) it was further alleged that the accused was having two wives as recorded in Form (gha) of General Election Rules, 2011 (Bihar), in which at Sl. Nos. 123 and 127 name of first wife Rita Devi aged 32 years and second wife Gauri Devi aged 29 years are recorded and at place, the name of husband is Ravi Shankar Singh;

(v) all these facts were suppressed by the accused by which the complainant felt aggrieved and cheated. It was mentioned that the petitioner was also an accused in Hayaghat. P.S. Case, for which the evidence would be given later. After getting information under the Right of Information Act, 2005, he came to know about above facts and became surprised.



Accordingly, giving wrong information and false affidavit in the election of 'Mukhiya' was alleged by the complainant in his said complaint petition.

3. Learned counsel for the petitioner submits that after he was elected as 'Mukhiya' of the said Panchayat, for oblique reason, the complainant as also some other persons with ulterior motive started harassing him. Further, the police conducted the investigation in a very routine manner and submitted charge sheet under Section 171(G), 141 and 468 of the Indian Penal Code vide Charge Sheet no. 03 of 2015 dated 11.01.2015.

4. Again, the Court of learned Chief Judicial Magistrate, Samastipur passed an order in a mechanical manner on 13.03.2001 by which cognizance was taken under Sections 171(G), 141 and 468 of the Indian Penal Code.

5. At this stage, learned counsel for the petitioner took this Court to Section 171(G) of the Indian Penal Code which read as follows :-

**Chapter IXA**

*OF OFFENCES RELATING TO  
ELECTIONS*

***171(G) False Statement in  
connection with an election –  
Whoever with intent to affect the***



*result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.”*

6. Learned counsel for the petitioner submits that the sum and substance of Section 171(G) of the Indian Penal code is very clear. For any false statement so made to affect the election, the aforesaid section will be available.

7. It is his further submission that so far as the other sections under which the cognizance has been taken is not applicable in the present case. It is not the case of the petitioner that he was a voter of the said constituency and had taken part in the voting and due to non-disclosure of the facts, he felt cheated.

8. Learned counsel submits that a bare perusal of his address would show that he is a resident of village Maksudpur under Warisnagar Police Station in the district of Samastipur whereas the petitioner was elected ‘Mukhiya’ in the village, Kharsand East under Kalyanpur Police Station in



Samastipur.

9. Further, to support his case, the learned counsel for the petitioner has cited a case of **Rajasthan High Court in Ram Singh Vs. State of Rajasthan & Anr.** in which paragraph- 10 read as follows;

*10. It is noticed that in the impugned FIR, there is no allegation to the effect that the petitioner has prepared a false document and used it as a genuine one. The main allegation in the impugned FIR against the accused is to the effect that he has furnished false information regarding the date of birth of his children and on the basis of which, he has contested the election though he was not qualified to do so. Furnishing false information before a public servant cannot be equated with the execution of a false document. If what his executed is not a false document, there is no forgery and if there is no forgery, then no offence under the provisions of Sections 465, 466, 467, 468 and 471 of the IPC is made out."*



10. Further, in paragraph-13, it has been clearly held as follows :-

*“Upon perusal of the impugned FIR, it is apparent that the main allegation of the complainant in the impugned FIR is to the effect that the accused persons has furnished false information or has not furnished correct information regarding the date of birth of his children while contesting the election. If the said allegation of the complainant are accepted to be true then too, the offence, which at best can be said to be committed by the accused would be of making statement in connection with an election which is punishable under section 171-G IPC or furnishing false information to any public servant punishable under section 177 IPC or the offences punishable under sections 181, 193, 199 and 200 IPC . However, all the above mentioned offences are non-cognizable offences. As per the provisions of sub-section (2) of section 155 Cr.PC, a Police*



*officer cannot investigate into the allegation of noncognizable offence without any order of the Magistrate having power to try such case or commit the case for trial, however, no such order of the Magistrate concerned is available on record.”*

11. In this case, notices were issued to the Opposite Party No. 2 on 11.05.2015 by a Co-ordinate Bench of this Court and although the Opposite Party No. 2 filed appearance through his lawyers, no one appeared on behalf of the informant.

12. From the aforesaid facts as also the content of Section 171 (G) of the Indian Penal Code and the case law cited above, it is clear that in case of making a false statement with the intent to affect the result of election, the candidate shall be punished with fine.

13. Further, the complainant was not a voter of the constituency where the petitioner was elected as ‘Mukhiya, the police thus erred in submitting charge sheet under other section of the I.P.C. and the learned Chief Judicial Magistrate, Samastipur erred in taking cognizance under sections 191(G) as also 468 of the Indian Penal Code.



14. However, so far as the cognizance taken under Section 171(G) of the Indian Penal Code is concerned, the same is/are fully justified.

15. Taking into account the said facts, the order dated 13.03.2015 passed by the learned Chief Judicial Magistrate, Samastipur in connection with Kalyanpur P.S. Case No. 141 of 2014 stands modified to the extent that the same may be read as cognizance taken only under Section 171 (G) of the Indian Penal Code.

16. Accordingly, the application stands allowed partially.

**(Rajiv Roy, J)**

Jagdish/-

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