

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.70645 of 2023

Arising Out of PS. Case No.-190 Year-2010 Thana- AIRPORT District- Patna

-
1. Smt. Rabri Devi W/O Lalu Prasad Yadav Resident Of 10 Circular Road, Ps. Secretariat, Dist. Patna, Bihar
 2. Sri Lalu Prasad Yadav @ Lalu Prasad S/O Late Kundan Rai Resident Of 10 Circular Road, Ps. Secretariat, Dist. Patna, Bihar

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Ashok Kumar Singh S/O Late Lalan Singh Village- Barka Louhar, Ps.Barhara, Dist. Bhojpur

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate Mr. Pranav Kumar, Advocate Ms. Shrishti Singh, Advocate Mr. Devashish Giri, Advocate
For the Opposite Party/s :		Mr. P.K. Shahi(A.G.)

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL JUDGMENT

Date : 02-07-2024

Heard Shri Y.V. Giri; learned senior counsel for the petitioners and learned APP for the State; Shri Chandra Bushan Prasad.

2. This application has been filed for quashing the order dated 25.05.2012 passed by the learned Chief Judicial Magistrate, Patna by which the cognizance has been taken under Section 188 of the Indian Penal Code and Section 131 of the Representation of People Act, 1951(hereinafter referred to as the “R.P. Act”) in Hawai Adda P.S. Case No. 190 of 2010 dated 01.11.2010 and summons was issued against the petitioners.



3. The prosecution story in brief is that on 01.11.2010 in Polling Center No. 118 at 181 *Digha* Assembly Constituency, the Chairman of Rashtriya Janta Dal-cum-Member of Parliament, *Sri Lalu Prasad Yadav @ Lalu Prasad* (Petitioner no. 2) and the Leader of Opposition *Smt. Rabri Devi* (Petitioner no. 1) both entered through their car within the 100-meter radius. This act of the petitioners is violative of the Model Code of Conduct. It was requested that an FIR be registered against both the representatives under relevant provisions and accordingly, the present FIR was registered.

4. Learned counsel for the petitioners submitted that the petitioners are innocent, have falsely been implicated in the present case, and have committed no offence. In fact, the learned Chief Judicial Magistrate, Patna, has exceeded his jurisdiction in taking cognizance against the petitioners when the same is barred under Section 468(2) of Cr.P.C. Further, the allegation mentioned in the F.I.R. does not constitute any offence against the petitioners, and the ingredients for constituting offences under Sections 188 of the Indian Penal Code and 131 of the Representation of People Act, 1951 are not made out against the petitioners, and the cognizance has been taken in a mechanical manner. Even from a perusal of the



cognizance taking order dated 25.05.2012, it is evident that the learned Chief Judicial Magistrate, Patna has not applied his mind and has only inserted the word "*Sangyan*" in the order taking cognizance. Thus, on the above mentioned ground, the order of cognizance is bad, without jurisdiction and fit to be quashed, as the order dated 25.05.2012 is apparently an abuse of process of law.

5. Learned counsel for the petitioners further submitted that from a perusal of the F.I.R. itself, it is evident that the only allegation levelled against the petitioners is that they have entered within 100-meter radius of Polling Center No. 118 of 181 *Digha* Assembly Constituency through their car, which is violative of Model Code of Conduct. Apart from this, no allegation has been made against the petitioners in the F.I.R. by the informant. He further submitted that from perusal of the prosecution report, it would indicate that primarily no offence is made out and the allegation does not constitute offence under Section 188 of the Indian Penal Code as no ingredients to constitute the offence has been mentioned in the F.I.R. For constituting the offence, there has to be a disobedience of an order duly promulgated by a public servant, who is lawfully empowered to promulgate such order. In the present case,



evidently in the F.I.R., there is no allegation made by the informant regarding any disobedience to any order promulgated. Further, the informant has not even mentioned in the F.I.R. about any promulgation by a public servant/authority which has been violated by the petitioners. In order to constitute an offence, there has to be a direction by a public servant to abstain from a certain act or take certain order, which is not the case in the F.I.R. In the entire prosecution story, nowhere has it been mentioned that there is an order by the informant not to enter within the 100-meter radius of the premise and the same has been violated by the petitioners. Thus, no offence under Section 188 of I.P.C. is made out against the petitioners as *prima facie* from a bare reading of the allegation, no offence is constituted. Accordingly, the learned Magistrate in a mechanical manner has taken cognizance under Section 188 of I.P.C. against the petitioners.

6. Learned counsel for the petitioners further submitted that similarly, no offence under Section 131 of the R.P. Act is also made out against the petitioners as from a bare reading of Section 131 of the R.P. Act, the ingredients to constitute an offence under Section 131(a) are use of any apparatus for amplifying or reproducing the human voice or the



use of a megaphone or a loudspeaker. For constituting an offence under Section 131(b) any act of shouting or in a disorderly manner within or at the entrance of the polling station is required. He further submitted that even the statements of the witnesses recorded during the investigation do not make out any case. Further, from the statements of the witnesses, evidently none of the ingredients for constituting an offence is made out. Moreover, all witnesses have given almost similar statements, which appear to be tutored. This has not been taken into consideration, and consequently, the order taking cognizance is mechanical, and liable to be quashed.

7. Learned counsel for the petitioners next submitted that the charge-sheet No. 50/2012 dated 30.04.2012 was submitted against the petitioners under Section 188 of I.P.C. and 131 of the R.P. Act, without properly considering the evidence that surfaced during investigation, and without appreciating the fact that no offence was made out against the petitioners. He next submitted that the order taking cognizance is liable to be quashed on the ground that the same has been mechanically taken against both the petitioners. It is evident from a bare perusal of the order itself where it unambiguously appears that the same has been passed in a pre-written format in



which the Learned Magistrate has only filled up the blanks and written "*Sangyan*".

8. Learned counsel for the petitioners further submitted that a similar view has been reiterated in the case of ***Pepsi Food Limited & Anr. v. Special Judicial Magistrate & Ors.; AIR (1998) SC 128*** wherein the Hon'ble Apex Court has held that the summoning of accused is a serious matter in criminal law and cannot be set into motion as a matter of course and further, held that the Magistrate can discharge the accused at any stage of trial if he considered the charge to be groundless. He further submitted that against the order dated 29.11.2022 passed by A.C.J.M.-I, Patna, a Criminal Revision No. 163/2023 was preferred in the Court of Special Judge (MP/MLA), Patna. The same was rejected *vide* order dated 28.06.2023 without appreciating the facts of the case and applicable law. In fact, the Learned Revisional Court has not taken into consideration the fact that since no offence is made out from the F.I.R., therefore, there was no occasion to proceed with the proceeding. It has also not been considered that no useful purpose will be served and in the interest of justice the proceeding should have been stopped.

9. Learned counsel for the petitioners further



submitted that from the above stated facts and circumstances of the case and taking into consideration the applicable law, no offence against the petitioners is made out.

10. Learned APP for the State; *Shri Chandra Bushan Prasad* has vehemently opposed the prayer of the petitioners and has submitted that from the reading of the F.I.R., offences are made out. He further submitted that the ingredients of Section 131(1)(B) of the R.P. Act are made out and, therefore, in this case, the order taking cognizance should not be quashed. He further submitted that this court may not interfere at the stage of cognizance and direct the petitioners to raise all the points at the stage of framing of charge.

11. I have considered the submissions of the parties.

12. The F.I.R. dated 01.11.2010 reads as follows:-

"सेवा में,

थानाध्यक्ष,

हवाई अड्डा, थाना पटना।

विषय:- आदर्श आचार संहिता के उल्लंघन मामले में प्राथमिकी दर्ज करने के संबंध में।

महाशय,

उपर्युक्त विषय के सम्बन्ध में सूचित करना है कि 181 दीघा विधान सभा निर्वाचन क्षेत्र के मतदान केन्द्र संख्या 118 पर राष्ट्रीय जनता दल अध्यक्ष सह सांसद श्री लालू प्रसाद एवं प्रतिपक्ष के नेत्री श्रीमति राबड़ी देवी के द्वारा गाड़ी से 100 मीटर के दायरे में प्रवेश किया गया है।



अतः आदर्श आचार संहिता के
उल्लंघन इन दोनों प्रतिनिधियों द्वारा किया गया।
इसलिए इन दोनों प्रतिनिधियों द्वारा किया गया।
इसलिए इन प्राथमिकी दर्ज करने की कृपा की
जाय।

विश्वासभाजन
अस्पष्ट

1.11.10

प्रावेड़ विकास पदाधिकारी

पटना सदर।

अशोक कुमार सिंह
5/0 स्व० ललन सिंह
ग्राम-बड़का लौहर
पो०-लौहर, फरना
थाना-बड़हरा, भोजपुर।"

13. Section 188 of the Indian Penal Code reads as

follows:-

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 extend 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 months, 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.

14. From reading of the Section 188 of the Indian Penal Code, it is clear that to constitute an offence under Section



188 of the I.P.C., a public servant must have to pass an order lawfully duly authorized in this regard. The order passed by the public servant must be directed towards a person directing him to abstain from a certain act or to take certain order with certain property in his possession or under his management, and the order must be in the knowledge of the persons against whom it is directed, who despite having the knowledge of disobedience of his order will or likely to cause harm, disobeys such order resulting in such obstruction, annoyance or injury or risk thereof or causes danger to human life, health or safety or a riot or affray.

15. For considering the offence alleged to have committed under Section 188 of the I.P.C., this Court in the case of *Parveen Amanullah V/s State of Bihar & Anr* passed in Cr. Misc. No. 75198 of 2018 has held as follows:-

*“30. The last submission of the petitioner with regard to the offence under Sections 188 of the Indian Penal Code is concerned, the same is squarely covered by the judgment of this Court passed in **Smt. Rabri Devi Vs. State of Bihar** (supra) Paragraph No. 36 of the aforesaid judgment is quoted herein below:-*

“Having seen the ambit and scope of Section 195(1) of the Cr.P.C. and the ratio laid down by the Supreme Court and this Court in the decisions, referred to hereinabove, this Court is of the opinion that the investigating authorities acted without jurisdiction in registering the FIR under Section 188 of the IPC on the basis of a letter written to them by the informant in the



capacity of Revenue Karamchhari. The investigation conducted by the police was also without jurisdiction. Sub-section (1) of Section 195 of the Cr.P.C. creates a further bar in so far as it also restricts the Magistrate from accepting written complaint from any person other than the public servant who issued the concerned order or of some other public servant to whom he is administratively subordinate.”

31. So far as the allegations against the petitioner with regard to the offences committed under the ‘Act’, is concerned, in the case of **Smt. Rabri Devi Vs. The State of Bihar (supra)**, this Court has held as follows:

“The narration in the First Information Report is conspicuously silent with respect to any such orders having been promulgated by any public servant. It would be stretching the logic a bit too far to say that during the election time model code of conduct is presumed to have been promulgated. In that view of the matter, there is nothing in the investigation papers or in the First Information Report to suggest that the petitioner had knowledge about such restraining order and that it was deliberately violated.

So far as the violation of the provisions of Bihar Control on the Use and Play of Loudspeaker Act, 1955 is concerned, there is no allegation that it was brought at the instance of the petitioner. There is no allegation whatsoever of using any loudspeaker in the First Information Report, in the first place.”

16. This case is also squarely covered by the Judgment of this Court in the case of **Parveen Amanullah V/s State of Bihar & Anr** (supra).

17. In the F.I.R. and the materials available on record, no material is disclosed to point out as to the commission of any offence under Section 188 of the I.P.C. No



ingredient of the offence is made out against the petitioners.

18. To constitute an offence under Section 188 of the Indian Penal Code, there must be an order lawfully passed by a public servant duly authorized in this regard. Said order must be directed towards a person and order must be in the knowledge of the person to whom it is directed.

19. No offence under Section 188 of the I.P.C. is made out against the petitioners, and the petitioners cannot be said to have committed the offence under Section 188 of the I.P.C. as the ingredients of the offences are lacking.

20. Section 131 of the Representation of People Act, 1951 reads as follows:-

131. Penalty for disorderly conduct in or near polling stations.—

(1) No person shall, on the date or dates on which a poll is taken at any polling station,—

(a) use or operate within or at the entrance of the polling station, or in any public or private place in the neighbourhood thereof, any apparatus for amplifying or reproducing the human voice, such as a megaphone or a loudspeaker; or

(b) shout, or otherwise act in a disorderly manner, within or at the entrance of the polling station or in any public or private place in the neighbourhood thereof, so as to cause annoyance to any person visiting the polling station for the poll, or so as to interfere with the work of the officers and other persons on duty at the polling station.

(2) Any person who contravenes, or wilfully aids or abets the contravention of, the provisions of sub-section (1) shall be punishable with imprisonment which may extend to three months or with fine or with both.

(3) If the presiding officer of a polling station has reason to believe that any person is committing or has committed an



offence punishable under this section, he may direct any police officer to arrest such person, and thereupon the police officer shall arrest him.

(4)Any police officer may take such steps, and use such force, as may be reasonably necessary for preventing any contravention of the provisions of sub-section (1), and may seize any apparatus used for such contravention.

21. From reading of the F.I.R., it will appear that the ingredients of Section 131 of the R.P. Act are not made out. The allegation against the petitioners is that they had gone to the polling booth on a vehicle. There is no allegation against them of using or operating within or at the entrance of the polling station or in any public or private place in the neighbourhood thereof, any apparatus for amplifying or reproducing the human voice, such as a megaphone or a loudspeaker, or shout or otherwise acting in a disorderly manner within or at the entrance of the polling station or in any public or private place in the neighbourhood thereof, so as to cause annoyance to any person visiting the polling station or which interferes in the work of the officers on duty in the polling station.

22. From reading of the F.I.R. it will appear that the allegation is only with regard to use of vehicle for reaching the polling station, apart from that there is no allegation against the petitioners to have used any loudspeakers or megaphone in the vicinity of the polling station or at the entrance of the polling



station or have created any annoyance at the entrance of the polling station.

23. Another submission by the learned senior counsel for the petitioners is with regard to the order taking cognizance. He has submitted that the order taking cognizance is a cryptic and non-speaking order, and the same has been passed mechanically without application of mind and the same cannot be sustained.

24. The Hon'ble Supreme Court in the case of *M/S Pepsi Food Ltd V/s Special Judicial Magistrate; (1998) 5 SCC 749* has held as follows:-

28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the



accused.

25. In the present case also, the learned Magistrate ought to have examined the F.I.R., and materials collected during investigation and, thereafter, only he should have taken cognizance.

26. In my opinion, the order taking cognizance is mechanical and in the teeth of the law laid down by the Hon’ble Supreme Court in the case of *M/S Pepsi Food Ltd. (Supra)* and the same cannot be sustained.

27. In view of the discussions above, this application is allowed on the grounds that no offence is made out under Section 188 of the I.P.C and Section 131 of the R.P. Act and also on the grounds that the order taking cognizance is bad and is against the law.

28. Accordingly, this application is allowed and the impugned order dated 25.05.2012 passed in Hawaii Adda P.S. Case No. 190 of 2010 by the learned Chief Judicial Magistrate, Patna is hereby quashed.

(Sandeep Kumar, J)

Shishir/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	29.07.2024
Transmission Date	N/A

