

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1279 of 2019

Arising Out of PS. Case No.- Year-0 Thana- District- Muzaffarpur

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AMITABH KUMAR GUPTA Son of Lakshmi Narayan Gupta Resident of
Village - Govindpur, Bibi ganj, P.S.- Sadar, Distt.- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Kundan Kumar Sub- Divisional officer East Muzaffarpur. Bihar
3. Vijay Kumar Shukhla @ Munna Shukhla Son of Late Ram Das Shukhla,
Resident of Village - Nayatola, P.S.- Kazimohammadpur, Distt.-
Muzaffarpur.
4. Annu shukhla W/o Vijay Kumar Shukhla @ Munna Shukhla, Resident of
Village - Nayatola, P.S.- Kazimohammadpur, Distt.- Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mani Bhushan Kumar
For the Respondent/s : Mr. Jagdhar Prasad

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT

Date : 28-02-2024

The instant revision is directed against the order dated 27th August 2019 passed by the Sub- Divisional Officer, East Muzaffarpur, in Trial Case No. M-214 of 2018 under Section 188 of the IPC. The said proceeding was disposed of by the Sub-Divisional Officer, East Champaran on the ground that no show-cause has been filed by the opposite party for a period of one year.

2. The supplementary affidavit, filed on behalf of the petitioner, be taken on record.

3. Section 188 of the IPC is a penal provision for



disobedience to order duly promulgated by a public servant. The
Section 188 runs thus:-

“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 persons 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 tends 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.

Illustration

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.”

4. A plain reading of Section 188 of the IPC suggests the following ingredients:-

(a) the offender must have the knowledge that some order was promulgated by a public servant.

(b) the public servant is lawfully empowered to promulgate such order

(c) by passing such order, he was directed to



abstain from certain act or to take certain order with certain property in his possession or under his management, and

(d) the offender disobeys such direction

5. On such conditions, disobedience to order, duly promulgated by a public servant, is punishable under Section 188 of the CrPC.

6. Coming to the instant case, it is submitted by the learned advocate for the petitioner that the Executive Magistrate passed an order under Section 144 of the CrPC, restraining the private opposite parties from making certain constructions over the disputed land. It is the case of the petitioner that in spite of promulgation of such order, the opposite parties constructed a shed on the disputed land. Section 188 of the CrPC is a cognizable and bailable offence. This implies that the police have the power under Section 154 of the CrPC to register FIR against the persons who disobey an order duly promulgated by the public servant and the police has also the authority to submit a final report under Section 173(2) of the CrPC before the concerned Magistrate. In the instant case, for violation of the order under Section 144 of the CrPC, no police case was registered under Section 188 of the CrPC. It is needless to say that according to the First Schedule of the Criminal Procedure



Code (CrPC), 1973, offences under Section 188 are cognizable, bailable and can be tried by any Magistrate which means a charge under Section 188 of the CrPC would necessitate arrest and a person charged under Section can be released on bail. Thus, any complaint under Section 188 of the CrPC can only be registered by filing a complaint before the jurisdictional police station. Since, the offence under Section 188 CrPC is made cognizable, according to the First Schedule of the CrPC. Application under the said provision before the S.D.O. is not maintainable and void *ab initio* if, S.D.O. passes an order on a void proceeding, such orders will also be void. Therefore, this Court cannot even look into the impugned order.

7. Thus, this instant revision application is devoid of any merit and is accordingly dismissed.

(Bibek Chaudhuri, J)

Suraj Dubey/-

AFR/NAFR	NAFR
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