

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1730 of 2020

Arising Out of PS. Case No.-71 Year-2015 Thana- GOVERNMENT OFFICIAL COMP.
District- Madhubani

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Binod Kumar Singh @ Vinod Kumar Singh, Son of Late Sita Ram Singh
Resident of Village - Jhanjharpur, P.S.- Jhanjharpur, District- Madhubani

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Harsh Singh, Adv.
For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 20-09-2024

Heard Mr. Harsh Singh, learned Advocate for the petitioner and Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor (APP) for the State.

2. The petitioner by invoking the inherent jurisdiction of this Court questioning the legality of the order dated 05.08.2019 passed by the Court of learned Sessions Judge, Madhubani in Cr. Revision No. 790 of 2018/931 of 2018 upholding the order dated 08.03.2016 passed by the learned Chief Judicial Magistrate, Madhubani in G.O. Case No. 71 of 2015 (Tr. No. 1781/2016), whereby the learned court has taken cognizance of the offence under Section 189 of the Indian Penal Code against the petitioner.

3. The short facts, giving rise to the instant quashing



application, are as follows:

(i) One Pankaj Kumar Chaudhary, Junior Electrical Engineer, Madhubani (Town) filed a written complaint dated 03.05.2015 alleging therein that on 01.06.2015 the complainant received a call on his mobile number 7763814980 from the mobile number 9431600077 wherein the petitioner, an elected MLC used explicit abusive language and threatened that he would beat up the complainant by entering into his house. Owing to threat as noted hereinabove, the complainant and the complainant's family members are said to have been living in fear.

(ii) The written complaint reveals that the petitioner was accusing the complainant of not making operational the transformer being set up near western side of *Sapta* Nagar and asking bribe in lieu of making the transformer operational; he abused the complainant in filthy language. Although the complainant informed the petitioner that the said transformer did not fall in the jurisdictional area of the complainant and the work was being done by the Bajaj Agency. Hence, the petitioner was required to meet with the Agency or with the Executive Engineer. Despite the aforesaid fact, the petitioner misbehaved and abused the complainant. The subject conversation was



recorded and a CD has been prepared and enclosed with the written complaint. After the incident, the complainant and his family members are apprehending danger to their life and property.

(iii) The aforesaid complaint was not addressed to any particular police station and was dated 03.05.2015 but subsequently after a month, a station diary entry with respect to the same was made and the complaint was assigned to a Sub Inspector for necessary action. The Investigating Officer after conducting investigation submitted a prosecution report dated 11.07.2015 before the learned Chief Judicial Magistrate, Madhubani and prayed that the appropriate prosecution be initiated against the petitioner under Section 189 of the Indian Penal Code, copy of the prosecution report is marked as Annexure-2 to the application.

(iv) On the basis of the aforesaid prosecution report, the impugned order taking cognizance dated 08.03.2016 came to be passed which was put to challenge in Criminal Revision No. 790 of 2018. However, the learned Sessions Judge, Madhubani rejected the revision application vide order dated 05.08.2019 which order is also assailed herein.

4. Adverting to the aforesaid fact, learned Advocate for



the petitioner primarily contended that indubitably Section 189 of the Indian Penal Code is a non-cognizable offence which deals with threat of injury to public servant. Drawing the attention of this Court to the entire order-sheet, it is contended that after receipt of the written report neither any FIR was drawn up nor was the informant referred to the jurisdictional Magistrate nor did the police officer in question seek necessary orders from the jurisdictional Magistrate for investigation of the case. On the contrary, the Investigating Officer submitted a prosecution report wherein he disclosed that he had already conducted investigation of the offence and found the same to be true. The action on the part of the Investigating Officer in delving into the investigation of a non-cognizable offence punishable under Section 189 of the Indian Penal Code was illegal and in the teeth of the provision of Section 155 Cr.P.C.; is the contention of the learned Advocate for the petitioner.

5. Referring to Section 155 Cr.P.C., it is contended that the section deals with information as to non-cognizable cases and the investigation of such cases. Section 155(1) Cr.P.C. makes it clear that whenever the information is given to an officer incharge of a police station of the commission of a non-cognizable offence, he shall enter or cause to be entered the



substance of the information in a book by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate. Sub Section (2) thereof, made it clear that no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial. The very sentence which starts from non-obstante clause leaves no room for police officer to investigate a non-cognizable case without the order of the Magistrate.

6. Learned Advocate for the petitioner further contended that the order-sheet in relation to GO Case No. 71 of 2015 (Tr. No. 1781/ 2016) and the materials available on record reveal that the police officer did neither make any entry of the substance of information in Form 28 in terms of Rules 142 and 144 of the Bihar Police Manual, the prescription of which deals with registration of an information regarding a non-cognizable offence nor did the police officer refer the informant/complaint to the jurisdictional Magistrate, and as such in teeth of the statutory prescription as required under sub section (1) of Section 155 of Cr.P.C. In the aforesaid premise, he thus submits that non adherence of the mandatory requirement alone renders the entire prosecution against the petitioner illegal and



vitiated.

7. While summarizing all the contentions, the submission, the learned Advocate thus contended that the learned Chief Judicial Magistrate as well as the revisional court failed to appreciate the fact that the mandatory requirement of Section 155 of Cr.P.C. is flouted; and the order taking cognizance, even otherwise, is bad on account of non application of mind as ingredients of the offence in question are not even present.

8. On the other hand, learned APP for the State has taken to this Court to the Counter affidavit filed on behalf of the Superintendent of Police, Madhubani and thus contended that the police, after making proper *sanha* entry *vide* Madhubani Town *Sanha* No. 75/2015 duly enquired the allegation. The informant supported the allegation and produced CD of the conversation between the informant and the accused. Based upon the aforesaid material, a prosecution report has been submitted by the police vide GO No. 71/2015 under Section 189 of the Indian Penal Code. Learned Court, having found sufficient materials constituting offence, took cognizance of the offence under Section 189 of the Indian Penal Code. The learned APP for the State also supported the order passed by the



learned Sessions Judge in the afore-noted criminal revision. The learned APP next contended that the submissions advanced before this Court by the learned Advocate for the petitioner had never been raised before the learned Magistrate or the jurisdictional court and, as such, on this account also, the quashing application has no merit.

9. Having heard the learned Advocate for the petitioner and the learned APP for the State. This Court finds that the facts are admitted which have not been disputed by either of the party, except the allegation levelled in the written complaint. In the aforesaid premise, the Court examined the legality of the order taking cognizance as well as the revisional order. There is no dispute that Section 189 of the Indian Penal Code is a non-cognizable offence and the prescription as provided under Section 155 of Cr.P.C. deals with a situation where the police officer received an information with regard to non-cognizable cases and investigation of such cases. For appreciation of the issue raised before this Court, it would be proper to quote Section 155 of Cr.P.C.

“Section 155- Information as to non-cognizable cases and investigation of such cases:

(1)When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to



be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer, the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.”

10. Having gone through the prescription as provided under Section 155 of Cr.P.C., it would be evident that there is no discretion left with the police officer that whenever they receive an information of the commission of a non-cognizable offence they are bound to enter or cause to be entered the substance of the information and refer the informant to the Magistrate; and without any sanction by the jurisdictional Magistrate, no police officer shall investigate a non cognizable case. Though Sub section (4) of Section 155 clarifies a position where a case relates to two more offences of which one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding



that other offences are non-cognizable. However, in the case in hand the subject matter of offence is only Section 189 of the Indian Penal Code and as such Section 155(4) of Cr.P.C. has no application.

11. True it is that at the time of order taking cognizance the Magistrate is not required to consider the defence version or materials or arguments nor he is required to evaluate the merit of the materials or evidence, whether it would lead to the conviction or not but in no circumstances the Magistrate is allowed to take cognizance of an offence contrary to the statutory provision. Initiation of an investigation without getting sanction of the Magistrate in a non-cognizable offence *dehors* the statutory prescriptions set at naught the entire proceeding and thus vitiated in law.

12. So far as the submission of the learned APP to the extent that for the first time all these points have been taken before this Court does not find any force and fit to be rejected as the point of law can be raised at any stage of the trial or case and/or the order *void ab initio* can be questioned at any point of time or even at the stage of execution. This Court also carefully read the allegation and found that even if the allegations are accepted to be true in its entirety, do not suggest that the



informant/complainant has had in any manner threatened to do some illegal act or prevented him from discharging his duties and thus it lacks the necessary ingredients to constitute an offence, much less, under Section 189 of the Indian Penal Code.

13. In view thereof, on both the counts, this Court finds that the impugned order taking cognizance dated 08.03.2016 as well as the revisional order dated 05.08.2019 suffers from illegality and as such continuance of the proceeding arising out of in connection with GO Case No. 71 of 2015 (Tr. No. 1781/2016) is nothing but an abuse of the process of the Court and as such the same are fit to be quashed and cancelled. The impugned orders and the proceeding arising therefrom are quashed and the quashing application stands allowed.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
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