

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.6331 of 2019

Arising Out of PS. Case No.-349 Year-2015 Thana- ARA NAGAR District- Bhojpur

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1. TUFANI SINGH S/o Chandradeo Singh, R/o- Village- Chanda, P.S.- Sikarhata, District- Bhojpur.
 2. Md. Kutubuddin @ Tukubuddin @ Kutubuddin, S/o Gulam Rasaul, R/O- Khedhi, P.S.- Narayanpur, District- Bhojpur.
 3. Deo Kumar Singh @ Dev Kumar Singh S/o Ramsakal Singh R/o- Village- M.B. Bagh, P.S.- Ara Town, District- Bhojpur.
 4. Santosh Kumar @ Santosh Kumar Verma. S/o Ramjee Prasad Verma R/O Village- Panjabi Market, P.S.- Buxar, District- Buxar.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ravindra Kumar, Advocate

For the Opposite Party/s : Mr. Ram Priya Sharan Singh, APP

Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Heard Mr. Ravindra Kumar, learned counsel
appearing on behalf of the petitioners and Mr. Ram Priya Sharan
Singh, learned APP along with Mr. Jharkhandi Upadhyay,
learned APP for the State.

2. The present application has been filed under
Section 482 of the CrPC for quashing of the order dated
07.09.2018 passed in Cr. Rev. No.203 of 2017 by learned
Sessions Judge, Bhojpur, Ara, as well as, the order dated
03.04.2017 passed by the learned Chief Judicial Magistrate,



Bhojpur, Ara in connection with Tr. no. 169 of 2017 arising out of Ara Town P.S. Case No.349 of 2015, by which cognizance of the offences has been taken under Sections 147, 149, 323, 341, 188, 353, 120B of the Indian Penal Code.

3. Learned counsel appearing on behalf of petitioners informs that after investigation the police has submitted the final form, having found no offence. In absence of any evidence against the other co-accused for similar allegation the proceeding was dropped against them by the learned Chief Judicial Magistrate, Bhojpur, Ara. He further submitted that in spite of having no material collected in course of investigation against the petitioners, who at the relevant time were holding different posts in the school namely *Rajkiya Madhaya Vidhayala, Dharhari*. and not even have participated in the alleged protest, have been made accused. On these grounds, learned counsel seeks interference of this Court with the order dated 03.04.2017 passed by the learned Chief Judicial Magistrate, Bhojpur, Ara for which the petitioners have preferred Cr. Rev. No.203 of 2017 and it was rejected *vide* order dated 07.09.2018.

4. Mr. Jharkhandi Upadhyay, along with Mr. Ram Priya Sharan Singh, learned APPs appearing on behalf of the



State at the outset jointly submitted that no interference can be made by this Court and to scuttle the trial, the petitioners have filed the present quashing application, for which an order has already been passed by the learned Sessions Judge, Bhojpur, Ara in Cr. Rev. No.203 of 2017, which requires no interference of this Court. He further submitted that the FIR in question has been registered as Ara Town P.S. Case No.349 of 2015 under sections 147, 149, 323, 341, 188, 353 and 120B of the Indian Penal Code, against the accused persons namely Tufani Singh, Md. Kutubuddin @ Tukubuddin, Dev Kumar Singh, Santosh Kumar. During the investigation, the Investigating Officer visited the place and recorded the prosecution occurrence, statements of the witnesses, as well as, the informant. As per the investigation, the allegations leveled against the petitioners were found to be true in nature, and the supervision report also substantiated the said allegations against the petitioners. He further submitted that it is true that initially the students were made accused along with teachers of the said school (petitioners) but during the investigation, none of the independent witness has stated active involvement of the students rather all the witnesses have stated that on the instigation of the teachers the students came on the road,



therefore, police had submitted charge sheet against the petitioners. Learned counsel submitted that on these grounds, the charge sheet no.514 of 2016 dated 31.12.2016 was submitted, after collecting the materials against the petitioners, and as such, no interference is required by this Court.

5. Heard the parties.

6. It is well settled that in exceptional cases, in abuse of process of law the High Court in exercise of its inherent powers under Section 482 CrPC can quash criminal proceedings. However, interference would only be justified when complaint didn't disclose any offence or was patently frivolous, vicarious or oppressive.

7. To analyze, as to whether, the offense as alleged in the FIR is made out, I find it proper to deal with Section 147, 149, 341, 323, 353, 188 and 120B Indian Penal Code which defines as under:

“Section 141: (Unlawful assembly) a group of five or more people whose common object is to commit an offense. The common object must involve one of the following: using criminal force to intimidate a government or public servant, resisting a law or legal process, committing mischief or criminal trespass, or extorting property or a valuable security from someone.

Punishment: The punishment for being part of such an assembly, after being commanded to disperse by a public servant, is imprisonment for up to six months, a fine, or both.

Section 147: (Punishment for rioting) Rioting occurs when an "unlawful assembly" (five or more people with a common, illegal objective) uses force or violence.

Punishment: Imprisonment up to 2 years, or fine, or both.



Section 149: (Every member of unlawful assembly guilty of offence committed in prosecution of common object)—If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Section 341 (Wrongful Restraint) : Deals with preventing someone from moving in any direction to which they are entitled to proceed.

Punishment: Imprisonment up to **1 month**, or fine up to **₹500**, or both.

Section 323 (Voluntarily Causing Hurt) : Pertains to inflicting pain, bodily disease, or infirmity on another persons.

Punishment: Imprisonment up to **1 year**, or fine up to **₹1,000**, or both.

Section 353 (Assault or Criminal Force to Deter Public Servant) : Entails using assault or criminal force to obstruct a public servant from discharging their official duties.

Punishment: Imprisonment up to **2 years**, or fine, or both.

120B. Punishment of criminal conspiracy.—

1. Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

2. Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

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 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.

8. The records based on materials and upon a plain reading of the relevant provision, under which the complaint has been lodged, it is evident that the essential ingredients of the offence mainly under Sections 147, 149, 188, 341, 323, 353 and 120B of the Indian Penal Code are attracted only when such act have been done, with an intention to use criminal force and prevent or deter the public servant from discharging his public duty.

9. The offence under above sections is made out only when the unlawful assembly with a common object to cause riot was without the ingredients of Section 147 of Indian Penal Code. The Apex court as in case of ***Charan Singh and Others v/s. State of Uttar Pradesh***, reported in, ***2004(2) SCR 925***, wherein in paragraph no. 13, the court held as under:

“... Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149....”

10. Further, the Apex Court in case of ***Lalji v. State of U.P.***, reported in, ***(1989) 1 SCC 437***, in para 8, observed as



under: -

“Common object of the unlawful assembly can be gathered from the nature of the assembly, arms used by them and the behaviour of the assembly at or before scene of occurrence. It is an inference to be deduced from the facts and circumstances of each case.”

11. It is the case of the petitioners that offences under Sections 323 and 353 of the IPC are also not made out. A reading of the above Sections clearly shows that if a public servant, while discharging his duties, is attacked or any injury caused to public servant in the discharge of his duties or when any public servant prevented or deterred from performing his duties or when any public servant assaulted or any criminal force used against the public servant while he is executing his duties as such public servant, then only the above offences would attract. It is not the case of the prosecution that the accused caused hurt or assault to the informant or any of the police officer, while they were performing their duties, with intent to prevent them or deter them from discharging their duties. The offences under Section 188 of the IPC is also not attracted as the petitioners did not intend to produce any harm in the present case.

12. I am, therefore, of the opinion that the necessary ingredients to attract Sections 323 and 353 of the I.P.C. are not present in the present case. The fact that the petitioners were in



a large crowd, which may raise some suspicion, but such suspicion could not be considered as proof/ evidence upon which the accused could be convicted. The law in this regard is well settled as in case of *Madan Singh v. State of Bihar* reported in *[2004] 4 SCC 622*, wherein the Hon'ble Supreme Court held that *“mere presence in an unlawful assembly does not render any persons automatically liable unless there is evidence to suggest that they were motivated by common objects set out in Section 141 Cr.P.C. Thus, the presence and sharing of a common unlawful object is a must to invoke Section 149 IPC. Mere presence is not enough.”*

13. In *Kapil Aggarwal and ors. vs V Sanjay Sharma and ors. AIR 2021 SC 1241: AIR ONLINE 2021 SC 99* the Apex Court observed that Section 482 of the CrPC (528 of the BNSS) is designed to achieve the purpose of ensuring that criminal proceedings are not permitted to generate into weapons of harassment.

14. Considering the aforesaid submissions made on behalf of the parties and the allegations made in the FIR, as well as, the fact that the constitutional right as guaranteed under Article 19(1) of the Constitution of India gives democratic right to the citizens to protest peacefully. The genesis of the protest



was in the background of required amount of scholarship, which was not given to the students. Though the FIR was lodged against other co-accused, who are students of a government school namely *Rajkiya Madhaya Vidhayala, Dharhari* and the petitioners, who are government teachers and because of the said FIR and charge sheet submitted against them, they are facing the criminal prosecution. In respect of other co-accused the police has submitted the final final form. In such circumstances, in absence of any information contained in the order dated 03.04.2017 passed by the learned Chief Judicial Magistrate, Bhojpur, Ara in connection with Tr. no. 169 of 2017 arising out of Ara Town P.S. Case No.349 of 2015, without any material being discussed against the petitioners, which was collected in course of investigation, *prima facie*, it appears that the revisional Court has also not looked into the materials available and only having reiterated certain background facts, has affirmed the order dated 03.04.2017 passed by the learned Chief Judicial Magistrate, Bhojpur, Ara. The exercise of democratic right cannot be scuttled by lodging FIR against the citizens. As such, the order taking cognizance dated 03.04.2017 and order dated 07.09.2018 passed in Criminal Revision No.203 of 2017 are hereby **set-aside** and **quashed**.



15. Accordingly, the present application stands disposed of.

(Purnendu Singh, J)

Ashishsingh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	18.10.2025
Transmission Date	NA

