

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.369 of 2023

Arising Out of PS. Case No.-148 Year-2010 Thana- BARAULI District- Gopalganj

Rampravesh Rai Son of Late Raj Kishore Rai Resident of village - Koini, P.S.
- Manjhagarh, Distt. - Gopalganj

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. S.D. Sanjay, Sr. Advocate Mrs. Priya Gupta, Advocate Mr. Mohit Agrawal, Advocate Mr. Lokesh Kumar, Advocate Mr. Vikash Khanna, Advocate
For the Respondent/s	:	Mr. Ram Bilash Roy Raman, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

6 22-01-2025 The impugned orders challenged in the instant Criminal Revision are glaring examples of patent illegality, material irregularity and blatant abuse of the process of the Court.

2. On the basis of a written complaint submitted by Block Development Officer, Barauli stating, inter-alia, that on 10.09.2010 one Rampravesh Rai the then Minister Incharge, Tourism Department visited Saran River Bank situated at Rupanchhap, Simaria at Saran. At that relevant point of time employees attached to Flood Control Department, Government of Bihar were working on the embankment situated at Simaria. The Minister examined the said work and asked the Assistant



Engineer, Flood Control Department about the progress of work, he also gave some instruction with regard to the manner of work to be executed by the employees of Flood Control Department.

3. It is submitted by the complainant that the specific act and conduct by Ram Pravesh Rai, the then Minister of Tourism was in violation of Model Code of conduct of election as at the relevant point of time general election was declared. The S.H.O. Barauli police station registered Barauli P.S. Case No.148 of 2010 dated 12.09.2010 under Sections 171-B, 171-C of the I.P.C. and entrusted the case to one ASI, K.N. Prasad to investigate.

4. The record shows that formal F.I.R. was lodged on the basis of the above-mentioned complaint against the petitioner and police suo-moto took the case for investigation, on completion of investigation, police submitted charge-sheet under Section 173 of the Cr.P.C. for the offence under Sections 171-B and 171-C of the I.P.C. against the petitioner.

5. By an order dated 06.10.2010, the learned Chief Judicial Magistrate, Gopalganj took cognizance of offence against the petitioner and subsequently, transferred the case to the Court of the learned Sub-Divisional Judicial Magistrate for trial and disposal.



6. It is needless to say that Chapter-IX-A of the I.P.C. starting from Section 171-A to 171-I deal with the offences relating to elections. Section 171-B of the I.P.C. defines the offence of Bribery during election committed by any person who gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right. Section 171-C deals with undue influence at elections.

7. It is needless to say that the offences mentioned in Sections 171-B and 171-C of the I.P.C., punishment of which are stated in Section 171-E and 171-F of the I.P.C. are non-cognizable bailable offences.

8. The learned Chief Judicial Magistrate and learned Sub-Divisional Judicial Magistrate, Gopalganj did not know the provision of Section 155 of the Cr.P.C. relating to an information as to non-cognizable cases and investigation of such cases. Section 155 of Cr.P.C. runs thus :-

“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.”

9. A plain reading of the provision suggest 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. Therefore, when information is given to the police officer Incharge of a police station of the commission of non-cognizable offence, he shall enter or cause



to be entered the substance of a information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf and referred the informant to the Magistrate. Therefore, the police officer had no power to suo-moto investigate into a non-cognizable case and submit final report under Section 173 of the Cr.P.C. when a non-cognizable case is investigated without the order of the Magistrate, the registration of the criminal case itself is bad in law.

10. Illegality of the matter did not stop here. The learned Magistrate took cognizance of offence under Section 171-F of the I.P.C. and summoned the accused to appear before this Court to face Trial. The accused duly appeared and he was examined under Section 251 of the Cr.P.C. At this stage also the learned Magistrate committed a gross error because on the basis of police report after investigation without the order of the learned Magistrate in a non-cognizable case, the accused cannot be examined under Section 251 of the Cr.P.C.

11. Subsequently, however, the case was placed in Trial. The Lower Court Record shows that during trial prosecution failed to produce any witness subsequent to the direction passed by the Hon'ble Supreme Court, Courts of Magistrates are established in Patna to try the cases pending



against peoples representatives, i.e., MPs and MLAs. The aforesaid case were also transferred to the Special Court of the learned Magistrate for trial. In the Special Court also prosecution failed to produce any evidence. Thereafter, on ill advice the accused had sworn an affidavit admitting his guilt for the offence punishable under Section 171-F of the I.P.C. On the basis of said affidavit, he was examined under Section 313 of the Cr.P.C. Subsequently, the affidavit of the accused which was self inculpated was accepted by the Court and he was convicted and sentence to pay fine of Rs.1,000/-.

12. The accused preferred an appeal against the said judgment before the learned Sessions Judge at Gopalganj, which was registered as Criminal Appeal No.12 of 2023. The learned Sessions Judge, Gopalganj dismissed the said appeal and affirmed the order of conviction.

13. Section 313 of the Cr.P.C. states :-

“313. Power to examine the accuse-

(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court-

(a) may at any stage, without previously warning the accused put such questions to him as the Court considers



necessary;

(b) shall after the witnesses for the prosecution have been examined and before he is called on for his defence question him generally on the case:

Provided that in a summons-case where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under subsection(1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section.”

14. In the case, we are concerned with Section 313(1)



(d) of the Cr.P.C., the said provision casts bounding duty of the Court, before drawing an adverse presumption against the accused on any point, to call his attention to it and asked for an explanation. The word 'shall' in clause (b) to Section 313(1) is obligatory on the Court and it shall be complied with when it is for the benefit of the accused. The provision postulates that after the witnesses for the prosecution has been examined, the accused shall be heard under Section 313(1)(b) of the Cr.P.C. On his explanation in respect of the incriminating material appearing against him in course of evidence adduced by the witnesses on behalf of the prosecution.

15. When an accused pleaded not guilty during his examination under Section 251 of the Cr.P.C. he cannot be asked to swear an affidavit declaring himself guilty of offence. Such course of action is absolutely illegal and the court cannot take into account such incalpatory affidavit. Moreover, the said affidavit cannot be treated as evidence on behalf of the prosecution and accused could not be examined under Section 313 of the Cr.P.C.

16. In the instant case, proper course of the learned Magistrate would have been to record an acquittal under Section 256(1) of the Cr.P.C. because of the fact the complainant and the



witnesses on behalf of the prosecution did not appear to deposed in this case against the accused. However, when the registration of non-cognizable case without the order of the Magistrate is bad in law, the subsequent proceeding is automatically without jurisdiction.

17. For the reasons stated above, the order of conviction and sentence passed by the learned Sessions Judge/Special Judge, MP/MLA Court, Gopalganj and affirmed by the learned Sessions Judge, Gopalganj in Criminal Appeal No.12 of 2023 are set aside and the learned Special Judge, MP/MLA Court, Gopalganj is directed to record acquittal of the petitioner under Section 256(1) Cr.P.C.

18. Accordingly, the instant criminal revision is, thus disposed of.

(Bibek Chaudhuri, J)

mdrashid/-

U		T	
---	--	---	--

