

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.63440 of 2025

Arising Out of PS. Case No.-259 Year-2010 Thana- KOTWALI District- Patna

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Lalan Kumar @ Lalan Kumar Yadav son of Late Kamleshwari Prasad
Resident of Mohalla -Hira Lal Lane Chhajju Bagh, PS -Kotwali, District
-Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Superintendent of Police, Patna Bihar
3. The Officer-In-Charge, Kotwali PS, Patna Bihar
4. Udaykant Mishra, the then Police Sub-inspector, Kotwali, PS, Patna Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Chandan Kumar, Advocate
For the Opposite Party/s : Mr. Md. Mushtaque Alam, APP

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 02-09-2025

Heard Mr. Chandan Kumar, learned counsel
appearing on behalf of the petitioner and Mr. Md. Mushtaque
Alam, learned APP for the State.

2. The present application has been filed for quashing
the order dated 20.08.2011 passed by learned Judicial
Magistrate, Ist Class, Patna in connection with Kotwali P.S. Case
No.259 of 2010, by which cognizance of the offences has been
taken under Sections 147, 149, 341, 323, 332, 337, 353, 160,
427, 504 of the Indian Penal Code against the petitioner and
other named persons.

3. As per the allegation made in the FIR, on 28.08.10,



at approximately 12:45 pm, around 200-250 supporters of the Bihar *Bandh*, which had been proposed by the Youth Congress Party for 28.08.10, were brought to the Dak Bungalow crossing, where slogans were raised and the traffic at the crossing was completely blocked. Despite repeated persuasion by the police officers, the supporters leading the procession did not stopped and the entire Dak Bungalow square was blocked, leading to complete disruption of traffic. In the meantime, some ambulances carrying patients were stuck in the traffic jam. The protesters were respectfully requested to allow the ambulances to pass, but they refused and when the police officers requested them to remove the blockade in view of public inconvenience, they started creating nuisance and the vehicles passing by, including government vehicles, were hit with sticks carrying party flags, and many vehicle glasses were broken. Upon being warned to disperse, the mob turned violent and started shouting slogans against the police administration. The petitioners allegedly with common intention started pelting bricks and stones on the police force due to which many police personnels were injured. Observing the escalating violence, the senior police officer ordered that the crowd be strictly dispersed. Accordingly, several protesters were arrested, and an FIR was



registered against them under Sections 143/342/353/323/337/504/160/427 IPC for unlawful assembly, obstruction in government duty, and damage to property.

4. Learned counsel appearing on behalf of the petitioner submitted that the allegations are general and omnibus in nature, so far as the petitioner is concerned, allegedly he is also one of the protesters and is a part of the mob. He further submitted that from the face of the FIR, no case is made out against the petitioner. He submitted that the charge sheet lacked the necessary ingredients to prosecute the petitioner. He contended that mere presence in a crowd, without proof of a shared unlawful objective, cannot render a person criminally liable. He further stated that the petitioner had exercised his democratic rights through protest, without incitement and the same cannot attract criminal prosecution against him. Learned counsel submitted that the FIR was lodged on 28.08.2010 and no witnesses has been examined till date. Learned counsel has relied upon a judgment of the Apex Court passed in the case of *State of Telangana Vs. Mallu Bhatti Vikramarka & Ors.* reported in *2025 SCC Online SC 574* and in case of *Manchu Mohan Babu Versus State of Andhra Pradesh & Another (Criminal Appeal No.3298 of 2025)*. On these grounds, learned



counsel submitted that the entire criminal proceeding, if allowed to continue, will be abuse of process of law.

5. Learned APP appearing on behalf of the State submitted that there are criminality in the action of the protesters, who became violent and broke the glass of common people and government vehicles' with stick and attacked the police force and pelted stone on them, in which several police personnel got injured, after which six persons were also got arrested. The order taking cognizance has been passed after proper application of judicial mind, based on the materials which were collected in course of the investigation against the petitioner. He further informs that similar cases are pending against the petitioner and he appears to be a habitual offender .

6. Heard the parties.

7. The question that arises for consideration is whether the material on record *prima facie* constitutes any offence against the accused. The contention so made in the FIR even if accepted to be true in entirety do not disclose ingredients of any offence under Sections 147, 149, 341, 323, 332, 337, 353, 160, 427, 504 of the Indian Penal Code, which renders order dated 20.08.2011 taking cognizance of the said offences by the learned Judicial Magistrate First Class, Patna is also



vitiating in the eye of law?

8. 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.

9. To analyze, as to whether, the offence as alleged in the FIR is made out, I find it proper to deal with Section 147, 149, 341, 323, 332, 357, 353, 160, 427 and 504 Indian Penal Code which defines as under:

“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 person.

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

Section 332 (Voluntarily Causing Hurt to Deter Public Servant) : Involves causing hurt to a public servant to prevent them from performing their duty.



Punishment: Imprisonment up to 3 years, or fine, or both.

Section 337 (Causing Hurt by Acts Endangering Life or Personal Safety of Others) : An act that causes hurt by an act so rash or negligent as to endanger life or the personal safety of others.

Punishment: Imprisonment up to 6 months, or fine up to ₹500, 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.

Section 160: (Punishment for committing affray): An affray involves two or more people fighting in a public place and, by doing so, disturbing public peace.

Punishment: Imprisonment up to 1 month, or fine up to ₹100, or both.

Section 427: (Mischief causing damage to the amount of fifty rupees or upwards): The accused must commit "mischief" (as defined in Section 425) and cause loss or damage amounting to fifty rupees or more.

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

Section 504: (Intentional insult with intent to provoke breach of the peace): The insult must be intentional and intended to provoke a reaction that would disrupt public order.

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

10. The record reveals that the petitioner has not adduce any evidence in his defence, instead asserted that he has been falsely implicated in the case due to political rivalry. Upon a plain reading of the relevant provision, it is evident that the essential ingredients of the offence mainly under Sections 147, 149, 353 and 504 of the Indian Penal Code are attracted when such act must have been done with an intention to use criminal force and prevent or deter the public servant from discharging his public duty.



11. On a careful perusal of the materials on record, it is apparent that no criminal force was used by the petitioner. There is nothing in the FIR to suggest that the petitioner either assaulted the concerned public servant or used any form of criminal force to obstruct the discharge of official duties. Even if the allegations are taken at face value and accepted in their entirety, the ingredients necessary to constitute an offence under Section 147 and 149 IPC are not satisfied.

12. The law with regard to unlawful assembly is well settled by 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....”

13. 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.”

14. It is the case of the petitioner that offences



under Sections 323, 332, 336 and 353 of the IPC is 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.

15. I am, therefore, of the opinion that the necessary ingredients to attract sections 341, 323, 332, 337, 353 and 353 of the I.P.C. are not present in the present case. The fact that the petitioners were in a large crowd and were armed 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.”

16. Our constitutional scheme comes with the right to protest and express dissent, but with an obligation towards certain duties. Article 19, one of the cornerstones of the Constitution of India, confers upon its citizens two treasured rights i.e. the right to freedom of speech and expression under Article 19(1)(a) and the right to assemble peacefully without arms under Article 19(1)(b). These rights, in cohesion, enable every citizen to assemble peacefully and protest against the action or inaction of the State. The same must be respected and encouraged by the State, for the strength of a democracy such as ours lies in the same. These rights are subject to reasonable restrictions, which, *inter alia*, pertain to the interests of the sovereignty and integrity of India and public order, and to the regulation by the police authorities concerned.

17. The Hon’ble Supreme Court while dealing with the right to freedom of speech and expression and to assemble



peacefully, in case of **Manchu Mohan Babu (supra)**, has
observed in paragraph no. 18, as follows:

“18. On a combined reading of the FIR and the charge-sheet, we fail to understand as to how the allegations against the appellants herein could be brought within the scope and ambit of the aforesaid provisions. Taking the allegations in the FIR and the charge-sheet as they stand, the crucial ingredients of the offences under Sections 290, 341, 171F read with 34 IPC and Section 34 of the Police Act, 1861 are entirely absent. A reading of the FIR and the charge-sheet neither discloses any act committed or illegal commission that caused common injury, danger, annoyance to the public or any section of the public or interference with their public rights, nor do they disclose any voluntary obstruction to a person that prevents them from proceeding in any direction that they have a right to proceed in. Further they do not disclose any material to suggest that there was any undue influence at elections, impersonation at elections or any act committed with the intention to interfere with the free exercise of electoral rights. Further they do not suggest that any act was committed on a road or in an open place within the limits of a town that caused inconvenience, annoyance or posed a risk of danger or injury or damage to the public, and do not disclose any of the eight specified actions under Section 34 of the Police Act, 1861. Therefore, even if the case of the respondent-State is accepted at its face value, it cannot be concluded that the appellants, while conducting the rally and dharna, engaged in any form of obstruction of the road in a manner that led to the offences alleged. The appellants were exercising their right to freedom of speech and expression and to assemble peacefully. Therefore, no purpose will be served by continuing the prosecution.”

18. The damages to property, obstruction of public ways, or violations of court orders arising from protests. While the right to peaceful protest under Article 19(1)(b) of the Indian Constitution is recognized, it is not absolute and must be balanced against other rights. Their actions requires to cause a tangible harm or breach of a valid order, not the protest itself to attract the allegations as alleged.



19. It has been informed that several case are pending against the petitioner of similar nature and he can be considered to be a habitual offender. It is not in dispute that the term 'habitual offender' is not defined under Cr.P.C. Section 110 CrPC is a preventive measure against habitual offender who are likely to commit breach of peace or commit a serious offense. It requires individuals who are deemed habitual offenders to post a bond to ensure good behaviour for a maximum of three years. It is not a case that in the near past the petitioner was not involved in similar offence.

20. 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.

21. In *State of Haryana and Ors. v. Bhajan Lal and Ors.* reported in *1992 Supp. (1) SCC 335*, the Apex Court held as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under [Article 226](#) or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it



may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

22. As I have already observed from the bare perusal of the allegation in FIR it appears that no offence has been made. The petitioner along with the protesters had assembled to raise voice against the police administration and exercised democratic right through protest. The Article 19(1)(b) of the Constitution guarantees the right to assemble peacefully and without arms. Considering the law laid down by the Apex Court in above cases the continuance of criminal proceeding against the petitioner will amount to abuse of process of law.

23. In view of the discussions hereinabove and law laid down by the Apex Court, this court is of the view that, the allegations in the FIR are demonstrably false or based on fabricated information and there is no substantial evidence to prove that the offenses were committed as alleged in the FIR. Therefore, proceeding further in this case would be abuse of process of law. Consequentially, the impugned cognizance order



dated 28.08.2010 passed by learned Judicial Magistrate, Ist Class, Patna in connection with Kotwali P.S. Case No.259 of 2010 along with the entire criminal proceeding is hereby *set-aside* and *quashed* in respect to the present petitioner.

24. Accordingly, the present application stands disposed of.

(Purnendu Singh, J)

Ashishsingh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	14.09.2025
Transmission Date	NA

