

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32966 of 2018

Arising Out of PS. Case No.-45 Year-2005 Thana- BAKHTIYARPUR District- Patna

Rajan Kumar Yadav @ Rajan Yadav S/o Late Ram Govind Singh, R/o House No. 1, Saraswati Niwas, Dr. Ram Govind Singh Path, P.S.- Kankarbagh, District- Patna.

... .. Petitioner

Versus

The State Of Bihar

... .. Opposite Party

Appearance :

For the Petitioner : Mr. Kunal Tiwary, Advocate
For the Opposite Party : Mr. Amitesh Kumar, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT
Date : 15-07-2025

Heard learned counsel for the petitioner and learned APP for the State.

2. By way of this application, the petitioner has challenged the order dated 30.08.2005 passed by the learned Additional Chief Judicial Magistrate, Barh, in connection with Bakhtiyarpur P.S. Case No.45 of 2005, whereby the learned Magistrate has taken cognizance against the petitioner under Section 171(H) of the Indian Penal Code and under section 3 of the Bihar Prevention of Defacement of Property Act.

3. As per the F.I.R., the Sub-Divisional Officer, Barh had issued a direction for removing the posters/banners of the candidates belonging to different political parties which were put on the walls/poles and to further lodge F.I.R. against



them. Acting upon the said directions, the informant along with other police personnel visited different places which falls under the jurisdiction of Bakhtiyarpur police station and during inspection found different posters/banners of various candidates of different political parties hanging on the walls/poles. It is also alleged that the poster/banner of the petitioner, who belongs to the Congress party, was also found to be hanging on the pole/wall. Accordingly, the present F.I.R. has been lodged against the nine candidates including the present petitioner.

4. Learned counsel for the petitioner submits that from perusal of the F.I.R., it appears that there is no specific allegation against the petitioner and he has no concern at all with respect to the place where the alleged posters/banners were hanged. He further submits that even if the statements made in the F.I.R. is taken to be true then also no specific allegation against the petitioner has been made in the F.I.R. and only a statement that a poster belonging to the Congress party candidate was found hanging on the pole/wall. Further, there is absolutely not even a whisper of allegation against the petitioner being involved in any activity or that he was present while the police officials were on patrolling duty.

5. It has been submitted by learned counsel for



the petitioner that admittedly in the said election from Bakhtiyarpur Constituency, the Congress party never contested the election and was in alliance with other political parties and in the said constituency, the candidates of Lok Jan Sakti Party was contesting.

6. It is the case of the prosecution that the name of the petitioner was written on the alleged poster/banner but the submission of the petitioner is that the mere fact that the name of the petitioner was written on the poster/banner does not mean that it was put up by the petitioner himself. Moreover, the petitioner has no concern with the area from where the alleged posters/ banners were seized since the Congress party was not contesting the election from that area and was in fact in alliance with other political parties.

7. Further submission of the petitioner is that the alleged posters/banners may have been putting on the Pole/wall by a person, who has ill motive towards the petitioner or the same might have been done in connivance with the rivals having malicious intention towards the petitioner. Therefore, the argument of the petitioner is that the whole prosecution story has been procured by the informant having ill motive and *mala fide* intention towards the petitioner and he has falsely and



deliberately been implicated at the behest of the political rivals.

8. It has further been submitted that pursuant to the F.I.R. the police filed the charge-sheet mechanically against the petitioner and other accused persons under section 171-H of the Indian Penal Code and under section 3 of the Bihar Prevention of Defacement of Property Act and the Court below without appreciating the facts in its right perspective and without applying the judicial mind has taken cognizance against the petitioner under the aforesaid sections.

9. Learned counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court rendered in the case of ***Pepsi Food Limited and Anr. vs. Special Judicial Magistrate and Others*** reported in ***(1998) 5 SCC 749*** wherein it has been held as under:-

"Summoning of an accused in a Criminal Case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the Complainant has to bring only two witnesses to support his allegation in the Complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the fact of the case and the law applicable thereto. He has to examine the nature of allegations made in the Complaint and evidence both oral and



documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the Complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examined if any offence is prima facie committed by all or any of the accused.”

10. Learned counsel for the petitioner has also relied upon the decision of the Hon’ble Supreme Court rendered in the case of ***G. Sagar Suri vs. State of Uttar Pradesh*** reported as ***(2000) 2 SCC 636*** and has submitted that in the aforesaid case, the Hon’ble Supreme Court has held that before issuing process, a criminal court has to exercise a great deal of caution.

11. He has also relied upon the decision of the Hon’ble Supreme Court rendered in the case of ***Dayle De’souza vs. Government of India & Anr.*** reported as ***(2021) 20 SCC 135*** and has submitted that in the aforesaid case it has been held that it is the duty of the Court not to issue summons in a mechanical and routine manner which would frustrate the detailed procedure given under the Cr.P.C.



12. Lastly, learned counsel for the petitioner has also relied upon the decision of the Hon'ble Supreme Court in the case of *State of Haryana vs. Bhajan Lal*, reported in *1992 Supp (1) SCC 335*.

13. Learned APP appearing on behalf of the State opposes the application by submitting that the Magistrate after going through the materials available on record has rightly taken cognizance against the petitioner and therefore, there the impugned order taking cognizance does not require any interference.

14. Considered the submissions of the parties and perused the material on record.

15. At this stage, it would be apposite to reproduce the section 171-H of the Indian Penal Code, 1860 which reads as under :-

“171H. Illegal payments in connection with an election.—Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees:

Provided that if any person having incurred any such expenses not exceeding the amount of ten



rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.”

16. From a close reading of the aforesaid penal provision, it is clear that unless authorized by a candidate to incur any expense in connection with the promotion by way of advertisement, circular or publication or any other way whatsoever or procuring the election of such candidate, such acts would be illegal. Therefore, the section is directed against a person other than the candidate contesting himself without whose authorization the person has acted for the promotion of the candidate in the election process. Moreover, the classification of the offence under section 171-H of the IPC is non-cognisable, bailable and triable by Magistrate of 1st Class as per first schedule of the Cr.P.C and would therefore require permission from jurisdictional Magistrate to proceed with the investigation under section 155(2) of the Code of Criminal Procedure, 1973. However, it may be noted that in the present case the prosecution has also invoked section 3 of the prevention of Defacement of Property Act, 1987 which is a cognizable offence as declared under section 4 of the aforesaid statute.



17. This Court in the case of ***Prakash Jha vs. The State of Bihar (Cr. Misc. No. 43543 of 2010)*** has culled out the essential ingredients under section 171-H and observed as under:-

“12. The essential ingredients of the offence punishable under Section 171H of the IPC are as follows:-

- (i) An election is impending;*
- (ii) The candidate has not given any general or special authority to the accused in writing to spend money at the election;*
- (iii) The accused made unauthorized expenses on-*
 - (a) public meeting,*
 - (b) advertisement or circular or publication, or*
 - (c) in any other way;*
- (iv) The accused did it for promoting, or procuring the election of the candidate;*
- (v) Such unauthorized expenses exceeding the sum of Rs.10 were not ratified in writing by the candidate within 10 days of the expenditure*

18. Therefore, the import of the section 171-H is that it penalises a person who incurs any expense in promotion or otherwise, as described under the aforesaid provision, to act in connection with an electoral process without the general or



special authority of the candidate contesting the election.

19. Turning to the facts of the present case, it appears that the petitioner was not himself contesting from the aforesaid constituency. The mere fact that the name of the petitioner appears on the alleged banner/poster, in itself is not sufficient to invoke section 171-H of the I.P.C. Further, there is no material available on record to establish that the petitioner was himself involved with the illegal promotion, as described under section 171-H, in connection with the election process or that he was acting for promotion of another candidate without such candidate's authority. Upon perusal of the materials available on record, it would clearly manifest that section 171-H is not applicable in the present case. There is no allegation that the petitioner himself acted in any way to promote or procure the election of any candidate. The only strand connecting the petitioner is the mere fact that the name of the petitioner figures on the seized alleged banner/posters which would in itself not suffice to attract the rigors of section 171-H of the I.P.C.

20. Moreover, the penal provision for defacement of property is also not attracted since there is also no material available on record to fasten the petitioner with the offence of defacement of property. There is no whisper that the



petitioner was himself involved in the act of defacement of the property. The entire criminal proceedings appear to have been initiated only on the basis of suspicion stemming from the mere fact that the seized banner/poster figures the name of the petitioner. The continuance of the criminal proceedings against the petitioner in absence of any direct material linking the petitioner with the act of defacement would not be sustainable.

21. Turning to the order taking cognizance, this Court in the case of ***Dharmesh Prasad Verma vs. The State of Bihar (Cr. Misc. 41702 of 2015)*** had observed as under :-

“27. The need for proper application of mind by the courts at the stage of summoning has been highlighted by the Supreme Court in Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, reported in (1998) 5 SCC 749, in para 28 as follows:-

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing



charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

28. *It would be trite to remark that taking of cognizance and summoning of accused in a criminal case has serious consequence on the liberty of an accused, as pursuant to such order, he is made to take bail and face trial for a criminal offence. An order of cognizance passed in a standardized format by filling up the only perfunctory details buttress an ex facie lack of application of mind in the order of taking cognizance and summoning an accused.*

29. *In Fakhruddin Ahmad Vs. State of Uttaranchal and Another, reported in (2008) 17 SCC 157, once again, in paragraph 17, the Supreme Court has held as follows:-*

"17. Nevertheless, it is well settled that before a Magistrate can be said to have taken cognizance of an offence, it is imperative that he must have taken notice of the accusations and applied his mind to the allegations made in the complaint or in the police report or the information received from a source other than a police report, as the case may be, and the material filed therewith. It needs little emphasis that it is only when the Magistrate applies his mind and is satisfied that the allegations, if proved, would constitute an offence and decides to initiate proceedings against the alleged



offender; that it can be positively stated that he has taken cognizance of the offence. Cognizance is in regard to the offence and not the offender."

22. Upon a close perusal of the order taking cognizance, it would be apparent that while taking cognizance against the petitioner the learned Magistrate has even not discussed the facts and materials available on record and therefore, there is no proper application of judicial mind.

23. In view of the discussions made hereinabove and keeping in mind the facts of the present case particularly the complete absence of any direct material on record to fasten the petitioner with the offences under section 171-H or the defacement of public property, I am of the considered view that that allowing the prosecution to continue would amount to abuse of the process of the law. The only thread linking the petitioner with the offences being the seizure of alleged banners/posters is insufficient to attract the rigors of the aforesaid offences. Even the order taking cognizance is silent on the materials upon which cognizance was taken by the magistrate under section 171-H of the I.P.C. and section 3 of the Prevention of Defacement of property Act, 1987.

24. Considering the aforesaid facts of the case and also considering the law laid down by the Hon'ble Supreme



Court in the case of *State of Haryana vs. Bhajan Lal* reported as *1992 Supp. (1) SCC 335*, this application is allowed. Consequently, the impugned order dated 30.08.2005 passed by the learned Additional Chief Judicial Magistrate, Barh, in connection with Bakhtiyarpur P.S. Case No.45 of 2005 is hereby quashed with respect to the present petitioner.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	16.07.2025
Transmission Date	16.07.2025.

