

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.80298 of 2025

Arising Out of PS. Case No.-25 Year-2009 Thana- PATAHI District- East Champaran

Sanjay Singh Son of Ram Charitra Singh R/o A-255, Pocket -2, Indraprashta Enclave, Dwarka Sector -17, South West Delhi, Delhi - 110078.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

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

For the Opposite Party/s : Mr. Ajit Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 09-12-2025

Heard learned counsel appearing on behalf of the petitioner and learned APP for the State.

2. The petitioner has preferred application under Section 528 of BNSS for quashing the order taking cognizance dated 28.09.2012 passed by the learned Sub-Divisional Judicial Magistrate, Sikrahna at Motihari, East Champaran in connection with Patahi P.S. Case No. 25 of 2009, by which learned Sub-Divisional Judicial Magistrate, Sikrahna at Motihari, East Champaran has taken cognizance of offence under Sections 188 and 171 F of the Indian Penal Code.

3. As per the allegation made in the FIR, on 17.04.2009, during the parliamentary election, while the informant, who is a police personnel, was on patrolling duty, stopped a Scorpio vehicle bearing Registration No. DL3CAS 2475 registered in the name of the petitioner, for checking near Champapur village but the petitioner could not produce any chit



of paper relating to the vehicle and he along with the driver, fled away from the spot. One co-accused Ram Chandra Sah was arrested on the spot and vehicle of the petitioner was seized.

4. Learned counsel appearing on behalf of the petitioner submitted that petitioner was going to cast his vote to his native place in the district of Supaul by his own vehicle through National Highway NH 227F, while he was crossing the Champapur Village, his vehicle was stopped by the police personnel and was forced to surrender his vehicle for the purpose of election duty. The petitioner refused to surrender, which led to failing of criminal case against him. He further submitted that no incriminating articles were recovered from the vehicle. The FIR was lodged against unknown and driver of the vehicle along with the petitioner were made accused on the basis of ownership. The arms were recovered from co-accused, who can be said to be a passers by namely, Ram Chandra Shah unknown to the petitioner. On these grounds, learned counsel submitted that from the very perusal of the FIR, in absence of violation of any law and order having been not complied by the petitioner, no offence under Sections 188 and 171 F of the Indian Penal Code is made out.

5. *Per contra*, learned A.P.P. for the State submitted



that the petitioner was accompanying the co-accused Ram Chandra Shah, who was apprehended along with loaded pistol and live cartridges. He submitted that the very content of the FIR, it can be found that the petitioner had allegedly participated in the offence along with the co-accused Ram Chandra Shah to impede the election process under influence of some political parties. He further draws attention to the Prohibitory orders and promulgation of 'Mode Code of Conduct', the petitioner and co-accused persons violated these orders and hence charge-sheet has been submitted, in which the petitioner and co-accused persons have found to be accused of offence under Section 171 F of the Indian Penal Code and cognizance has also been taken under Sections 188 and 171 F of the Indian Penal Code.

6. Heard the parties.

7. Petitioner is aggrieved by the cognizance order dated 28.09.2012 taken under Sections 188 and 171 F of the Indian Penal Code. Before examining the legality of the order, I find it gainful to reproduce Section 195 (1) (1) of the Code of Criminal Procedure, which is the guidelines to take cognizance of offence under Sections 171 to 188 (both inclusive) of the Indian Penal Code, which is as follows:

"195. Prosecution for contempt of lawful



authority of public servants, for offences against public justice and for offences relating to documents given in evidence.-

(1) No Court shall take cognizance -

(a)(i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860),

or

(ii) of any abetment of, or attempt to commit, such offence,

or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court,

or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476 of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court,

or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii)"

8. To analyze, as to whether, the offence as alleged in the FIR is made out, I find it proper to deal with Sections 171-F and Section 188 of the I.P.C. which define disobedience to order duly promulgated by public servant to spread infection as under:

"171-F. Punishment for undue influence or personation at an election.

-Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year 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 trends 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.

Illustration

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section."

9. The Apex Court while dealing with Section 195

Cr.P.C., in the case of *State of U.P. vs. Mata Bhikh & Ors.*

reported in (1994) 4 SCC 95, has held as follows:

"6. The object of this section is to protect persons from being vexatiously prosecuted upon inadequate materials or insufficient grounds by person actuated by malice or ill-will or frivolity of disposition at the instance of private individuals for the offences specified therein. The provisions of this section, no doubt, are mandatory and the Court has no jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing of 'the public servant concerned' as required by the section without which the trial under Section 188 of the Penal Code, 1860 becomes void ab initio. See Daulat Ram v. State of Punjab [1962 Supp 2 SCR 812 : AIR 1962 SC



1206 : 1962 Cri LJ 286] . To say in other words a written complaint by a public servant concerned is sine qua non to initiate a criminal proceeding under Section 188 of the IPC against those who, with the knowledge that an order has been promulgated by a public servant directing either 'to abstain from a certain act, or to take certain order, with certain property in his possession or under his management' disobey that order. Nonetheless, when the court in its discretion is disinclined to prosecute the wrongdoers, no private complainant can be allowed to initiate any criminal proceeding in his individual capacity as it would be clear from the reading of the section itself which is to the effect that no court can take cognizance of any offence punishable under Sections 172 to 188 of the IPC except on the written complaint of 'the public servant concerned' or of some other public servant to whom he (the public servant who promulgated that order) is administratively subordinate. (emphasis supplied)

7. A cursory reading of Section 195(1)(a) makes out that in case a public servant concerned who has promulgated an order which has not been obeyed or which has been disobeyed, does not prefer to give a complaint or refuses to give a complaint then it is open to the superior public servant to whom the officer who initially passed the order is administratively subordinate to prefer a complaint in respect of the disobedience of the order promulgated by his subordinate. The word 'subordinate' means administratively subordinate i.e. some other public servant who is his official superior and under whose administrative control he works."

10. 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 Versus State of Andhra Pradesh & Another (Criminal Appeal No.3298 of 2025)**, 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 inquiry 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."

11. The Apex Court in the case of ***C. Muniappan vs. State of T.N.*** reported in ***(2010) 9 SCC 567*** in paragraph no. 33, has held as follows:

"33. Thus, in view of the above, the law can be summarised to the effect that there must be a complaint by the public servant whose lawful order has not been complied with. The complaint must be in writing. The provisions of Section 195 CrPC are mandatory. Non-compliance with it would vitiate the prosecution and all other consequential orders. The court cannot assume the cognizance of the case without such complaint. In the



absence of such a complaint, the trial and conviction will be void ab initio being without jurisdiction." (emphasis supplied)

12. From the FIR, charge-sheet and the impugned order, there is no reference of any order, which was violated by the petitioner and the co-accused persons and it is also apparent that the informant was neither the superior nor subordinate officer in the hierarchy of the officer, who had supposedly passed the alleged prohibitory order, which was allegedly violated by the petitioner. From perusal of the aforesaid provisions, it is evident that the police has no right to file a case under Sections 171F and 188 of the I.P.C. and to investigate the same.

13. In view of the discussions made hereinabove and the law laid down by the Apex Court, this Court finds that further proceeding against the petitioner would be abuse of process of law. Accordingly, the order taking cognizance dated 28.09.2012 is hereby quashed and set aside, to the extent it relates to the petitioner.

14. The present application stands disposed of.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
Uploading Date	12.12.2025
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