

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 1861 of 2022

Hemant Soren, aged about 46 years, son of Shibu Soren, resident of Chief Minister House, P.O.-Kanke, P.S. Gonda, District-Ranchi
..... Petitioner

Versus

1. The State of Jharkhand
2. Rakesh Ranjan Oraon, Executive Magistrate, Sadar, P.O. and P.S. Ranchi, District-Ranchi
..... Opp. Parties

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Kaushik Sarkhel, Advocate
Mr. Abhishek Singh, Advocate
For the Opposite Parties : Mrs. Vandana Bharti, A.P.P.
.....

03/Dated: 11/11/2022

Office note suggests that notice has been personally served upon O.P. No. 2. The O.P. No. 2 has lodged the F.I.R. on his personal capacity as Executive Magistrate, Sadar, Ranchi.

2. Mrs. Vandana Bharti, learned counsel for the State fairly submits that there are law points argued on behalf of the petitioner and therefore, this matter may kindly be decided on the law point.

3. In view of her submission, this matter is being heard on merit.

4. Heard Mr. Kaushik Sarkhel, assisted by Mr. Abhishek Singh, learned counsel for the petitioner and Mrs. Vandana Bharti, learned counsel for the State.

5. The present petition has been filed for quashing of entire criminal proceeding in connection with Argora P.S. Case No. 149/2019 corresponding to MP/MLA Case No. 15 of 2021 including order dated 16.11.2019 whereby cognizance has been taken under section 188 of the I.P.C and under section 130(e) of the Representation of People Act, 1951, pending in the Court of learned Judicial Magistrate, Ist Class, Ranchi.

6. The F.I.R. has been lodged by the O.P. No. 2 who is Executive Magistrate, Sadar, Ranchi alleging therein that on 06.05.2019, during casting his vote in booth no. 288 by election of Lok Sabha, 2019, Ex. Chief Minister, Hemant Soren had exhibited party sign by wearing a "patta" which is against model code

of conduct and committed offence under section 130(e) of the Representation of People Act, 1951.

7. Mr. Kaushik Sarkhel, learned counsel for the petitioner submits that the matter was investigated by the Investigating Officer wherein notice under section 41-A of the Cr.P.C. was received by this petitioner and the petitioner co-operated in the investigation. He submits that chargesheet has been submitted and cognizance has been taken on 16.11.2019 under section 188 of the I.P.C. and under section 130(e) of Representation of People Act, 1951 against the petitioner. He submits that in absence of judicial mind cognizance has been taken against the petitioner however, there is no whisper of any allegation that the petitioner in any manner disobeyed the order promulgated by any public servant lawfully empowered to promulgate and did anything which the petitioner was abstained from doing so. He further submits that section 195 (1)(a) of the Cr.P.C. speaks that only on the complaint such case can be entertained. He draws the attention of the Court to section 2(d) of the Cr.P.C. and submits that complaint has been defined there. He further submits that section 130(e) of Representation of People Act, 1951 is also not attracted in view of the contents made in F.I.R. He elaborates his argument by submitting that prosecution could not be maintained only by an authority making an order whose order is alleged to have been violated. He submits that whose order was restrained to exhibit party symbol in booth is not disclosed and O.P. No. 2 had no locus to lodge the F.I.R. He submits that the petitioner had gone there to cast his vote for Lok Sabha Election. He submits that no competent authority neither Election Commissioner of India nor any person authorized on their behalf has lodged the F.I.R. To buttress his argument with regard to lodging of F.I.R. under section 188 of the I.P.C and on the point of maintainability, he relied in the case of "**C. Muniappan & Others Vs. State of Tamil Nadu**" reported in **(2010) 9 SCC 567** wherein para 33, 34 and 35 the Hon'ble Supreme Court has held as under:-

"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.

34. *The learned counsel for the appellants have submitted that as no charge could have been framed under Section 188 IPC in the absence of a written complaint by the officer authorised for that purpose, the conviction under Section 188 IPC is not sustainable. More so, it falsifies the very genesis of the case of the prosecution as the prohibitory orders had not been violated, no subsequent incident could occur. Thus, the entire prosecution case falls.*

35 Undoubtedly, the law does not permit taking cognizance of any offence under section 188 I.P.C. unless there is a complaint in writing by the competent public servant. In the instant case, no such complaint had ever been filed. In such an eventuality and taking into account the settled legal principles in this regard, we are of the view that it was not permissible for the trial court to frame a charge under Section 188 I.P.C. However, we do not agree with the further submission that absence of a complainant under Section 195 Cr.P.C. falsifies the genesis of the prosecution case and is fatal to the entire prosecution case"

8. On these grounds, learned counsel for the petitioner submits that entire criminal proceeding is fit to be quashed so far as petitioner is concerned.

9. On the other hand, Mrs. Vandana Bharti, learned counsel for the opposite parties submits that since violation was there that is why F.I.R. has been lodged by the competent Executive Magistrate who was on duty. He submits that there is no illegality in lodging F.I.R. and in order taking cognizance.

10. In view of above submission of the learned counsel for the parties, the Court has gone through the materials on record and finds that admittedly, F.I.R. being Argora P.S. Case No. 149/2019 was lodged under section 188 of the I.P.C and under section 130(e) of the Representation of People Act, 1951. Admittedly, the F.I.R. has been lodged by the O.P. No. 2. The point which is to be ponder over in this matter is, whether the Executive Magistrate has the locus-standi to file FIR, directly to the concerned police station for registration of crime under Section 188 of the IPC and under section 130(e) of the Representation of People Act, 1951 against the petitioner? In order to decide the aforesaid issue, it would be apposite to take into consideration the certain provisions of the IPC, as well as Cr.P.C., which would facilitate to determine this legal issue within the purview of law. At the threshold, the provision of Section 188 of the IPC, is essential to be reproduced, which reads thus :

"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."

11. In addition to the aforesaid provision, it is imperative to take into consideration the embargo for taking cognizance of an offence punishable under section 188 of IPC, contained in section 195 of Cr.P.C. The provision of Section 195 of Cr.P.C. provides as under :

" 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 of some 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), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause(a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local

jurisdiction such Civil Court is situate:

Provided that

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed"

12. In view of the aforesaid legal provisions contemplated under section 195 of Cr.P.C., it can be said that no Court shall take cognizance of any offence punishable under sections 172 to 188 of the IPC, except on the complaint in writing of the public servant concerned, or some other public servant, to whom he is administratively subordinate. The word, "complaint" referred in the above mentioned provision of Section 195 of the Cr.P.C., denotes, "complaint in writing to a magistrate" and "not a police report". At this juncture, it would be necessary to make reference of definition of the word, "complaint" given in section 2(d) of the Code, which prescribes as under :

"2(d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation.-A report made by a police officer in a case which discloses, after investigation, the commission of a non- cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant."

13. On conjoin reading of the provision of Section 188 of IPC and Section 195 of Cr.P.C., it is evident that if the alleged offence is punishable under Sections 172 to 188 of IPC, the court cannot take cognizance except on a complaint in writing of the public servant concerned, or some other public servant, to whom he is administratively subordinate. In such peculiar circumstances, no FIR could have been registered by the Executive Magistrate for an offence punishable under Section 188 of IPC. The legislative intention appears to be clear from the language of section 195(1) of Cr.P.C. itself, which categorically prescribes that where an offence is committed under Section 188 of IPC, it would be obligatory for the public servant before whom such offence is committed, to file a complaint before the concerned Magistrate having jurisdiction to take cognizance of it. Therefore, in view of the aforesaid principles of law, the FIR lodged by the Executive Magistrate,

cannot be termed as a "complaint" given to the Magistrate in writing.

14. In the instant case, Executive Magistrate directly lodged the FIR alleging commission of offence under Section 188 of IPC, for disobedience of the order." Looking into section 195 of the Cr.P.C., it appears that only on the complaint, cognizance under section 172 to 188 of the I.P.C. can be taken. Non compliance of said section, has been considered by the Hon'ble Supreme Court in the case of "**C. Muniappan**" (*surpa*) even its assumption that F.I.R. is not barred however taking cognizance is barred under section 195 Cr.P.C, reference in this regard may be made to the case of "**State of Punjab Vs. Raj Singh & Another**" reported in **(1998) 2 SCC 391**.

15. In the case in hand, there are no circumstances on record to show that the disobedience of the condition imposed on the petitioner would entail one or the other consequences mentioned in Section 188 of IPC itself. The impugned FIR is silent about the same and 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. Moreover, it was within the ambit of the Court to treat that F.I.R. as complaint under section 2(d) of the Cr.P.C.

16. In view of the above it is crystal clear that order taking cognizance is not in accordance with law which is barred under section 195 Cr.P.C. The case of the petitioner is coming within the ambit of para 102(6) of the judgment of the Hon'ble Supreme Court in the case of "**State of Haryana Vs. Bhajan Lal**" reported in **1992 suppl. (1)SCC 335**.

17. In view of the aforesaid facts, reasons and analysis, the entire criminal proceeding so far as petitioner is concerned, in connection with Argora

P.S. Case No. 149/2019 corresponding to MP/MLA Case No. 15 of 2021 including order dated 16.11.2019 whereby cognizance has been taken under section 188 of the I.P.C and under section 130(e) of the Representation of People Act, 1951, pending in the Court of learned Judicial Magistrate, Ist Class, Ranchi, is hereby quashed.

18. This petition stands allowed and disposed of. Interim order is vacated.

(Sanjay Kumar Dwivedi, J.)

Satyarthi/