IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13494 of 2023

Arising Out of PS. Case No.-93 Year-2019 Thana- BARSOI District- Katihar

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Navjot Singh Sidhu, aged about 59 years, Gender-Male, S/o Late Sardar Bhagwant Singh R/o - 110, Holy City, P.S.- Amritsar Cantonment, Amritsar, Punjab - 143008.

... ... Petitioner/s

Versus

1. The State of Bihar
2. Rajeev Ranjan S/o Yogendra Prasad Singh Presently posted as Assistant Engineer, Rural works Department, Barsoi, Katihar, Bihar and Permanent Resident of Village- Kanaun, P.S.- Rajoun, Distt- Banka.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ramakant Sharma, Sr. Advocate Mr. Rakesh Kumar Sharma, Advocate Mr. Santosh Kumar Pandey, Advocate Mr. Amresh Kumar, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

CAV JUDGMENT

Date : 12-12-2023

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

Re.: Interlocutory Application No. 1 of 2023

2. This Interlocutory Application has been filed challenging the order dated 12.10.2022 passed by learned ACJM-I, Katihar, by which the learned Magistrate has taken cognizance against the petitioner for the offence under Section 188 of the Indian Penal Code and Section 123 of the Representation of People Act, 1951.

3. For the reasons mentioned in the Interlocutory

Application No. 1 of 2023, the same is allowed.

4. Accordingly, the petitioner is permitted to challenge the cognizance order dated 12.10.2020.

Re.: Cr. Misc. No. 13494 of 2023

5. The present application has been being filed for quashing the FIR bearing PS Barsoi Case No. 93 of 2019 dated 16.04.2019, instituted for the offences punishable under Section 188 of the Indian Penal Code and Sections 123 (3) and 125 of the Representation of People Act, 1951. The Case is presently pending in the Court of learned ACJM, Katihar.

6. Subsequently, after investigation charge sheet has been submitted and the learned A.C.J.M., Katihar has taken cognizance of the offences punishable under Section 188 of the IPC read with Sections 123(3) and 125 of the Representation of the People Act, 1951.

7. Learned senior counsel for the petitioner submits that the Impugned FIR bearing P.S. Barsoi Case No. 93 of 2019 dated 16.04.2019, was instituted for the offences punishable under Section 188 of the Indian Penal Code read with Sections 123 and 125 of the Representation of People Act, 1951, on the basis of a written report submitted by Rajeev Ranjan (O.P.No.2), claiming himself to be the Assistant Engineer of Rural Works

Department, Barsoi, Katihar, Bihar.

8. The brief facts of the case are that the Informant alleged in his written report that on 15.04.2019 Navjot Singh Sidhu (the Petitioner) (Hon'ble Minister, Govt. of Punjab) had addressed a public gathering organized by the Indian National Congress at the campus ground of Utkramit High School, Ghatta, Barsoi. The said public gathering and the address delivered by the petitioner was recorded by VST, Barsoi and upon perusal of the said recording made by VST, the AEO Katihar, Barsoi informed that the model code of conduct had been violated by the petitioner while delivering his speech.

9. Further, the Informant alleged that after watching the C.D. (made available by VST, Barsoi), it is clear that the petitioner has violated the restraining orders while making appeal for votes on religious grounds. After that the Informant submitted his written report to the concerned police station, the aforementioned FIR was instituted against the petitioner and the charge-sheet bearing No. 94/20 dated 12.07.2020 under Section 188 of the Indian Penal Code read with Section 123 (3) and 125 of the Representation of People Act, 1951 was accordingly filed against the petitioner.

10. Learned senior counsel submits that the petitioner

is innocent and has been is falsely implicated in the instant case only due to political rivalry. The petitioner having a political figure since almost past two decades and has been contesting elections in the most peaceful and decent manner. However, the issue of alleged hate speech has never been a case as far as the present petitioner is concerned.

11. It has further been submitted that from perusal of the FIR, it is evident that the allegation as levelled against the petitioner is only to harass the petitioner and to settle political scores and the impugned FIR is fit to be quashed, as even if otherwise, the case of the complainant at hand is assumed to be true without admitting, even then due to the alleged contentious speech, not even a single incident escalated which resulted in social turmoil, violence, hate crime or degradation of social fabric of peace & harmony.

12. Learned senior counsel for the petitioner has submitted that no offence is made out against the petitioner under Section 188 of the Indian Penal Code and Sections 123(3) and 125 of the Representation of the People Act, 1951.

13. Learned APP for the State has opposed the application and submitted that the prosecution of the petitioner at the stage of cognizance cannot be quashed in view of the fact

that from reading of the F.I.R. and the materials collected during investigation *prima facie* offence as alleged are made out.

14. I have considered the submissions of the parties. From the reading of the F.I.R., it will appear that it has been alleged by the informant that the petitioner has violated the restraining orders while making an appeal for votes on religious grounds. The gist of the statement made by the petitioner in the public rally has been mentioned in para 130 of the case diary, which reads as under:

> *''<u>नवजोत सिंह सिद्धु का चुनावी भाषण</u>*
> *क्या आप सब इन्हीं सबके लिए हो आज साजिस हो रही है पूर्णियाँ में मैं आप सबको चेतावनी देने आया हूँ मुस्लिम भाईयों आप 64 % आबादी हो यहाँ पे मेरे मुस्लिम भाईयों जितने भी है ये मेरी पगड़ी है, आप सब पंजाब में भी काम करने जाते हो पंजाब में हमारी तरफ से प्यार मिलता है। मेहमान जो होता है, जान से प्यारा होता है आप को पंजाब में दिक्कत होता है मैं मंत्री हूँ जिस दिन पंजाब आयेगा सिद्धु को अपने साथ खड़ा पायेगा। कंधे से कंधा मिलाकर लेकिन मैं आपको चेतावनी देने आया हूँ बहनों भाईयों ये सब बांट रहें हैं आपको मुस्लिम भाईयों ये यहाँ ओवैसी साहब जैसे लोगो को लाके एक नई पार्टी साथ में खड़ी करके आप लोगो की वोट बांट बांट के जीतना चाहते हैं।''*

15. So far as the prosecution of the petitioner under Section 188 of the I.P.C. is concerned, the same has to be examined in light of the provisions of Section 188 of I.P.C. and Section 195(1) of the Cr.P.C. The F.I.R. under Section 188 of the I.P.C. has been filed on the basis of the report submitted by the informant who is the Assistant Engineer.

16. Section 195(1) of the Cr. P.C. reads 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*
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> *(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 by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate]"*

17. Sub-section (1) of Section 195 of the Cr.P.C. creates a bar, in so far as it also restricts a Magistrate from accepting written complaints from any person other than the

public servant concerned, who issued the concerned order, or of some other public servant to whom he (i.e., the public servant who issued the concerned order) is administratively subordinate.

18. The investigation has been conducted on the basis of a complaint filed by the opposite party no. 2 and cognizance has been taken. The opposite party no. 2 besides not mentioning the details of any offence (cognizable or otherwise), is not and does not even claim to be the Public Servant who has lawfully promulgated any order (i.e., the 'concerned' public servant) nor does opposite party no. 2 claim to be an officer administratively superior to the concerned public servant and nothing has been brought on record to show his competency under the law to make such a complaint in the first place and also in the manner in which such complaint has to be filed.

19. Learned senior counsel for the petitioner submits that it is a settled position that Section 195 of the Cr.P.C. is mandatory and the non-compliance of this provision would vitiate the prosecution and all consequential orders. Section 195(1)(a)(i) of the Code bars the Court from taking cognizance of any offence punishable under Section 188 I.P.C. or abatement or attempt to commit the same, unless, there is a written complaint by the public servant concerned for contempt of his

lawful order. This provision has been carved out as an exception to the general rule contained under Section 190 of the Cr. P.C., i.e., that any person can set the law in motion by making a complaint.

20. From the discussions above, it is clear that under Section 195 of the Cr. P.C., there must be a complaint by the Public Servant whose lawful order has not been complied with and the complaint must be in writing. The provisions of Section 195 of the Cr.P.C. are mandatory and the non-compliance of these provisions would vitiate the prosecution and all other consequential orders/ proceedings. Since the complaint has been filed against the mandatory provision of Section 195(1) Cr.P.C., all subsequent action shall be held to be illegal i.e., the investigation and the cognizance pursuant to the registration of the F.I.R.

21. This Court in **Cr. Misc. No. 37822 of 2010** in the case of **Smt. Rabri Devi vs. State of Bihar,** disposed of on 01.08.2014 at paragraph no. 36, has held as follows:

> *"Having seen the ambit and scope of Section 195(1) of the Cr.P.C. and the ratio laid down by the Supreme Court and this Court in the decisions, referred to hereinabove, this Court is of the opinion that the investigating authorities acted without jurisdiction in registering the FIR under Section 188 of the IPC on the basis of a letter written to them by the informant in the*

> *capacity of Revenue Karamchari. The investigation conducted by the police was also without jurisdiction. Sub-section (1) of Section 195 of the Cr.P.C. creates a further bar in so far as it also restricts the Magistrate from accepting written complaint from any person other than the public servant who issued the concerned order or of some other public servant to whom he is administratively subordinate."*

22. The trial Court has acted without jurisdiction and in violation of the provisions of Cr.P.C. in taking cognizance under Section 188 of I.P.C. on the basis of a police report and issuing summons to the petitioner. The investigating authorities have acted without jurisdiction in registering an FIR on the basis of a letter written by the opposite party no. 2, who is an Assistant Engineer, and who has not passed any order which has been violated by the petitioner and both the trial Court and the investigating authorities have acted without jurisdiction and authority and in complete violation of mandatory procedural law, as contained in Section 195 (1) of the Cr. P.C.

23. Moreover, from the gist of the allegation extracted above, it will appear that the allegation against the petitioner is that the petitioner had violated the model code of conduct and has asked for vote on the basis of religion. From reading the transcript of the speech of the petitioner, it will appear that he has only said that Owaisi Sahab had floated a new party and was

trying to divide votes and win the election.

24. In my considered opinion, the part of the speech on which the informant has relied upon to show that the petitioner was asking for votes on the ground of religion does not support the allegation. The petitioner has not made any statement which is prejudicial to the maintenance of harmony or is likely to disturb the public tranquility. From the content of the speech, it does not appear that the petitioner has tried to promote feelings of enmity or hatred between two classes of people or two religions but in fact he has only said that Mr. Owaisi was trying to divide the votes of Muslims. The statement of the petitioner has not depicted any communal tension and violence. It has only cautioned the people of Muslim community about dividing their votes by Mr. Owaisi and therefore, the allegation that the petitioner was demanding votes on the name of religion is false.

25. Section 123(3) of the Representation of the People Act, 1951 is reproduced hereinbelow:

> *"123(3). The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to, religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially*

> *affecting the election of any candidate:*
>
> *Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause."*

26. For prosecuting the petitioner under Section 123(3) of the Representation of the People Act, 1951, a person should appeal for voting or refrain from voting for any person on the ground as mentioned in Section 123(3) of the Representation of the People Act, 1951.

27. In the opinion of this Court, no such appeal has been made by the petitioner but he has only said about Mr. Owaisi floating a party for dividing the vote and in the opinion of this Court, the petitioner cannot be prosecuted under Section 123(3) of the Act.

28. Section 125 of the Representation of the People Act, 1951 read as follows:

> *"125.* ***Promoting enmity between classes in connection with election****.—Any person who in connection with an election under this Act promotes or attempts to promote on grounds of religion, race, caste, community or language, feelings of enmity or hatred, between different classes of the citizens of India shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both."*

29. For prosecuting a person under Section 125 of the Representation of People Act, 1951, the basic requirement is

that the person should promote or attempted to promote on grounds of religion, race, caste, community or language, feelings of enmity or hatred between different classes of citizens of India. Again, in the opinion of this Court, the ingredients of Section 125 of the Representation of the People Act are not made out against the petitioner as the statements have not been made to promote or attempting to promote on grounds of religions, race, caste, community or language, feelings of enmity or hatred between different classes of citizens of India.

30. From the speech which has been reproduced above, it is again clear that no offence under Section 125 of the Representation of the People Act, 1951 is made out against the petitioner as the speech has not been made to promote or attempting to promote on the grounds of religion, race, caste or community or language, feeling of enmity or hatred between the parties.

31. The order of issuance of summons after taking cognizance dated 12.10.2020 also suffers from non-application of mind in view of the law laid down by the Hon'ble Supreme Court in case of **Pepsi Food Ltd Vs. Special Judicial Magistrate reported in (1998) 5 SCC 749**. Paragraphs No. 28, 29, 30 of the aforesaid judgment reads 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 scrutinise 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.

29. No doubt the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial. It was submitted before us on behalf of the State that in case we find that the High Court failed to exercise its jurisdiction the matter should be remanded back to it to consider if the complaint and the evidence on record did not make out any case against the appellants. If, however, we refer to the impugned judgment of the High Court it has come to the conclusion, though without referring to any material on record, that "in the present case it cannot be said

at this stage that the allegations in the complaint are so absurd and inherently improbable on the basis of which no prudent man can ever reach a just conclusion that there exists no sufficient ground for proceedings against the accused". We do not think that the High Court was correct in coming to such a conclusion and in coming to that it has also foreclosed the matter for the Magistrate as well, as the Magistrate will not give any different conclusion on an application filed under Section 245 of the Code. The High Court says that the appellants could very well appear before the court and move an application under Section 245(2) of the Code and that the Magistrate could discharge them if he found the charge to be groundless and at the same time it has itself returned the finding that there are sufficient grounds for proceeding against the appellants. If we now refer to the facts of the case before us it is clear to us that not only that allegation against the appellants do not make out any case for an offence under Section 7 of the Act and also that there is no basis for the complainant to make such allegations. The allegations in the complaint merely show that the appellants have given their brand name to "Residency Foods and Beverages Ltd." for bottling the beverage "Lehar Pepsi". The complaint does not show what is the role of the appellants in the manufacture of the beverage which is said to be adulterated. The only allegation is that the appellants are the manufacturers of bottle. There is no averment as to how the complainant could say so and also if the appellants manufactured the alleged bottle or its contents. His sole information is from A.K. Jain who is impleaded as Accused 3. The preliminary evidence on which the first respondent relied in issuing summons to the appellants also does not show as to how it could be said that the appellants are manufacturers of either the bottle or the beverage or both. There is another aspect of the matter. The Central Government in the exercise of their powers under Section 3 of the Essential Commodities Act, 1955

made the Fruit Products Order, 1955 (for short "the Fruit Order"). It is not disputed that the beverage in question is a "fruit product" within the meaning of clause (2)(b) of the Fruit Order and that for the manufacture thereof certain licence is required. The Fruit Order defines the manufacturer and also sets out as to what the manufacturer is required to do in regard to the packaging, marking and labelling of containers of fruit products. One of such requirements is that when a bottle is used in packing any fruit products, it shall be so sealed that it cannot be opened without destroying the licence number and the special identification mark of the manufacturer to be displayed on the top or neck of the bottle. The licence number of the manufacturer shall also be exhibited prominently on the side label on such bottle [clause (8)(1)(b)]. Admittedly, the name of the first appellant is not mentioned as a manufacturer on the top cap of the bottle. It is not necessary to refer in detail to other requirements of the Fruit Order and the consequences of infringement of the Order and to the penalty to which the manufacturer would be exposed under the provisions of the Essential Commodities Act, 1955. We may, however, note that in Hamdard Dawakhana (Wakf) v. Union of India [AIR 1965 SC 1167 : (1965) 2 SCR 192] an argument was raised that the Fruit Order was invalid because its provision indicated that it was an Order which could have been appropriately issued under the Prevention of Food Adulteration Act, 1954.This Court negatived this plea and said that the Fruit Order was validly issued under the Essential Commodities Act. What we find in the present case is that there was nothing on record to show if the appellants held the licence for the manufacture of the offending beverage and if, as noted above, the first appellant was the manufacturer thereof.

30. It is no comfortable thought for the appellants to be told that they could appear before the court which is at a far off place in Ghazipur in the State of Uttar Pradesh, seek their

> *release on bail and then to either move an application under Section 245(2) of the Code or to face trial when the complaint and the preliminary evidence recorded makes out no case against them. It is certainly one of those cases where there is an abuse of the process of the law and the courts and the High Court should not have shied away in exercising their jurisdiction. Provisions of Articles 226 and 227 of the Constitution and Section 482 of the Code are devised to advance justice and not to frustrate it. In our view the High Court should not have adopted such a rigid approach which certainly has led to miscarriage of justice in the case. Power of judicial review is discretionary but this was a case where the High Court should have exercised it."*

32. In view of the judgment of the Hon'ble Supreme Court in the case of **Pepsi Food Ltd Vs. Special Judicial Magistrate** (supra), I am of the view that the summons have been issued without any application of mind and without following the law laid down by the Hon'ble Supreme Court as the summons have been issued mechanically by a cryptic and non specking order and therefore, the order taking cognizance and issuance of summons dated 12.10.2020 cannot be sustained.

33. In view of the discussions made above, I am of the opinion that the offences as alleged under Section 188 of the IPC and Section 125(3)/125 of the Representation of the People Act, 1951 are not made out and the entire prosecution of the petitioner is held to be illegal.

34. The order taking cognizance 12.10.2020 and the issuance of summons is also hereby quashed.

35. Accordingly, the application stands allowed. Consequently, the cognizance order dated 12.10.2020 passed by the ACJM-I, Katihar in FIR bearing P.S. Barsoi Case No. 93 of 2019 taking cognizance of the offence under Section 188 of the Indian Penal Code read with Sections 123(iii) and 125 of the Representation of the People Act, 1951 and the entire prosecution of the petitioner are hereby quashed.

(Sandeep Kumar, J)

P. Kumar

AFR/NAFR	NAFR
CAV DATE	02.08.2023
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