

(2016) 05 PAT CK 0039

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 304 of 2016

Imamullah

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 24-05-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 195
Environment (Protection) Act, 1986 — Section 15, 19
Penal Code, 1860 (IPC) — Section 188, 290

Citation : (2016) 3 BBCJ 156 : (2016) 4 BLJud 212 : (2016) 3 ECRC 605 :
(2016) 6 FLT 876 : (2016) 3 PLJR 513

Hon'ble Judges : Mr. I.A. Ansari, A.C.J.

Bench : Single Bench

Advocate : Mr. Khurshid Alam and Md. Mushtaque Alam, Advocates, for the Appellant; Mr. Nirbhay Kumar Singh, GP-26, Mr. Manoj Kumar Jha, AC to GP-26 and Mr. Shivendra Kishore, Sr. Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. I.A. Ansari, A.C.J.(Oral)—Heard Mr. Khurshid Alam, learned Counsel, appearing on behalf of the petitioner, and Mr. Manoj Kumar Jha, learned Assistant Counsel to Government Pleader No.26, appearing on behalf of the State-respondents. Heard also Mr. Shivendra Kishore, learned Senior Counsel, appearing on behalf of the respondent No.7.

2. With the help of this writ petition, made under Articles 226 and 227 of the Constitution of India, the petitioner, who, according to his own admission made at para 7 of this writ petition, had been running a Plastic Scrap Factory, situated at Sector-B, New Azimabad Colony, Sandalpur Road, Patna, which falls under Alamganj Police Station, seeks quashing of Alamganj Police Station Case No.48 of 2016, registered under Sections 188/290 of the Indian Penal Code, Noise Pollution (Regulation and Control) Rules, 2000, and Section 15 of the Environment (Protection) Act, 1986, for causing noise pollution.

3. On the basis of an information, given in writing, by one Mathura Baraik, Sub-Electoral Officer-cum-In-Charge Officer, City Control Room, Patna City, alleging to the effect, inter alia, that the petitioner herein had been unauthorisedly running a plastic factory and causing thereby foul smell, the case aforementioned came to be registered, treating the said information as First Information Report,. Having registered the case aforementioned, police has investigated the case and submitted a police report within the meaning of Section 173(2)(i) of the Code of Criminal Procedure. It is also the grievance of the petitioner that police have sealed his factory and he is, therefore, unable to shift the factory even if he wishes to do so.

4. In the writ petition, a counter affidavit has been filed by the respondents indicating therein, inter alia, that by order, dated 23.05.2014, a notice to close the factory, in question, had been issued by the Principal Secretary, Bihar State Pollution Control Board, as far back as on 23.05.2014, but notwithstanding the order to close the factory, the petitioner had been running the factory. By means of rejoinder, which the petitioner has filed, the petitioner has submitted that he was never communicated the order, dated 23.05.2014, which the respondents claim to have been passed.

5. In the present writ petition, we are concerned with the question as to whether the Alamganj Police Station Case No. No.48 of 2016, registered under Sections 188/290 of the Indian Penal Code, and Section 15 of the Environment (Protection) Act, 1986 read with Noise Pollution (Regulation & Control) Rules 2000, need to be quashed or not.

6. There is, no doubt, as has been submitted by Mr. Khurshid Alam, learned Counsel for the petitioner, that Section 188 of the Indian Penal Code is not attracted to the case at hand. It is also pointed out, and correctly so, that Section 290 of the Indian Penal Code is non-cognisable and, therefore, the police had no power to investigate the case.

7. In view of the fact that investigation, having been completed into an offence under Section 290 of the Indian Penal Code, which was non-cognisable, charge sheet has admittedly been submitted against the accused under Sections 290 of the Indian Penal Code, what needs to be made clear is that when police, having investigated a non-cognisable offence, submits police report, it will be treated, in the light of the provisions of Section 190 of the Criminal Procedure Code, as a complaint and it would remain open to the learned Magistrate concerned to take cognizance of appropriate offence(s) if materials disclose commission of such an offence.

8. So far as offence under Section 188 of the Indian Penal Code is concerned, the learned Magistrate shall bear in mind the provisions of Section 195 of the Code of Criminal Procedure, which dis-empowers the Magistrate from taking cognizance of an offence under Section 188 of the Indian Penal Code except on the complaint, in writing, of the public servant concerned or of some other public

servant to whom he is administratively subordinate. In the case at hand, there is, admittedly, no such complaint is made and, therefore, question of taking cognizance of an offence under Section 188 Indian Penal Code does not arise in the present case.

9. Section 15 of the Environment (Protection) Act, 1986, is penal provision and reads thus:

"15. Penalty For Contravention Of The Provisions Of The Act And The Rules, Orders And Directions - (1) Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued thereunder, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.

(2) If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years."

10. Coupled with the above, Section 19 of the Environment (Protection) Act, 1986, deals with the power to take cognizance of the offences, which reads thus:

"19. Cognizance Of Offences - No court shall take cognizance of any offence under this Act except on a complaint made by--

(a) the Central Government or any authority or officer authorised in this behalf by that Government,20 or

(b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid."

11. There was, admittedly, no such complaint made by the public servant concerned, as is warranted by Section 19 of the Environment (Protection) Act, 1986, and, hence, in the case at hand, learned Magistrate could not have taken cognizance of the offence under Section 15 of the Environment (Protection) Act, 1986, read with Noise Pollution (Regulation and Control) Rules, 2000. The impugned order taking cognizance of offence under Section 15 of the Environment (Protection) Act, 1986, is, therefore, set aside.

12. What emerges from the above discussion is that it would be an exercise in futility if the case is remitted to the learned Magistrate to take cognizance of the offence under Section 188 of the Indian Penal Code, when the learned Magistrate, for the reasons indicated above, lacks jurisdiction to take cognizance of the offence under Section 188 of the Indian Penal Code.

13. Thus, the registration of the case aforementioned under Section 188 of the

Indian Penal Code and the police report are hereby set aside to the extent that it deals with the provisions of Section 188 of the Indian Penal Code.

14. The learned Magistrate shall bear in mind the provisions of Section 19 of the Environment (Protection) Act, 1986, which does not allow a Court to take cognizance of any offence under the Environment (Protection) Act, 1986, except on the complaint, in writing, made by the public servant as specified thereunder.

15. So far as the question of removing the seal, which has, admittedly, been put on the factory of the petitioner, it needs to be clarified that it will be for the learned Magistrate to pass appropriate order, in this regard, ensuring that the evidence, relating to causing of nuisance, is not made to disappear.

16. Before parting with this case, it is also made clear that petitioner as well as respondent No.7 shall remain at liberty to take recourse to appropriate provisions of law for redressal of their grievances.

17. With the above observations and directions, this writ petition stands disposed of.