
(2019) 11 PAT CK 0021

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 1199 Of 2019

Md. Jamal Akhtar @ Jamal Akhtar

APPELLANT

Vs

State Of Bihar, Through The Principal Secretary And Ors

RESPONDENT

Date of Decision : 05-11-2019

Acts Referred:

Indian Penal Code, 1860 — Section 188, 353

Code Of Criminal Procedure, 1973 — Section 195(1)(a)

Citation : (2020) 1 PLJR 203

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

Advocate : Bimlesh Kumar Pandey

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner.
2. No body appears either on behalf of the State or on behalf of the North Bihar Power Distribution Company Limited. However, a counter affidavit has already been filed on behalf of the North Bihar Power Distribution Company Limited.
3. This application has been filed by the petitioner for quashing the first information report (for short 'FIR') of Chanpatiya P.S. Case No. 37 of 2019 registered under Sections 353 and 188 of the Indian Penal Code (for short 'IPC').
4. Mr. Bimlesh Kumar Pandey, learned counsel for the petitioner submitted that even if the entire allegations made in the FIR are accepted to be true at their face value, none of the ingredients of the offences punishable under Sections 353 and 188 of the IPC would be attracted against the petitioner. He contended that in absence of any allegation of assault or use of criminal force to any person being a public servant in the execution of his duty as public servant, the ingredients of the offence punishable under Section 353 of the IPC would be completely wanting.

5. He further submitted that in view of the provisions prescribed under Section 195(1)(a) of the Code of Criminal Procedure, the prosecution cannot be launched against any person except on a complaint in writing of the public servant concerned for an offence punishable under Section 188 of the IPC.

6. The FIR of Chanpatiya P.S. Case No. 37 of 2019 has been instituted on 04.02.2019 on the basis of the written report submitted by one Rajiv Kumar Singh, Junior Electrical Engineer (Chanpatiya) to the Officer-in-charge, Chanpatiya Police Station wherein he has stated that an 11 K.V. transmission line of North Bihar Power Distribution Company Limited is running from Chiran-Chowk, Chanpatiya to Pakadihar Rajkiya Nalkup and further upto village Pakdihar, Chanpatiya. In between, the said transmission line there comes Radiant Public School whereby transmission line passes. The above transmission line of 11 K.V. is giving electricity to Pakadihar Rajkiya Nalkup and also to the villagers of the Pakadihar village. The petitioner, who is the Managing Director of Radiant Public School, has constructed the school building in such a way that some portion of the building is coming above the 11 K.V. transmission line, which may cause unprecedented incident any time.

7. On the basis of the aforestated allegations, the FIR was registered under Sections 353 and 188 of the IPC on 04.02.2019 and investigation was taken up.

8. Since the contention of the petitioner is that the ingredients of the offences alleged are not attracted in the present case, it would be necessary to examine the provisions prescribed under Sections 353 and 188 of the IPC, which are set out hereunder :-

"353. Assault or criminal force to deter public servant from discharge of his duty.- Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, 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."

9. From perusal of the provisions prescribed under Section 353 of the IPC, it would be evident that for attracting an offence under the said provision, following requirements must be satisfied :

- (1) There must be assault or use of criminal force;
- (2) Such assault or use of criminal force must have been made on a public servant; and
- (3) The assault must have been on a public servant :-
 - (a) while he was acting in the execution of his duty; or
 - (b) with intent to prevent or deter him from discharging his duty; or
 - (c) in consequence of anything done or attempted to be done by him in the discharge of duty.

10. As far as the case in hand is concerned, there is no allegation against the petitioner that he assaulted or used criminal force against any public servant. In absence of any allegation of assault or use of criminal force on any public servant in execution of his duty as a public servant, it has rightly been contended by the learned counsel for the petitioner that the ingredients of the offence punishable under Section 353 of the IPC would not be attracted.

11. As far as Section 188 of the IPC is concerned, the essential ingredients to attract the offence are as under :-

- (1) There must be an order promulgated by a public servant;
- (2) The public servant must have been lawfully empowered to promulgate such order;
- (3) A person having knowledge of such order and directed by such order (a) to abstain from a certain act, or (b) to take certain order with certain property in his possession or under his management, has disobeyed such direction; and
- (4) Such disobedience causes or tends to cause (i) obstruction, annoyance, or injury, or risk of it, to any person lawfully employed, or (ii) danger to human life, health or safety, (iii) a riot or affray.

12. In the instant case, there is no allegation that there was any order promulgated by any public servant duly empowered to promulgate such order and the petitioner having knowledge of such order or directed by such order to

abstain from certain act or to take certain order with certain property in his possession or under his management has disobeyed such direction. In absence of the aforesaid essential ingredients, the offence under Section 188 of the IPC would also not be attracted against the petitioner.

13. Furthermore, it has rightly been submitted by the learned counsel for the petitioner that in view of the provisions prescribed under Section 195(1)(a) of the Code of Criminal Procedure, the prosecution cannot be launched against any person except on a complaint in writing of the public servant concerned for an offence punishable under Section 188 of the IPC. In that view of the matter also, the FIR in question for an offence under Section 188 of the IPC cannot be sustained.

14. Thus, even if the entire allegations made in the FIR are taken to be true at their face value, none of the ingredients of any cognizable offence would be attracted in the present case.

15. In absence of any cognizable offence, the police would have no authority to register a case and proceed with the investigation.

16. In that view of the matter, the FIR of Chanpatiya P.S. Case No. 37 of 2019 is hereby quashed.

17. The application stands allowed.