IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11247 of 2021

Arising Out of PS. Case No.-198 Year-2016 Thana- MADHAURAH District- Saran

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Kumar Vansh Giri @ Kumar Raghuvansh Giri @ Kumar Vansh @ Harivansh Giri @ Raghuvansh Giri S/O Late Deodhari Giri Resident Of Ward No.13, Saraiya, P.S.- Gopalganj, District- Gopalganj.

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Y.V. Giri, Sr. Adv.
Mr. Vikas Ratan Bharti, Adv.
Mr. Kumar Abhishek, Adv.
Mr. Deepak Kumar, Adv.

For the State : Mr. Ram Priya Sharan Singh, APP

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CORAM: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA

ORAL JUDGMENT

Date : 08-01-2026

Heard Mr. Y.V. Giri, learned senior counsel for the petitioner duly assisted by Mr. Vikas Ratan Bharti and Mr. Ram Priya Sharan Singh, learned APP for the State.

2. At the outset, it is indicated that the stage of the case has not progressed any further after taking of cognizance as has been informed by the learned counsel for the petitioner.

3. The present application has been filed for quashing of the order dated 30.09.2019 passed by the court of the learned ACJM-14 Chapra in Madhaura P.S. Case No. 198 of 2016 in (Trial No. 2892 of 2019) whereby and whereunder the learned Magistrate has been pleased to take cognizance against the

petitioner for offence under Sections 188, 379, 420, 409 read with Section 34 of the Indian Penal Code (hereinafter referred to as the 'IPC').

4. The said order taking cognizance and issuance of summons has been assailed by the learned Senior counsel for the petitioner on both legal and factual grounds. So far as the legal ground of challenge is concerned, it has been submitted by the learned senior counsel that the order impugned suffers from the vice of total non-application of judicial mind inasmuch as, a perusal of the order itself would indicate that it is a routined, patterned and a mechanical order which does not indicate any consideration about the materials leading to finding of a prima facie case against the petitioner, consequence whereupon cognizance has been taken and summons have been issued. For substantiating such submission, the learned senior counsel has referred to the following case laws which have been rendered by coordinate Benches of this Court:-

i. **Dharmesh Prasad Verma Vs. State of Bihar**

(2017 (1) PLJR 401)

ii. **Shambhu Sharan Sharma Vs. State of Bihar & Anr.**

(2023 (1) PLJR 871)

ii. **Birendra Pd. Singh Vs. State of Bihar**

(2023 (2) PLJR 931)

5. The second contention raised by the learned senior counsel relates to the legal bar created by Section 195(1) (a) of the Cr.P.C. to taking of cognizance under Section 188 of the IPC in case of non-adherence to the procedure as contemplated under the statute. It has been emphatically contended that the very taking of cognizance under Section 188 of the IPC is bad in law as the same stands legally barred in view of the fact that the cognizance can be taken under the aforesaid section only upon a complaint in the writing of the public servant concerned or some other public servant to whom he is administratively subordinate, which is not the position in the case in hand as a First Information Report has been instituted on the basis of the self statement of the informant who is a Sub Inspector of Police. In this regard, the learned senior counsel has also made reference to the case of **Vijay Kumar Vs. The State of Bihar and Another** rendered by a co-ordinate Bench of this Court reported in **2025 (1) BLJ 649** wherein it has been clearly laid down that Section 195 of the Cr.P.C. prohibits taking of cognizance under Section 188 IPC except on the written complaint of the public servant. It has also been laid down making reference to other judicial pronouncements that the provisions of Section 195 Cr.P.C. are mandatory and non-application of the same would

vitiate the prosecution and all other consequential orders. Reference has also been made to the case of **Dharmesh Pd. Verma Vs. State of Bihar** reported in **2017 (1) PLJR 401,** wherein also a coordinate Bench of this Court has, in clear and unambiguous terms, laid down that the provision of Section 195 of the Cr.P.C. has been carved out as an exception to the general rule contained under Section 190 of the Cr.P.C. and as such it prohibits the courts from taking cognizance of certain offences until and unless a complaint has been made by some particular authority or person.

6. Besides the abovementioned legal grounds, the argument has also been made on the factual context submitting herein that no offence is made out even upon considering the facts which are on record. For proper adjudication of the factual aspect, short facts of the case is required to be elucidated. The present FIR has been lodged on the basis of the self statement of the SI of police alleging therein that two trucks loaded with sand were intercepted and since there was a total ban upon the excavation and transportation of sand, which comes under mines and minerals, the present FIR was lodged alleging illegal mining of sand and its transportation. The FIR further reveals that the driver of the truck upon inquiry had disclosed the name

of the petitioner to be the owner of one of the trucks which fact was subsequently retracted and during the course of investigation, it has transpired that the driver has not named the present petitioner to be the owner of the truck and has rather taken the name of some other person to be the said owner. After investigation however, charge-sheet was submitted and the impugned order taking cognizance U/s 188, 379, 420, 409/34 was passed mechanically issuing summons against the accused persons including the present petitioner. It is to be noted here that there is no cognizance under the provisions of Mines and Minerals (Development and Regulation) Act, which is the special Act dealing with issues related herein.

7. Learned APP for the State has opposed the present application for quashing of the order impugned on the ground stating that there is no illegality in the said order and a *prima facie* case is made out upon the facts of the case.

8. Upon hearing the rival contentions, this Court is of the view that so far as the legal ground of non-application of mind by the court concerned while taking cognizance of the offence is concerned, the order itself very apparently reflects a mechanical and a routine approach having been passed only on the basis of the fact that a charge-sheet has been submitted and

there is absolutely no consideration of any material upon which the learned Magistrate has found a *prima facie* case to be existing against the present petitioner. It is a settled law that no order taking cognizance can be passed in a standardised format by merely filling up details whether in a typed format or in an order like the present one which is clearly reflective of non-application of mind. One also cannot loose sight of the fact that in a criminal case summoning of an accused has serious consequences and ramifications as laid down in the case of ***Pepsi Foods Ltd. and Anr. vs Special Judicial Magistrate and Ors***., reported in ***(1998) 5 SCC 749***, and 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. Thus, any order which is passed in a routine and a mechanical manner with perfunctory details pointing towards non-application of mind ought not be considered to be legally sustainable.

9. As regards the contention of the learned senior counsel pertaining to the legal bar operating against the cognizance taken under Section 188 IPC, it would be expedient to quote both Section 195(1) (a) of the Cr.P.C. and Section 188 of I.P.C.:-

"**Section188 of IPC**- 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.

Section 195 (1) (a) of the Code of Criminal Procedure, 1973-

(1) No Court shall take cognizance -(a) (i)of any offence punishable under sections 172 to 188 (both inclusive) of the Indian

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> 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;"

10. In view of the above-mentioned provision, it is clear that Section 188 IPC falls within the preview of the bar created by the Cr.P.C. under Section 195(1)(a) and in case an offence is committed under the aforesaid provision, a complaint before the jurisdictional Magistrate ought to be filed in writing. It would not be within the domain of the police to register a case for an offence involving Section 188 of the IPC and investigate the same since such a course is not permissible under law. If such cases upon police report are allowed to continue, that would frustrate the very purpose of Section 195 Cr.P.C., the object of which would be to prevent frivolous cases being filed under the provisions as mentioned under the said provision.

11. After having heard the submissions made by the learned senior counsel, this Court finds force in the contentions having been raised with regard to the fact that the order taking cognizance has been passed mechanically with no application of any judicial mind and secondly the application of Section 188 of the IPC stands barred under the provision of Section 195(1) (a)

of the Cr.P.C. On the above-mentioned grounds, this Court would have remitted the matter back to the jurisdictional Magistrate to consider the case afresh but the factual aspect also needs to be considered and taking into consideration the facts on record, it appears that the offences under the alleged provisions of law are not made out. There is no allegation of any theft having been committed and even in enquiry, no claim of ownership has been made and the offences of cheating etc. is also not made out on the basis of the allegations. There is only a bald allegation of illegal transportation of sand which could be covered under special Act and so far as application of the general provisions of IPC other than Section 188 IPC, being Sections 379, 420 and 409 of the IPC are concerned, the ingredients of these offences are also not made out and as such, the present case would be one covered by clause 1 and clause 6 of the case of State of ***Haryana & Others Vs. Bhajan Lal & Ors.*** reported in **1992 Supp (1) SCC 335** and the said clauses are being quoted hereunder:

> *(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
>
> *(2)……*
>
> *(3) ….*

(4) ……..

(5) …….

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

12. In view of the entire conspectus of the case, submissions made on behalf of the petitioner, consideration of the legal grounds as well as factual aspect and also taking into consideration the law laid down in this regard as stated above, this Court is of the view that the impugned order dated 30.09.2019 passed by learned Additional Chief Judicial Magistrate, XIV, Chapra in Madhaura P.S. Case No.198 of 2016, taking cognizance is not fit to be legally sustained and is thus set aside.

13. Accordingly, the present application stands allowed.

(Soni Shrivastava, J)

devendra/-

AFR/NAFR	AFR
CAV DATE	NA
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