

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. M.P. No. 856 of 2019

Amitabh Choudhary, aged about 58 years, son of Late S.N. Rai Choudhary, resident of C-193, Ashok Nagar, P.O. & P.S.- Argora, District- Ranchi (Jharkhand) **Petitioner**

-Versus-

1. The State of Jharkhand
2. Sahdeo Murmu, son of not known to petitioner, working and posted as Block Animal Husbandry Officer, Angara, P.O. & P.S.- Angara, District- Ranchi (Jharkhand) **Opp. parties**

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner	: Mr. Amit Kumar Das, Advocate
For the State	: Mr. Vishwanath Ray, Advocate

9/25.03.2022

1. Heard Mr. A.K. Das, learned counsel appearing on behalf of the petitioner.
2. Heard Mr. Manoj Kumar alongwith Mr. Vishwanath Ray, learned counsels appearing on behalf of the Opposite Party-State.
3. The petitioner has preferred the present criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure for quashing the entire proceedings in connection with Angara P.S. Case No. 23 of 2014 dated 11.03.2014 corresponding to G.R. Case No. 1449 of 2014 including the order dated 03.09.2014 / 09.05.2014 passed by the learned Judicial Magistrate, Ranchi whereby and whereunder he has been pleased to take cognizance against the petitioner for the offences under Sections 143 and 188 of the Indian Penal Code and Section 126(1)(a) of the Representation of People Act, 1951. The case is said to be pending in the court of learned Judicial Magistrate, 1st Class, Ranchi.
4. Arguments on behalf of the parties were advanced on 10.12.2021, 11.02.2022 and 18.02.2022.

Arguments of the Petitioner

5. Learned counsel for the petitioner submitted that in the present case, cognizance has been taken for the offence under Sections 143 and 188 of the Indian Penal Code and also under Section 126(1)(a) of the Representation of People Act, 1951 on the basis

of a police report.

6. He further submitted that so far as Section 143 of the Indian Penal Code is concerned, the same is punishment for being a member of an unlawful assembly and unlawful assembly has been defined under Section 141 of the Indian Penal Code. Referring to the definition of 'unlawful assembly', the learned counsel submitted that none of the ingredients of unlawful assembly is satisfied in the present case. He submitted that even as per the allegation in the F.I.R., the so-called meeting was convened in the premises of the school.
7. He further submitted that considering the allegations made in the present case, the offence under Section 188 of the Indian Penal Code is also not made out as the basic ingredients of the offence under 188 of the Indian Penal Code are not satisfied.
8. The learned counsel further submitted that as per the provisions Section 195 of Cr.P.C., no court shall take cognizance of offence, unless a complaint petition is filed by the person who is either superior or the person who had issued the prohibitory order. Learned counsel submitted that in the present case, prohibitory order was issued by the S.D.O. and the F.I.R. has been lodged by the Block Animal Husbandry Officer, who was deputed as the Magistrate. He submitted that in view of the aforesaid facts and circumstances of the case, the cognizance could not have been taken under Section 188 IPC.
9. Learned counsel referred to a judgment passed by the Hon'ble Patna High Court reported in **2019 SCC Online Patna 654 (Pashupati Kumar –vs- State of Bihar)** decided on 13th May, 2019 and a judgment passed by the Hon'ble Madras High Court reported in **2019 SCC Online Madras 35292 (Thanuskodi and Another –vs- Inspector of Police and Another)** decided on 18th November, 2019 and further referred to another judgment passed by the Hon'ble Patna High Court reported in **2016 SCC Online Patna 3622 (Dharmesh Prasad Verma –vs- The State of Bihar)**. He submitted that in these cases, it has been clearly held that no cognizance can be taken for the offence under Section 188 of the Indian Penal Code on the basis of police report. He further

submitted that these judgments are based on the judgment passed by the Hon'ble Supreme Court reported in **(2000) 1 SCC 278 (M.S. Ahlawat –vs- State of Haryana and Another) and AIR 1962 SC 1206 (Daulat Ram –vs- State of Punjab).**

10. Learned counsel for the petitioner referred to a judgment passed by the Hon'ble Supreme Court reported in **(2012) 5 SCC 1 (In Re: Ram lila Maidan Incident –Vs- Home Secretary and Others)** Para-320 and submitted that in the present case also, the basic ingredients of the offence under Section 188 of the Indian Penal Code are not made out. He also submitted that in the said judgment, it has also been held that a complaint is required to be filed as provided under Section 195(1)(a) of Cr.P.C. and the complaint is not even maintainable in the absence of allegation of danger to life, health or safety or of riot or affray. He submitted that in the entire case, there is no allegation of any danger to life, health or safety or of any riot or affray.
11. While referring to Section 126(1)(a) of the Representation of People Act, the learned counsel submitted that a counter affidavit has been filed in the present case and at Page-37, it is mentioned that the earliest date of election in Jharkhand was 10th April, 2014 and the present incident relates to Ranchi and the date of election in Ranchi was 17th April, 2014, for which he referred to Page No.13 of the counter affidavit. Learned counsel submitted that the F.I.R. in the present case has been instituted on 11.03.2014 and the alleged date of incident is of 09.03.2014, when the petitioner was alleged to have called a meeting in connection with certain election, but no polling was scheduled within 48 hours of 09.03.2014. Thereafter, he referred to Section 126 of the Representation of People Act and submitted that it clearly prohibits public meeting during prior period of 48 hours fixed for poll. He submitted that considering the aforesaid aspect of the matter, the date of incident is much beyond 48 hours and accordingly, the condition precedent for constituting an offence under Section 126(1)(a) of the Representation of People Act, 1951 was apparently not satisfied and therefore, no case under Section 126(1)(a) of the Representation of People Act, 1951 is also made

out against the petitioner.

12. The learned counsel for the petitioner also submitted that the impugned order taking cognizance reflects non-application of judicial mind, as the same has been passed on a printed format by filling up the blank spaces.

Arguments of the Respondents

13. Learned counsel appearing on behalf of the State, Mr. Manoj Kumar and Mr. Vishwanath Ray, on the other hand, while opposing the prayer submitted that no case for interference is made out at this stage. He submitted that both the Sections i.e., Sections 143 and 188 of the Indian Penal Code are cognizable offences and accordingly, the argument of the petitioner that no court shall take cognizance of offence, unless a complaint is made before the Magistrate is not correct. He submitted that since the offences are cognizable, F.I.R. can also be registered.
14. Learned counsel for the State referred to a judgment passed by the Hon'ble Supreme Court reported in *(1998) 2 SCC 391 (State of Punjab –vs- Raj Singh and Another)* to submit that it has been held that there is no bar in lodging of the F.I.R., but whether the cognizance can be taken without a complaint or not, that is to be seen at the time of taking cognizance.

Rejoinder arguments on behalf of the Petitioner

15. Learned counsel for the petitioner in response submitted that in the present case, the order taking cognizance is under challenge and the cognizance has been taken even under Section 188 of Cr.P.C. without filing a complaint which is in violation of the provisions of Section 195(1)(a) of Cr.P.C..

Findings of this Court

16. The prosecution case is based on a written report dated 11.03.2014 lodged by the Informant namely, Sahdeo Murmu posted as the Block Animal Husbandry Officer, Angara, Ranchi before the Officer-in-charge, Angara P.S., Ranchi alleging *inter-alia* that in compliance of Memo No. 01/Confidential dated 05.03.2014 issued by the Sub-Divisional Officer, Ranchi and in the light of Memo

No.496/Confidential dated 09.03.2014, on 09.03.2014, the Informant was deputed as Magistrate at Village- Angara, Gaitalsud and during this period, Sri Amitabh Choudhary (Petitioner), a representative of Jharkhand Vikas Morcha and the candidate contesting for the Ranchi Parliamentary Constituency, without obtaining any prior permission and in violation of the Model Code of Conduct, after collecting people illegally, convened a political meeting, which was found to be confirmed in course of enquiry. It is further alleged that it was also found that in course of the political meeting, petitioner gave a political speech which constitutes an offence for violation of the Model Code of Conduct. The Informant prayed for registration of case and taking legal action under Section 126(1)(a) of the Representation of People Act, 1951 and Sections 143 and 188 of the Indian Penal Code against the petitioner.

17. On the basis of the written report, the case has been registered as Angara P.S. Case No. 23 of 2014 dated 11.03.2014 under Sections 143 and 188 of the Indian Penal Code and Section 126(1)(a) of the Representation of People Act, 1951 against the petitioner and after completion of investigation, Charge-sheet No.36/2014 dated 19.04.2014 was submitted against the petitioner under the same sections. The learned Judicial Magistrate, Ranchi, vide order dated 03.09.2014 / 09.05.2014, also took cognizance of offence against the petitioner under the same sections.
18. The learned counsel for the petitioner has argued that the order taking cognizance reflects non-application of judicial mind by alleging that the same has been passed on a printed format by filling up the blank spaces. Upon perusal of the order taking cognizance, this court finds that though there are certain insertions / corrections in pen in the order taking cognizance which is a typed order, but it cannot be said that the impugned order taking cognizance has been passed on a printed format by filling up the blank spaces. Further, the order taking cognizance reflects that the learned court below has perused the case diary, the case records and also considered filing of the charge sheet after investigation of

the case instituted on a police report and has taken cognizance of the offence under Sections 143 and 188 of the Indian Penal Code and Section 126(1)(a) of the Representation of People Act, 1951. This Court is of a considered view that the order taking cognizance reflects sufficient application of judicial mind for the purposes of taking cognizance, and a detailed or fully reasoned order is not required to be passed while taking cognizance particularly when cognizance is taken on a police report.

19. The petitioner has further submitted that no case is made out against the petitioner and has prayed for quashing of the entire criminal proceedings including the order taking cognizance dated 03.09.2014 / 09.05.2014 passed by the learned Judicial Magistrate, Ranchi.
20. A Counter Affidavit has been filed on behalf of the Opposite Party No.1-State of Jharkhand opposing the contentions of the petitioner and supporting the allegations made against the petitioner in the F.I.R. annexing photocopy of Letter No.192(ii)/Election, Ranchi, dated 19.03.2020 as Annexure-A containing the Press Note dated 05.03.2014 which was issued for the General Elections, 2014. In the counter affidavit, it has been contended that the Model Code of Conduct had commenced from the date of issuance of the Press Notification. An affidavit has been filed on 02.02.2022 bringing on record a photocopy of Memo No.496/ Confidential, Ranchi dated 09.03.2014 and another affidavit has also been filed on behalf of the State of Jharkhand on 02.02.2022 bringing on record a copy of prohibitory order passed by the Sub Divisional Magistrate, Sadar, Ranchi under section 144 Cr.P.C. as contained in Memo No.01/Confidential, Ranchi dated 05.03.2014.
21. In the Memo dated 05.03.2014, while issuing prohibitory order under section 144 Cr.P.C, reference has been made regarding declaration of election and coming into force of model code of conduct and there being apprehension of violation of law and order on account of rivalry amongst groups, it was ordered that no political meeting etc. can be organised without prior permission.
22. The allegation in the present case is that the petitioner being a candidate in the election had organising political meeting in open

space in the school premises without prior permission and has violated the Model Code of Conduct and violated the aforesaid prohibitory order issued under section 144 Cr.P.C.

23. In the present case, cognizance of the offence under Sections 143 and 188 of the Indian Penal Code and Section 126(1)(a) of the Representation of People Act, 1951 has been taken against the petitioner on the basis of police report dated 11.03.2014 submitted by the Block Animal Husbandry Officer, Angara, Ranchi.

Offence under Section 188 I.P.C.

24. Accordingly, Section 195(1)(a) of Cr.P.C. prohibits a court from taking cognizance of the offence punishable, *inter alia*, under Section 188 of the Indian Penal Code, except on a complaint in writing of the public servant concerned or other public servant to whom he is administratively subordinate. Further, it is not in dispute that offence under Section 188 IPC is a cognizable offence.
25. The Hon'ble Patna High Court in the case of ***Dharmesh Prasad Verma (supra)*** has held that no cognizance can be taken for the offence under Section 188 of the Indian Penal Code on the basis of an F.I.R. culminating into charge-sheet.
26. The same view has been taken by the Hon'ble Patna High Court in the case of ***Pashupati Kumar (supra)*** which is based on the judgments passed by the Hon'ble Supreme Court in the cases of ***M.S. Ahlawat (supra)*** and ***Daulat Ram (supra)***.
27. The Hon'ble Supreme Court, in the case of ***In Re: Ram Lila Maidan Incident (supra)*** at Para-320, has held that a complaint is required to be filed as provided under Section 195(1)(a) of Cr.P.C. and the complaint is not even maintainable in the absence of any allegation of danger to life, health or safety or of riot or affray.
28. This Court finds that in the present case, an F.I.R. has been lodged by the Block Animal Husbandry Officer who was deputed as the Magistrate and apparently, cognizance of the offence under Section 188 of the Indian Penal Code, on the basis of the F.I.R. and the charge-sheet, is not in consonance with the provisions of Section 195(1)(a) of Cr.P.C.

29. Learned counsel for the respondents has relied upon the judgment reported in **(1998) 2 SCC 391 (State of Punjab Vs. Raj Singh and Anr.)** to submit that the offence under Section 188 being cognizable offence, the F.I.R cannot be said to be not maintainable. Upon perusal of the aforesaid judgment, this Court finds that it has been held that from plain reading of Section 195 Cr.P.C., it is manifest that it comes into operation at the stage when the court intends to take cognizance of an offence under Section 190 (1) Cr.P.C and it has nothing to do with the statutory power of the police to investigate into an F.I.R. which discloses a cognizable offence in accordance with Chapter XII of the Code of Criminal Procedure. It has further been held that in other words, statutory power of the police to investigate under the Code is not in any way controlled or circumscribed by Section 195 Cr.P.C and it is of course true that upon the charge sheet, if any, filed on completion of investigation into such an offence, the court would not be competent to take cognizance thereof in view of the embargo of Section 195 of Cr.P.C., but nothing prevents filing a complaint for the offence on the basis of F.I.R. In the said case, the F.I.R was instituted for offence under Sections 419, 420, 467 and 468 of Indian Penal Code for commission of alleged offence in course of proceeding of the Civil suit and therefore it was held by the Hon'ble Supreme Court that there is nothing in Section 195 (1) (b) of Cr.P.C. that deters the court from filing a complaint for the offence based on the F.I.R filed by the aggrieved party and the materials collected during investigation, provided it forms the requisite opinion and follows the procedure laid down under Section 340 Cr.P.C.
30. Considering the ratio of the aforesaid judgement reported in **(1998) 2 SCC 391 (supra)**, this Court is of the considered view that offence under Section 188 of Indian Penal Code being a cognizable offence, the institution of F.I.R and investigation is not barred under law and certainly a complaint by the competent authority can be filed on the basis of F.I.R and the material collected during investigation before competent court. In absence of such a complaint, cognizance cannot be taken in view of the

specific bar under Section 195 Cr.P.C.

31. This Court is of the considered view that there was no bar in institution of F.I.R in the present case, but so far as cognizance of offence under Section 188 Indian Penal Code is concerned, the same having not been taken on a complaint, the order taking cognizance under Section 188 Indian Penal Code cannot be sustained in the eyes of law. However, it is made clear that it will still be open to the competent authority to file a complaint on the basis of the F.I.R and the materials collected during investigation and learned court below shall proceed in accordance with law.

Offence under section 143 I.P.C.

32. The learned counsel for the petitioner has relied upon the judgment reported in *(2012) 5 SCC 1(supra)* and referred to para 320 with reference to offence under Section 188 I.P.C. However, para 319 of the same judgement deals with section 144 Cr.P.C. which is quoted as under:

“319. [Section 144](#) Cr.P.C. deals with immediate prevention and speedy remedy. Therefore, before invoking such a provision, the statutory authority must be satisfied regarding the existence of the circumstances showing the necessity of an immediate action. The sine qua non for an order under [Section 144](#) Cr.P.C. is urgency requiring an immediate and speedy intervention by passing of an order. The order must set out the material facts of the situation. Such a provision can be used only in grave circumstances for maintenance of public peace. The efficacy of the provision is to prevent some harmful occurrence immediately. Therefore, the emergency must be sudden and the consequences sufficiently grave.”

33. In the present case, it is not in dispute that the Lok Sabha election was already declared and the prohibitory order under Section 144 Cr.P.C. prohibiting political meeting etc. without prior permission was issued as a consequence of declaration of Lok Sabha election and implementation of Model Code of Conduct. Neither issuance of prohibitory order under Section 144 Cr.P.C. is disputed nor the wisdom of the concerned authority to issue prohibitory order under Section 144 Cr.P.C. on account of declaration of Lok Sabha election and implementation of model code of conduct is disputed. Thus, there was apprehension of breach of peace and consequent

legally enforceable prohibitory order was issued prior to the date and time of alleged occurrence. This court is of the considered view that legally enforceable prohibitory order issued under Section 144 Cr.P.C. was the law at the time and place of the alleged occurrence.

34. With the aforesaid background, it is to be seen as to –

*whether prima-facie any offence is made **out** under section 143 IPC in view of the allegation of holding political meeting by a candidate of election in the field of a school where public had participated, without prior permission, during existence of a prohibitory order of the aforesaid nature in the aforesaid circumstances?*

35. Section 143 of the Indian Penal Code provides for the punishment for being a member of an unlawful assembly.

36. “Unlawful assembly” has been defined under Section 141 of the Indian Penal Code, which reads as under:

141. Unlawful assembly - An assembly of five or more persons is designated an “unlawful assembly”, if the common object of the persons composing that assembly is—

First.— To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or

Second.—To resist the execution of any law, or of any legal process; or

Third.— To commit any mischief or criminal trespass, or other offence; or

Fourth.—By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth. — By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation. —An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

37. This Court is of the considered view that holding a public political meeting by a candidate of election, after coming into force of Model Code of Conduct followed by issuance of prohibitory order under Section 144 Cr.P.C. of the aforesaid nature, would *prima facie* amount to formation of unlawful assembly where common object of the persons composing that assembly, *prima facie*, would be to act in violation of the prohibitory order issued under Section 144 Cr.P.C.
38. In view of the aforesaid findings, this Court is of the considered view that *prima facie* offence under Section 143 of the Indian Penal Code is made out against the petitioner in the light of the allegations and materials collected during investigation. This Court is also of the considered view that merely because the political meeting was held in the playground of a school, that by itself has no bearing in the matter, particularly when it is alleged that public had participated in the political meeting. Accordingly, order taking cognizance for offence under Section 143 IPC does not call for any interference by this Court under Section 482 Cr.P.C.

Offence under Section 126 of the Representation of People Act, 1951

39. Section 126 of the Representation of People Act, 1951 provides as under:

126. Prohibition of public meetings during period of forty-eight hours ending with hour fixed for conclusion of poll.—

(1) No person shall—

- (a) convene, hold, attend, join or address any public meeting or procession in connection with an election; or
- (b) display to the public any election matter by means of cinematograph, television or other similar apparatus; or
- (c) propagate any election matter to the public by holding, or by arranging the holding of, any musical concert or any theatrical performance or any other entertainment or

amusement with a view to attracting the members of the public thereto,

in any polling area during the period of forty-eight hours ending with the hour fixed for the conclusion of the poll for any election in that polling area.

(2) Any person who contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(3) In this section, the expression “election matter” means any matter intended or calculated to influence or affect the result of election.

40. Section 126(1)(a) of the Representation of People Act, 1951 prohibits convening, holding, attending, joining or addressing any public meeting or procession in connection with an election in any polling area during the period of 48 hours ending with the hour fixed for the conclusion of the poll for any election in that polling area.

41. This Court finds that in the present case, certain unimpeachable and undisputed facts and documents have been brought on record by the opposite parties by filing a counter affidavit. As per Page No.13 of the counter affidavit dated 24.06.2020, the date of election in Ranchi was 17th April, 2014 and the date of incident as per FIR is 09.03.2014 and the F.I.R. has been instituted on 11.03.2014. Accordingly, no polling was scheduled within 48 hours of 09.03.2014 at Ranchi. As the date of incident was much beyond 48 hours from the date of the election, this Court is of the considered view that the condition precedent for constituting an offence under Section 126(1)(a) of the Representation of People Act, 1951 is not satisfied and accordingly, the basic ingredients of the offence under Section 126(1)(a) of the Representation of People Act, 1951 are not satisfied against the petitioner.

42. Accordingly, this Court is of the considered view that, *ex-facie*, offence under Section 126(1)(a) of the Representation of People Act, 1951 is not at all made out against the petitioner and consequently, the order taking cognizance so far it relates to offence under Section 126 of the Representation of People Act, 1951, is set-aside to the aforesaid extent.

43. Accordingly, the impugned order taking cognizance dated 03.09.2014 / 09.05.2014 passed by the learned Judicial Magistrate, Ranchi arising out of Angara P.S. Case No. 23 of 2014 dated 11.03.2014 corresponding to G.R. Case No. 1449 of 2014 is set aside to the extent it relates to offence under Section 126 of the Representation of People Act, 1951 and offence under Section 188 IPC. Since cognizance under section 188 IPC has been set-aside on technical grounds, the concerned authorities may proceed in accordance with law as already indicated above. As a result, the present criminal miscellaneous petition is partly allowed.
44. So far as the offence under section 143 of IPC is concerned, the impugned order taking cognizance does not call for any interference and accordingly, the learned court below is directed to proceed with the matter expeditiously.
45. It is made clear that dismissal of this petition with regards to offence under Section 143 IPC and any observation made in this order will not prejudice the case of the respective parties before the learned court below in any manner.
46. Pending interlocutory application, if any, is closed.
47. The office is directed to communicate this order to the court below through 'FAX/e-mail'.

(Anubha Rawat Choudhary, J.)