

**Sanjay Kumar Vs. the State of Bihar**

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**Court :** Patna

**Decided On :** Jul-13-2007

**Judge :** Ghanshyam Prasad, J.

**Acts :** Prevention of Damage of Public Property Act, 1984 - Sections 2, 3, 3(1) and 3(2); Code of Criminal Procedure (CrPC) - Sections 482; Indian Penal Code (IPC) - Sections 425

**Appeal No. :** Cr. Misc. No. 13355 of 2007

**Appellant :** Sanjay Kumar

**Respondent :** The State of Bihar

**Disposition :** Application allowed

**Judgement :**

**Ghanshyam Prasad, J.**

1. This application under Section 482 Cr.P.C. has been filed to quash the order of cognizance dated 13.6.2005 passed by C.J.M., Patna in Kotwali P.S. Case No. 436 of 2002 thereby cognizance under Section 3 of prevention of Damage of Public Property Act, 1984 has been taken against this petitioner and others.

2. Heard the learned Counsel for the petitioner as well as the learned Counsel for the State.

3. It appears from the fardbevan that on 9.12.2002, the informant Executive Magistrate was directed to remove illegal display of posters etc. on electrical pole in between Lalit Bhawan to Dank Bunglow Chouraha. Accordingly, he inspected the area and seized Banner and Poster displayed on electric poles. Several Posters and Banners were found displayed on electric pole by NIIT, Swift Jyoti. This petitioner is a Director of NIIT.

4. It is submitted on behalf of the learned Counsel that prosecution of the petitioner under the above provision of Prevention of Damage of Public Property Act, 1984 is misuse of process of the court. No case is made out under Section 3 of the said Act of 1984, No mischief was committed nor any damage was done to any public property, it is further submitted that this petitioner was not responsible for display of Banner and Poster as it was entrusted to local advertising agency. The advertising agency was responsible for display of Banners and Posters and not this petitioner who is a Director of the NIIT.

5. Considered the submission of the learned Counsel for the petitioner and also perused the relevant section of the prevention of Damage of Public Property Act, 1984. Section 3(1) of the Act runs as follows:

3. Mischief causing damage to Public property. - (1) Whoever commits mischief by doing any act in respect of any public property, other than public property of the nature referred to in Sub-section (2), shall be punished with imprisonment for a term which may extend to five years and with fine.

6. Mischief has been defined in Section 2 of the Act says that mischief shall have same meaning as in Section 425 of the I.P.C. Section 425 I.P.C. runs as follows:

425. Mischief.- Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits 'mischief'.

7. According to definition of mischief, the main ingredient of the mischief is that there must be intent to cause wrongful loss and damage to the property and with that intent destruction and damage should be caused resulting in the diminishing of value or utility of the property. Therefore simply, displaying Banners and Posters on public property without causing any destruction or damaging or diminishing value of the property does not fall within the definition of ' mischief'.

8. So far the allegation against the petitioner is concerned, it is quite clear from the facts that it is only with regard to displaying Banners and Posters on electric pole. Nothing has been mentioned in the F.I.R. to show that any damage and destruction was caused to the electric pole. Thus, apparently, no ingredient of Section 3 of the Prevention of Damage of Public Property Act, 1984 is attracted in this case.

9. Thus, having regard to the facts and circumstances of the case as well as the law, it is quite clear that the prosecution of the petitioner is out and out misuse of process of the court, Accordingly, this application is allowed and the impugned order of cognizance is hereby quashed.

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