

indrashan Thakur and anr Vs. State of Bihar and anr

indrashan Thakur and anr Vs. State of Bihar and anr

SooperKanoon Citation : sooperkanoon.com/974515

Court : Patna

Decided On : May-12-2012

Appellant : indrashan Thakur and anr

Respondent : State of Bihar and anr

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Criminal Revision No.10 o

1. Indrashan Thakur S/O Sri Nawajadik Thakur R/O Village- Diya Parmeshwar, P.O.- Diyaman, P.S.- Krishnabraham, District- Buxar 2. Ramjee Thakur S/O Sri Indrashan Thakur R/O Village- Diya Parmeshwar, P.O.- Diyaman, P.S.- Krishnabraham, District - Buxar Versus 1. The State of Bihar 2. Dharamraj Thakur S/O Chatoo Thakur R/O Village- Diya Parmeshwar, P.S.- Diyaman, P.S.- Krishna Braham, District- Buxar ----- For the Petitioner: - Shree Kant Pandey, Advocate. For the State: - M. Rab, A.P.P. ----- 3. 12.01.2012 Heard learned counsel for the petitioners and Mr. Matlub Rab, learned A.P.P for the State. The present application is for setting aside the order dated 7.10.2009 passed in Cr. Appeal No. 56/06 by the Additional District & Sessions Judge, F.T.C. No. Vth, Buxar by which the appeal has been dismissed and the order dated 16.10.2006 passed in case no. 8 (O)/M, corresponding to Tr. No. 789/06 by the Judicial Magistrate 1st Class, Buxar has been upheld. The brief facts of the case are that prohibitory order under Section 144 of the Code of Criminal Procedure had been promulgated by the Sub- Divisional Officer, Dumraon. The parties were noticed and appeared on 13.3.2004 but it is alleged in

the 2 complaint filed before the Chief Judicial Magistrate, Dumraon, Buxar that on 20.3.2004 the petitioners violated the prohibitory order. The complaint was filed for action under Section 188 of the Indian Penal Code against the petitioners for such violation. Learned counsel submits that the original order passed by the Judicial Magistrate, 1st Class, Buxar dated 16.10.2006 is not sustainable in the eyes of law for the reasons that it is admitted fact that notices were not served upon the petitioners. It is further submitted that the complaint nowhere discloses as to how the alleged violation caused or tendered to cause obstruction, annoyance or injury of any person lawfully employed. For this proposition learned counsel places reliance on the decision of this Court rendered in the case of Gajendra Ojha @ Gajendra Nath Ojha & Ors. Vs. State of Bihar & Ors. reported in 2003 (4) PLJR 646 He submits that four ingredients are required for constituting an offence under Section 188 of the Indian Penal Code and in the absence of any the same cannot be sustained. One of the same is that such disobedience should cause or tend to cause any obstruction or annoyance to any person lawfully employed. He submits that upon consideration of the entire facts and circumstances of this case and in view 3 of the requirements of law, such conviction of the petitioners under Section 188 of the Indian Penal Code by order dated 16.10.2006 of the Judicial Magistrate, 1st Class, Buxar is untenable. Learned counsel further submits that the appellate order passed in Cr. Appeal No. 56/06 dated 7.10.2009 by the Additional District & Sessions Judge, F.T.C. No. Vth, Buxar is also not sustainable for the same reason since it has not considered the points raised by the petitioners or the law applicable. Learned A.P.P. on the other hand submits that the petitioners deliberately avoided receiving notice and thus they cannot take the plea of the order having been passed behind their back in their absence. He also submits that despite prohibitory orders the petitioners erected their boundary and thus the violation is established and this Court may not interfere in the order of conviction. Considering the entire facts and circumstances of the case and taking into account the requirements of the law, especially as propounded in the case of Gajendra Ojha (Supra) this Court feels that the ingredients constituting offence under Section 188 of the Indian Penal Code are not satisfied from the complaint of the Magistrate filed before the Court 4 concerned. In the result, the application is allowed and the order dated 16.10.2006 passed by the Judicial Magistrate, 1st

Class, Buxar in Case No. 8 (O)/04 corresponding to Tr. No. 789/06 as well as the appellate order dated 7.10.2009 passed in Cr. Appeal No. 56/06 by the Additional District & Sessions Judge, F.T.C. No. Vth , Buxar are quashed. (Ahsanuddin Amanullah, J.) Anand Kr.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com