IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17279 of 2023

Arising Out of PS. Case No.-129 Year-2018 Thana- NARPATGANJ District- Araria

==========

Nityanand Roy @ Nityanand Rai Son Of Late Ganga Vishnu Rai R/O Vill.- Karanpura, P.S.- Ganga Bridge (Hajipur), Distt.- Vaishali.

... ... Petitione

Versus

The State of Bihar

... ... Opposite Party

==========

Appearance :
For the Petitioner/s : Mr.Naresh Dikshit, Advocate
Mr.Brij Bihari Tiwary, Advocate
For the Opposite Party/s : Mr.Jharkhandi Upadhyay, A.P.P.

==========

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
C.A.V. JUDGMENT

Date : 17-06-2025

Heard Mr. Naresh Dikshit, learned counsel appearing on behalf of the petitioner and Mr. Jharkhandi Upadhyay, learned A.P.P. for the State.

2. The present petition is being preferred under section 482 of the Code of Criminal Procedure (in short, the 'Cr.P.C.') for setting aside the order dated 13.04.2022 passed in Narpatganj P.S. Case No. 129 of 2018, G.R. No. 653 of 2018 by learned Chief Judicial Magistrate, Araria, whereby and whereunder the learned Magistrate took cognizance for the offences under section 153 of the Indian Penal Code (in short, the 'I.P.C.') and section 125 of the Representation of People Act (hereinafter referred to as the

"R.P. Act") and issued summon against the petitioner.

3. The brief case of the prosecution as it appears from the written information of Circle Officer, Narpatganj, District - Araria, that on 09.03.2018, while addressing a meeting in the campus of the High School, Narpatganj, the petitioner, who was at that point of time president of Bhartiya Janata Party, Bihar (in short the 'BJP'), gave provoking public speech which was in violation of the Model Code of Conduct. It is further alleged that petitioner gave hatred speech against the RJD candidate namely, Md. Sarfaraz Alam to the extent that if Md. Sarfaraz Alam wins the election in that case Araria will become the centre of ISIS.

4. On the basis of the aforesaid written information, police registered Narpatganj P.S. Case No. 129 of 2018 against the petitioner for the offences under section 153A of the IPC and section 125 of the R.P. Act and submitted a charge-sheet, accordingly, on the basis of available materials, learned jurisdictional Magistrate took cognizance for the offences punishable under section 153 of the I.P.C. and 125 of the R.P. Act.

5. Mr. Naresh Dikshit, learned counsel appearing on behalf of the petitioner submitted that the petitioner, at the relevant point in time, was the BJP State President, and presently he is the Minister of State for Home Affairs, Government of India, implicated falsely with the present case out of oblique and ulterior political motive.

6. It is submitted by Mr. Dikshit that written information itself suggests that no name of any religion or community was taken by the petitioner. No illegal act was done by this petitioner also as to constitute the offence under section 153 of the I.P.C. It is submitted that the complaint was not made by the RJD candidate directly rather in connivance with Circle Officer, the present case was lodged against the petitioner. It is submitted that ISIS is a militant group and is not connected with any particular religion.

7. It is further submitted by learned counsel that cognizance is barred by the provision of limitation also.

8. It is submitted that in view of the allegation, no *prima-facie* case is made out, and, therefore, the impugned order of cognizance dated 13.04.2022, is fit to be set-

aside/quashed by importing the legal ratio as available through **State of Haryana and Ors. Vs. Bhajan Lal and Ors [(1992) Supp (1) SCC 335].**

9. Mr. Dikshit, also relied upon the legal report of this Hon'ble Court as available through **Navjot Singh Sidhu Vs. State of Bihar** reported in **2023 SCC OnLine Pat 6186.**

10. Mr. Jharkhandi Upadhyay, learned A.P.P. for the State despite of giving several opportunities since 22.03.2023 through different orders of this Court, failed to file a counter affidavit and, therefore, the matter was heard on the basis of materials available on the record in terms of order dated 25.07.2023, and also in terms of order dated 09.05.2025 of this Court.

11. At the outset, it would be relevant to reproduce the written information dated 10.03.2018 and cognizance order dated 13.04.2022, which read as under for ready reference:

"कार्यालय अंचल अधिकारी नरपतगंज, अररिया, 13797
पत्रांक 355 / दिनांक 10.03.18

प्रेषक,
अंचल अधिकारी
नरपतगंज अररिया।

सेवा में,
थानाध्यक्ष,
नरपतगंज थाना।

विषयः– श्री नित्यानंद राय, प्रदेश अध्यक्ष (भारतीय जनता पार्टी) के द्वारा आर्दश आचार संहिता के उल्लंघन किये जाने के कारण प्राथमिकी दर्ज करने के संबंध में।

महाशय,

उपर्युक्त विषय के संबंध में सुचित करते हुए कहना है कि कल दिनांक 09.03.18 को उच्च विद्यालय, नरपतगंज परिसर में विधिवत एक खिड़की कोषांग, अररिया से सभा आयोजन करने हेतु अनुमति प्राप्त कर श्री उमानंद राय के द्वारा सभा का आयोजन किया गया था। सभा के दौरान श्री नित्यानन्द राय, प्रदेश अध्यक्ष (भा0ज0पा0) के द्वारा आपत्तिजनक एवं धार्मिक भावनाओं को आहत करने संबंधी भड़काउ भाषण दिया गया, जो स्पष्टया आर्दश आचार संहिता का उल्लंघन है। उनके द्वारा दिये गये भाषण के दौरान राजद प्रत्याशी मो0 सरफराज आलम का नाम लेते हुए कहा गया है कि अगर वो जीत गया तो अररिया आई.एस.आई.एस का अड्डा बन जाएगा।

अतः अनुरोध है कि सुसंगत धाराओं के अन्तर्गत प्राथमिकी दर्ज की जाय।

अनुलग्नकः C.D की कापी संलग्न।

विश्वासभाजन

ह0/–
अंचल अधिकारी
नरपतगंज, अररिया।
निशांत कुमार उम्र 31 वर्ष
s/o स्व0 परशुराम सिंह
ग्राम–बिरोबिगहा
पो0– सिकन्दरपुर
थाना–शकुराबाद
जिला–जहानाबाद

Registered Narpatganj P.S Case No.129/18 dt 10-03-18 u/s 153 'A' IPC & 125 Representation of People Act 1951.
ASI Sifait Yadav will please investigate this case.
Sunil Kumar
10.03.18
SHO
Narpatganj P.S

Cognizance order dated 13.04.2022

IN THE COURT OF C.J.M., ARARIA
Narpatganj P.S. Case No. 129/2018
G.R. No. 653/2018
State Vs. Nityanand Roy

13.04.2022:

Record was put up today in which I.O. has already submitted charge sheet no. 574/2021 dated 31.10.2021 against the accused persons namely, Nityanand Roy for the offences punishable u/s 153 of the I.P.C. & 125 R.P. Act.

Heard the Ld. D.P.O. on the point of cognizance.

Perused the case diary as well as material available on the record i.e. reports etc. on perusal of the case diary along with relevant documents, I find that there is sufficient material available on the record, which compels the court to draw inference that prima-facie case is made out against the accused namely, Nityanand Roy. Considering the material available on the record.

Accordingly, congizance for the offences u/s 153 of the I.P.C. & 125 R.P. Act is taken against the accused shown in column no. 11 of the charge sheet. The case record is

transferred to the special court of M.P./M.L.A. (A.C.J.M.-1), Araria for trial and disposal in accordance with law. Put up on 04.07.2022 for Appearance. O/c directed to issue Sumon against the above-mentioned accused person.

(Dictated)
Sd/-
C.J.M.

12. It would be apposite to reproduce the provision of section 153 of the I.P.C. and Section 125 of the R.P. Act, 1951, also for ready reference:

"153. Wantonly giving provocation with intent to cause riot—if rioting be committed—if not committed. —Whoever malignantly, or wantonly, by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

Section 125 of the R.P. Act, 1951

125. Promoting enmity between classes in connection with election.— Any person who in connection with an election under this Act promotes or attempts to promote on grounds of religion, race, caste, community or language, feelings of enmity or hatred, between different classes of the citizens of India shall he punishable, with imprisonment for a term which may extend to three years, or with fine, or with both.]

[125A. Penalty for filing false affidavit, etc.—A candidate who himself or through his proposer, with intent to be elected in an election,—

(i) fails to furnish information relating to sub-section (1) of section 33A; or

(ii) give false information which he knows or has reason to believe to be false; or

(iii) conceals any information,

> in his nomination paper delivered under sub-section (1) of section 33 or in his affidavit which is required to be delivered under sub-section (2) of section 33A, as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.]"

13. At the outset, it would be relevant to understand the meaning of word 'Malignantly' & 'Wantonly' as incorporated in section 153 of I.P.C. In a reported matter **Kahanji (1893) 18 Bom 758, 775,** it was held by the court that the word 'Malignantly' implies a sort of general malice. 'Malignantly' and 'Maliciously' both are synonymous to each other. 'Malice' is not, as in ordinary speech, implies only an expression of hatred or ill-will to an individual, rather it means an unlawful act done intentionally without just cause or excuse as it was held in **Bromage V. Prosser [(1825) 4B & C 247].** The word 'Malignant' bear some more values to the extent constituting the act having nature of extreme malevolence or enmity something violently hostile or harmful.

14. The word 'Wantonly' as per 10th Edition of *Black's Law Dictionary* implies reckless, heedless, malicious, characterized by extreme recklessness or foolhardiness; recklessly disregardful of the rights or safety of others or of

consequences. In its ordinarily accepted sense connotes perverseness exhibited by deliberate and uncalled for conduct, recklessness, disregardful of rights and an unjustifiable course of action. Wanton acts and omissions imply those acts and omissions done in such a manner or under such circumstances as to indicate that a person of ordinary intelligence actuated by normal and natural concern for the welfare and safety of his fellowmen who might be affected by them could not be guilty of them unless wholly indifferent to their probable injurious effect or consequences.

15. This High Court, while dealing the matter of ***Kori Vs. State [AIR 1952 Pat 138]*** held that if the act is not illegal however Wanton, however undesirable, however deplorable the act may have been, there could be no offence committed under section 153. Citing example, it was said by this Court that if there is no provision under law which could make the killing of a cow an offence, it is impossible to hold the act of person in killing of cow in the open is an illegal act, although it may have been Wanton and one which was deplorable.

16. Thus, from the aforesaid discussed proposition of law, it can be straightway gathered that to make offence under this section, there must be an illegal act.

17. Now coming to the case in hand, it appears from the written information that the petitioner alleged to express through his public speech that if the candidate of RJD namely, Md. Sarfaraz Alam will win the election, it would amount to make “Araria” as a base of ISIS. The written information nowhere discloses that any hatred speech was given in the name of religion, caste etc. The ISIS no doubt is a militant outfit having no connection with any religion. There is no harm to any religious sentiment to any particular community. Admittedly, no illegal act was done by the petitioner. Mere showing an apprehension that in case the candidate of a particular party will win the election may create the base of ISIS (a militant outfit) in Araria, district of Bihar, cannot be said that the speech was Malignant in nature or was wantonly in terms of its dictionary meanings as discussed aforesaid.

18. From the written information, which is the basis of FIR, it appears that speech of petitioner has not been made to

promote or attempting to promote the ground of religion, caste or community or language feeling of enmity or hatred between the parties. The written information and cognizance order both are silent on these issues making the impugned cognizance order non-speaking to the extent that petitioner be summoned to join criminal trial.

19. In this context, it would be relevant to reproduce paras 28, 29 & 30 of **Pepsi Food Ltd. Vs. Special Judicial Magistrate [(1998) 5 SCC 749],** which reads as under:

> "**28.** Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. 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. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.
>
> **29.** No doubt the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the

proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial. It was submitted before us on behalf of the State that in case we find that the High Court failed to exercise its jurisdiction the matter should be remanded back to it to consider if the complaint and the evidence on record did not make out any case against the appellants. If, however, we refer to the impugned judgment of the High Court it has come to the conclusion, though without referring to any material on record, that "in the present case it cannot be said at this stage that the allegations in the complaint are so absurd and inherently improbable on the basis of which no prudent man can ever reach a just conclusion that there exists no sufficient ground for proceedings against the accused". We do not think that the High Court was correct in coming to such a conclusion and in coming to that it has also foreclosed the matter for the Magistrate as well, as the Magistrate will not give any different conclusion on an application filed under Section 245 of the Code. The High Court says that the appellants could very well appear before the court and move an application under Section 245(2) of the Code and that the Magistrate could discharge them if he found the charge to be groundless and at the same time it has itself returned the finding that there are sufficient grounds for proceeding against the appellants. If we now refer to the facts of the case before us it is clear to us that not only that allegation against the appellants do not make out any case for an offence under Section 7 of the Act and also that there is no basis for the complainant to make such allegations. The allegations in the complaint merely show that the appellants have given their brand name to "Residency Foods and Beverages Ltd." for bottling the beverage "Lehar Pepsi". The complaint does not show what is the role of the appellants in the manufacture of the beverage which is said to be adulterated. The only allegation is that the appellants are the manufacturers of bottle. There is no averment as to how the complainant could say so and also if the appellants manufactured the alleged bottle or its contents. His sole information is from A.K. Jain who is impleaded as Accused 3. The preliminary evidence on which the first respondent relied in issuing summons to the appellants also does not show as to how it could be said that the appellants are manufacturers of either the bottle or the beverage or both. There is another

aspect of the matter. The Central Government in the exercise of their powers under Section 3 of the Essential Commodities Act, 1955 made the Fruit Products Order, 1955 (for short "the Fruit Order"). It is not disputed that the beverage in question is a "fruit product" within the meaning of clause (2)(b) of the Fruit Order and that for the manufacture thereof certain licence is required. The Fruit Order defines the manufacturer and also sets out as to what the manufacturer is required to do in regard to the packaging, marking and labelling of containers of fruit products. One of such requirements is that when a bottle is used in packing any fruit products, it shall be so sealed that it cannot be opened without destroying the licence number and the special identification mark of the manufacturer to be displayed on the top or neck of the bottle. The licence number of the manufacturer shall also be exhibited prominently on the side label on such bottle [clause (8)(1)(b)]. Admittedly, the name of the first appellant is not mentioned as a manufacturer on the top cap of the bottle. It is not necessary to refer in detail to other requirements of the Fruit Order and the consequences of infringement of the Order and to the penalty to which the manufacturer would be exposed under the provisions of the Essential Commodities Act, 1955. We may, however, note that in Hamdard Dawakhana (Wakf) v. Union of India [AIR 1965 SC 1167 : (1965) 2 SCR 192] an argument was raised that the Fruit Order was invalid because its provision indicated that it was an Order which could have been appropriately issued under the Prevention of Food Adulteration Act, 1954.This Court negatived this plea and said that the Fruit Order was validly issued under the Essential Commodities Act. What we find in the present case is that there was nothing on record to show if the appellants held the licence for the manufacture of the offending beverage and if, as noted above, the first appellant was the manufacturer thereof.

30. It is no comfortable thought for the appellants to be told that they could appear before the court which is at a far off place in Ghazipur in the State of Uttar Pradesh, seek their release on bail and then to either move an application under Section 245(2) of the Code or to face trial when the complaint and the preliminary evidence recorded makes out no case against them. It is certainly one of those cases where there is an abuse of the process of the law and the

courts and the High Court should not have shied away in exercising their jurisdiction. Provisions of Articles 226 and 227 of the Constitution and Section 482 of the Code are devised to advance justice and not to frustrate it. In our view the High Court should not have adopted such a rigid approach which certainly has led to miscarriage of justice in the case. Power of judicial review is discretionary but this was a case where the High Court should have exercised it."

20. It would also be apposite to reproduce para 102 of **Bhajan Lal case (supra),** which reads as under:

"**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable

> offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
> (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
> (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (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 Act concerned, providing efficacious redress for the grievance of the aggrieved party.
> (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.''

21. Taking note of the aforesaid factual and legal discussion and on the basis of materials available on record, it can be safely said that the written information, which is the basis of Narpatganj P.S. Case No. 129/2018, *prima-facie* does not constitute any offence, further, the impugned order of cognizance, which is under challenge, does not appear to speak as to suggest how a *prima-facie* case is made out under sections 153 of the I.P.C. and 125 of the R.P. Act against the petitioner. It seems that same was drawn mechanically.

22. Accordingly, the impugned order dated 13.04.2022 as passed by learned Chief Judicial Magistrate,

Araria in connection with Narpatganj P.S. Case No. 129 of 2018, G.R. No. 653 of 2018, *qua* petitioner is hereby quashed/set-aside with all its consequential proceedings, if any.

23. This application stands allowed.

24. Let a copy of this judgment be sent to the court concerned immediately for necessary compliance.

(Chandra Shekhar Jha, J)

Rajeev/-

AFR/NAFR	**AFR**
CAV DATE	**13.05.2025**
Uploading Date	**17.06.2025**
Transmission Date	**17.06.2025**