IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.3659 of 2019

In

CRIMINAL MISCELLANEOUS No.4117 of 2018

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In Re, Suo Motu Cognisance by a Special Bench of 11 Judges arising out of Order Dated 28/08/2019 passed in Criminal Miscellaneous No. 4117/2018 by a learned Single Judge.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Home Affairs, New Delhi.
2. The State of Bihar through Director General, Vigilance Bureau, Circular Road, Patna.
3. Karrah Parshu Ramaiah @ K.P. Ramaiya, I.A.S. (Rtd.) S/o Nariah Karrah, R/o B-3/55, Opposite Sanjay Gandhi Botanical Garden, Bailey Road, P.S.- Shastri Nagar, District-Patna

... ... Opposite Party/s

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with

Letters Patent Appeal No. 1101 of 2019

In

CRIMINAL MISCELLANEOUS No.4117 of 2018

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Karra Parasuramaiah, Son of Late Karra Naraiah Resident of 1-1-31/168, Lane-7, Kapra Saket Colony, Rangareddy, Ecil, Hyderabad, Andhra Pradesh-500062

... ... Appellant/s

Versus

The State of Bihar through Director General, Vigilance Bureau, Circular Road, Patna

... ... Respondent/s

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Appearance :

(In Miscellaneous Jurisdiction Case No. 3659 of 2019)

For the Petitioner/s :

For the Opposite Party/s :

(In Letters Patent Appeal No. 1101 of 2019)

For the Appellant/s : Mr. Y.V. Giri, Sr. Advocate
Mr. Sumit Kumar Jha, Advocate
Ms. Shrishti Singh, Advocate

For the Respondents : Mr. Lalit Kishore, Advocate General
Mr. S.D. Sanjay, Addl.S.G.

For the Vigilance : Mr.Anjani Kumar (L.O.I/C Vig.)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 02-09-2019

A question of seminal importance of jurisdiction of a learned Single Judge of this Court and the exercise of power by him in the background of a controversy relating to the passing of an order after summoning the file from the office on oral instructions which had long been disposed of on 23rd of March, 2018, was brought to the fore and an 11 Judges Bench had to be constituted by the Chief Justice wherein the entire

facts giving rise to the controversy was narrated in detail and the order of the learned Single Judge dated 28th of August, 2019 passed in Cr. Misc. No. 4117 of 2018 was put under suspension with certain directions. The 11 Judges' Bench in the operative part of the order also directed the matter to be placed before the Chief Justice on the administrative side for further appropriate action. The 11 Judges' Bench may have thought it proper to entertain the matter apprehending an institutional crisis as was once experienced in the matter of Special Reference No. 1 of 1964, reported in AIR 1965 Supreme Court 745 looking to the nature and the contents of the order of the learned Single Judge dated 28.08.2019 that raised an issue of jurisdiction to the forefront.

2. Upon deliberations, the Chief Justice in his discretion thought it appropriate that this issue of jurisdiction alone could be dealt with by a numerically lesser strength of Judges forming a Full Bench and accordingly reconstituted the present three Judges Bench vide order dated 1st September, 2019 to hear this matter and deliver orders accordingly. This is how the present three Judges Bench had been constituted to dispose of the said matter for which we have assembled today.

3. We have heard Shri Y.V. Giri, learned senior

counsel in support of L.P.A. No. 1101 of 2019. The learned Advocate General, State of Bihar has appeared and has supported the maintainability of the appeal to the limited extent against the order dated 28th August, 2019. Shri Anjani Kumar, learned Additional Advocate General and learned counsel for the Vigilance Department has also been heard. Shri S.D. Sanjay, learned Additional Solicitor General of India has also addressed the Court and all of them have unanimously submitted that the order of the learned Single Judge is unsustainable. No one has appeared or has canvassed in support of the order dated 28.08.2019 despite the matter being listed in Court where the proceedings were conducted in the open hearing of every counsel and a request made by the Court on that behalf.

4. At the very outset, it may also be put on record that another appeal captioned as a Letters Patent Appeal No. 1101 of 2019 under Clause 10 of the Patna High Court Rules has been preferred by one of the affected parties questioning the correctness of the order of the learned Single Judge dated 28.08.2019 on various issues of jurisdiction, violation of principles of natural justice as well as on other issues of merit involving fact and law. On a request by the learned senior counsel Sri Y.V. Giri, the said matter has also been placed before

the Bench under orders of the Hon'ble Chief Justice to be disposed of simultaneously.

5. We are of the considered opinion, as expressed in the order passed by the 11 Judges' Bench, the powers conferred under the Letters Patent of the Patna High Court Rules amply authorizes in law the hearing of this matter to correct an error arising out of an order that suffered from not only patent lack of authority but also patent lack of jurisdiction. We are further now justified and fortified in proceeding with the matter upon the filing of an appeal by one of the directly affected parties in the case in which the learned Single Judge has issued the sweeping directions. The observations and directions contained in the order are not an exercise of authority under the criminal jurisdiction of this Court but are in the nature of a mandamus and declaration as if the power was being wielded under Article 226 of the Constitution. We, therefore, find ourselves competent to entertain this matter for all the reasons stated in the order by the 11 Judges' Bench as well as the reasons recorded in this order.

6. The order dated 28th August, 2019 passed by the learned Single Judge *suo motu* announces revealing facts after summoning the file from the office on his oral instructions as

recorded by him in the order itself that overlooks the elementary principles of exercise of jurisdiction and exercise of judicial power both. The first principle that one acquires through knowledge and then through experience, and is elementary for every Judge is to know and determine is his own jurisdiction. This basic requirement to be possessed of legal power flows from the ordinary meaning of the word "jurisdiction" which means the authority or power to administer law and justice under a lawful sanction, in the present case by a Judge of the High Court under the Constitution of India. The Judge can exercise a power which is conferred on the High Court and, therefore, a Judge cannot assume an authority over and above which the High Court is not empowered with under the Constitution. The jurisdiction of High Courts and its prerogative to issue certain writs are all contained in Article 225 and 226 of the Constitution of India with the power of superintendence under Article 227 of the Constitution of India.

7. The administration of justice in the High Court and the respective powers of the Judges is categorically provided for in Article 225, which is extracted hereinunder:

> "**225. Jurisdiction of existing High Courts.-** Subject to the provisions of this Constitution and to the provisions of any law of

> the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution:
>
> Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction."

8. The said provision also empowers the High Court to frame rules of Court and to regulate the sittings of the Court and the members thereof either alone or in Division. The deliberation on this issue is no longer *res integra* and has been laid threadbare in a large number of decisions of the Apex Court and the various Courts throughout the country. The law covering

the field has been dealt with very recently in the case of **Kamini Jaiswal Vs. Union of India**, reported in **(2018) 1 SCC 156,** but the case closer to the present controversy, for the purpose of understanding the fundamental principles of the authority to exercise jurisdiction by a Judge of the High Court, was more succinctly dealt with in the case of **State of Rajasthan Vs. Prakash Chand and others,** reported in **(1998) 1 SCC 1**, Paragraphs 56 to 64, which are extracted hereinunder:

> "56. We, therefore, unhesitatingly come to the firm conclusion that the observations, comments, insinuations and allegations made by Shethna, J. in the matter of drawal of full daily allowance by the former Chief justices of Rajasthan High Court including the present Chief Justice of India, Mr. Justice J.S. Verma, who used to stay in Bungalow No. A/2 at Jaipur without payment of rent, are not sustainable both in law and on facts. The allegations have been made irresponsibly and recklessly. There is no question of any "misappropriation" of "public funds" by any former Chief Justice of the High Court of Rajasthan in the established facts of the case. Strong expressions have been used against the Head of the Indian Judicial Family without any factual matrix and legal justification. We express our serious disapproval of the manner in which

the learned Single Judge has done so as it does no credit to the office that he holds.

57. Whereas we concede that a Judge has the inherent power to act freely upon his own conviction on any matter coming before him, but it is a principle of the highest importance to the proper administration of justice that the Judge must exercise his powers within the bounds of law and should not use intemperate language or pass derogatory remarks against other judicial functionaries, unless it is absolutely essential for the decision of the case and is backed by factual accuracy and legal provisions.

58. It is educative to quote the views of Benjiman cardazo, the great Jurist in the behalf:

> "The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in the social life.'

It must be remembered that it is the duty of every member of the legal fraternity to ensure that the image of the judiciary is not tarnished and its respectability eroded. The manner in which proceedings were taken by the learned Judge in relation to the writ petition disposed of by a Division Bench exposes a total lack of respect for judicial discipline. Judicial authoritarianism is what the proceedings in the instant case smack of. It cannot be permitted under any guise. Judges must be circumspect and self-disciplined in the discharge of their judicial functions. The virtue of humility in the Judges and a constant awareness that investment of power in them is meant for use in public interest and to uphold the majesty of rule of law, would to a large extent ensure self-restraint in discharge of all judicial functions and preserve the independence of judiciary. It needs no emphasis to say that all actions of a Judge must be judicious in character. Erosion of credibility of the judiciary, in the public mind, for whatever reasons, is the greatest threat to the independence of the judiciary. Eternal vigilance by the Judges to guard against any such latent internal danger is, therefore, necessary, lest we "suffer form self inflicted mortal wounds". We must remember that the Constitution does not give unlimited powers to anyone including the Judge of all levels. The societal perception of Judges as being

detached and impartial referees is the greatest strength of the judiciary and every member of the judiciary must ensure that this perception does not receive a setback consciously or unconsciously. Authenticity of the judicial process rests on public confidence and public confidence rests on legitimacy of judicial process. Sources of legitimacy are in the impersonal application by the Judge of recognised objective principles which owe their existence to a system as distinguished from subjective moods, predilections, emotions and prejudices. It is most unfortunate that the order under appeal founders on this touchstone and is wholly unsustainable.

59. From the preceding discussion the following broad CONCLUSIONS emerge. This, of course, is not to be treated as a summary of our judgment and the conclusion should be read with the text of the judgment:

(1) That the administrative control of the High Court vests in the Chief Justice alone. On the judicial side, however, he is only the first amongst the equals.

(2) That the Chief Justice is the master of the roster. He *alone* has the prerogative to constitute benches of the court and allocate cases to the benches so constituted.

(3) That the puisne Judges can only do that work as is allotted to them by the Chief Justice or under his directions.

(4) That till any determination made by the Chief Justice lasts, no Judge who is to sit singly can sit in a Division Bench and no Division Bench can be split up by the Judges constituting the bench themselves and one or both the Judges constituting such bench sit singly and take up any other kind of judicial business not otherwise assigned to them by or under the directions of the Chief Justice.

(5) That the Chief Justice can take cognizance of an application laid before him under Rule 55 (supra) and refer a case to the larger bench for its disposal and he can exercise this jurisdiction even in relation to a part-heard case.

(6) That the puisne judges cannot "pick and choose" any case pending in the High Court and assign the same to himself or themselves for disposal without appropriate orders of the Chief Justice.

(7) That no Judge or judges

can give directions to the Registry for listing any case before him or them which runs counter to the directions given by the Chief Justice.

(8) That Shethna, J. had no authority or jurisdiction to send for the record of the disposed of writ petition and make comments on the manner of transfer of the writ petition to the Division Bench or on the merits of that writ petition.

(9) That all comments, observations and findings recorded by the learned Judge in relation to the disposed of writ petition were not only unjustified and unwarranted but also without jurisdiction and make the Judge *coram-non judice*.

(10) That the "allegations" and "comments" made by the learned Judge against the Chief Justice of the High Court, the Advocate of the petitioner in the writ petition and the learned Judges constituting the Division Bench which disposed of Writ Petition No. 2949 of 1996 were uncalled for, baseless and without any legal sanction.

(11) That the observations of the learned Judge against the former

Chief Justices of the High Court of Rajasthan to the effect that they had “illegally" drawn full daily allowance while sitting at Jaipur to which they were not entitled, is factually incorrect, procedurally untenable and legally unsustainable.

(12) That the "finding" recorded by the learned Judge against the present Chief Justice of India, Mr. Justice J.S. Verma, that till his elevation to the Supreme Court, he had, as Chief Justice of the Rajasthan High Court, "illegally" drawn a daily allowance of Rs. 250 while sitting at Jaipur and had thereby committed "criminal misappropriation of public funds" lacks procedural propriety, factual accuracy and legal authenticity. The finding is wholly incorrect and legally unsound and makes the motive of the author not above personal pique so wholly taking away dignity of the judicial process.

(13) that the disparaging and derogatory comments made in most intemperate language in the order under appeal do not credit to the high office of a High Court Judge.

(14) That the direction of

Shethna, J. to issue notice to the Chief Justice of the High Court to show cause why contempt proceedings be not initiated against him, for transferring a part-heard writ petition from his Bench to the Division Bench for disposal, is not only subversive of judicial discipline and illegal but is also wholly misconceived and without jurisdiction.

60. We, therefore, hold that all observations, comments, insinuations, allegations and orders made by the learned Judge in connection with and relating to the disposed of Writ Petition No. 2949 of 1996 in the impugned order, are illegal, misconceived and without jurisdiction. The same are quashed and are hereby directed to be expunged from the record.

61. The direction to issue show-cause notice to the Chief Justice of the High Court-Respondent 2, being wholly unwarranted, unjustified and legally unsustainable is hereby quashed and set aside.

62. Nothing said hereinabove shall however be construed as any expression of opinion of the pending criminal revision petition field by respondent 1 which has been admitted to hearing and in which respondent 1 has been granted bail. That criminal revision petition shall be decided by the High Court on its own merits.

63. Before parting with this Judgment, we wish to say that we hope there shall not be any other occasion for us to deal with such a case.

64. The appeal therefore succeeds and is allowed."

9. In the instant case, we find that apart from the lack of authority to adjudicate or pronounce was also coupled with the complete lack of administrative authority in the Judge to have summoned the file orally, not for mere perusal, which usually Judges do, but for clearly intending to proceed to deliver a judicial order which could not have been done in the absence of any application pending, any request made by any aggrieved party to the litigation or by any administrative direction of the Chief Justice. Thus, this was a case not only of jurisdictional incompetence but also of complete lack of administrative authority in summoning the file and issuing directions far beyond the competence of the learned Judge. It is this issue which has been highlighted in the case of **Prakash Chand** (supra) and then we are again fortified in our view as enunciated by **HWR Wade & C.F. Forsyth** in their classic work of Administrative Law where they have opined that such an order which has the consequence of a precedent, so as to enable the

benefit of it to others, has the impact of operating *erga omnes* i.e. for and against anyone concerned. The learned authors have, therefore, said that a judgment which is a nullity has its direct impact on third parties as well and if the 'brand of invalidity' is plainly visible then it is absolutely necessary to undertake proceedings to remove the cause of invalidity as it would have the effect of an ostensible purpose for which it has been passed. We find that the said principle was applied by the Apex Court in a matter arising out of a contract in the case of **Sultan Sadik Vs. Sanjay Raj Subba and Ors.**, reported in **A.I.R. 2004 SC 1377**.

10. As observed above, in criminal jurisprudence this elementary principle, which has escaped the notice of the learned Single Judge, stands prominently pronounced by the Supreme Court in the case of **State of Punjab Vs. Davinder Pal Singh Bhullar and others,** reported in **(2011) 14 SCC 770** where the power was exercised by learned Judge of the Punjab & Haryana High Court under Section 482 Cr.P.C. for a colateral goal and the Bench while referring to the case of **Prakash Chand** (supra) referred a large number of decisions and opined as follows on the jurisdiction of the Bench in Paragraphs 65 to 70:

"65. The court is "not to yield to spasmodic sentiments, to vague and unregulated

benevolence". The court "is to exercise discretion informed by tradition, methodised by analogy, disciplined by system". This Court in State of Rajasthan v. Prakash Chand & Ors., AIR 1998 SC 1344 observed as under:

> "58…… Judicial authoritarianism is what the proceedings in the instant case smack of. It cannot be permitted under any guise. Judges must be circumspect and self-disciplined in the discharge of their judicial functions.....It needs no emphasis to say that all actions of a Judge must be judicious in character. Erosion of credibility of the judiciary, in the public mind, for whatever reasons, is the greatest threat to the independence of the judiciary. Eternal vigilance by the Judges to guard against any such latent internal danger is, therefore, necessary, lest we 'suffer from self-inflicted mortal wounds'. We must remember that the Constitution does not give unlimited powers to anyone including the Judge of all levels. The societal perception of Judges as being detached and impartial referees is the greatest strength of the judiciary and every member of the judiciary must ensure

that this perception does not receive a setback consciously or unconsciously. Authenticity of the judicial process rests on public confidence and public confidence rests on legitimacy of judicial process. Sources of legitimacy are in the impersonal application by the Judge of recognised objective principles which owe their existence to a system as distinguished from subjective moods, predilections, emotions and prejudices. It is most unfortunate that the order under appeal founders on this touchstone and is wholly unsustainable".

66. This Court in State of U.P. & Ors. v. Neeraj Chaubey & Ors., (2010) 10 SCC 320, had taken note of various judgments of this Court including State of Maharashtra v. Narayan Shamrao Puranik, AIR1982 SC 1198; Inder Mani v. Matheshwari Prasad, (1996) 6 SCC 587; Prakash Chand (Supra) (1998) 1 SCC 1; R. Rathinam v. State, (2002) 2 SCC391; and Jasbir Singh v. State of Punjab, (2006) 8 SCC 294, and came to the conclusion that the Chief Justice is the master of roster. The Chief Justice has full power, authority and jurisdiction in the matter of allocation of business of the High Court which flows not only from the provisions contained in

sub-section (3) of Section 51 of the States Reorganisation Act, 1956, but inheres in him in the very nature of things. The Chief Justice enjoys a special status and he alone can assign work to a Judge sitting alone and to the Judges sitting in a Division Bench or a Full Bench. He has jurisdiction to decide which case will be heard by which Bench.

67. The Court in Neeraj Chaubey case (2010) 10 SCC 320 held that: (SCC pp. 322-23, para 9)

> "9…....a Judge or a Bench of Judges can assume jurisdiction in a case pending in the High Court only if the case is allotted to him or them by the Chief Justice. Strict adherence of this procedure is essential for maintaining judicial discipline and proper functioning of the Court. No departure from this procedure is permissible."

68. In Prakash Chand [(1998) 1 SCC 1] this Court dealt with a case wherein the Chief Justice of the Rajasthan High Court had withdrawn a part-heard matter from one Bench and directed it to be listed before another Bench. However, the earlier Bench still made certain observations. While dealing with the issue, this Court held that it was the exclusive prerogative

of the Chief Justice to withdraw even a part-heard matter from one Bench and to assign it to any other Bench. Therefore, the observations made by the Bench subsequent to withdrawal of the case from that Bench and disposal of the same by another Bench were not only unjustified and unwarranted but also *without jurisdiction* and made the Judge *coram non judice*. It is a settled legal proposition that no Judge or a Bench of Judges assumes jurisdiction unless the case is allotted to him or them under the orders of the Chief Justice.

69. It has rightly been pointed out by the Full Bench of the Allahabad High Court in Sanjay Kumar Srivastava v. Chief Justice, 1996 All WC 644, that if the Judges were free to choose their jurisdiction or any choice was given to them to do whatever case they would like to hear and decide, the machinery of the court could have collapsed and judicial functioning of the court could have ceased by generation of internal strife on account of hankering for a particular jurisdiction or a particular case.

70. In view of the above, the legal regime, in this respect emerges to the effect that the Bench gets jurisdiction from the assignment made by the Chief Justice and the Judge cannot choose as to which matter he should entertain and he cannot entertain a petition in respect of which jurisdiction has not been assigned to him

> by the Chief Justice as the order passed by the court may be without jurisdiction and make the Judge *coram non judice*."

11. The said authority is also a useful reminder of exercise of inherent powers assumed under Section 482 Cr.P.C. and the limitations prescribed in support thereof. The Apex Court went on to trace the doctrine of rule of inherent powers and after citing certain decisions in reference to the context opined in Paragraphs 61 and 62 extracted hereinunder:-

> "61. To inhere means that it forms a necessary part and belongs as an attribute in the nature of things. The High Court under Section 482 Cr.P.C. is crowned with a statutory power to exercise control over the administration of justice in criminal proceedings within its territorial jurisdiction. This is to ensure that proceedings undertaken under the Cr.P.C. are executed to secure the ends of justice. For this, the legislature has empowered the High Court with an inherent authority which is repository under the Statute. The legislature therefore clearly intended the existence of such power in the High Court to control proceedings initiated under Cr.P.C. Conferment of such inherent power might be necessary to prevent the miscarriage of justice and to prevent any form of injustice. However, it

> is to be understood that it is neither divine nor limitless. It is not to generate unnecessary indulgence. The power is to protect the system of justice from being polluted during the administration of justice under the Code.
>
> 62. The High Court can intervene where it finds the abuse of the process of any court which means, that wherever an attempt to secure something by abusing the process is located, the same can be rectified by invoking such power. There has to be a nexus and a direct co-relation to any existing proceeding, not foreclosed by any other form under the Code, to the subject-matter for which such power is to be exercised."

12. The facts of the case, even though have been detailed in the order of the 11 Judges' Bench, may be reiterated to the extent involving jurisdiction.

13. An anticipatory application was filed by the respondent K.P. Ramaiah under Section 438 Cr.P.C. The same was rejected by the learned Single Judge (Hon'ble Justice Rakesh Kumar) on 23.3.2018. There was no application pending nor any request made either by the State or by any aggrieved party in the said case, whatsoever. The said bail applicant had not appeared before the Court which he is stated to have been

avoiding and these facts were noticed by a learned Single Judge of this Court while deciding a writ petition in a land dispute arising out of an order of the Land Tribunal of which respondent K.P. Ramaiah was a member. It was his order which was under challenge in the said writ petition. The learned Single Judge, apart from the merits of the said writ, noticed the aforesaid criminal case pending against Mr. Ramaiya and issued directions for his appearance. Mr. Ramaiah assailed the said order by way of two appeals before this Court being L.P.A. No.438 and 439 of 2019 contending that the learned Single Judge had travelled beyond his jurisdiction in issuing such directions. However, the Division Bench that was presided over by the Chief Justice, on the peculiar facts of the said case, entertained the same, but, at the same time, had to issue warrants for his production whereafter he surrendered before the Court and was granted regular bail. It may also be put on record that Mr. Ramaiah had approached the Apex Court in this matter where he did not get any relief. All these facts are noticed that it was the High Court through the learned Single Judge and the Division Bench referred to above that compelled the production and surrender of Mr. Ramaiya which was long after the rejection of his anticipatory bail in March, 2018. The learned Single

Judge in his order dated 28th August, 2019 surprisingly does not mention any of these facts and rather assumed a jurisdiction on the suspicion of the manner in which regular bail had been granted by the court below which, of course, may be a matter of administrative enquiry, but it certainly did not give rise to any cause of action or jurisdiction to be assumed by the learned Single Judge after summoning the file from the record room which had been finally disposed in 2018. The order of the learned Single Judge does not refer to any provision of law muchless the Criminal Procedure Code or the High Court Rules under which he could assume this authority. It is obvious because the learned Single Judge himself has stated that normally he does not pass any such order.

14. Apart from this, the entire order nowhere speaks of any notice having been issued or any party having been heard. This, therefore, is a clear case of violation of principles of natural justice engrained in Article 14 of the Constitution of India which is yet another reason for us to interfere with the order.

15. It is this complete lack of competence of the summoning of the file and the assumption of jurisdiction that led to the assemblage of the 11 Judges' Bench which, of course,

took notice of the wide and sweeping nature of observations made by the learned Single Judge which we may not reiterate and are already stated in the order of the 11 Judges' Bench dated 29.8.2019.

16. We have stated the minimal facts only to understand that the power exercised by the learned Single Judge completely omits to consider as to the scope of a Jurisdiction Rule which raises a test of validity and has been extensively dealt with by a renowned author Ammon Rubinstein in his work "Jurisdiction and Illegality-- A Study of Public Law" (published by Oxford at the Clarendon Press). The learned Author opens Chapter-7 as follows:

VII

JURISDICTION AS A TEST OF VALIDITY

SCOPE OF THE JURISDICTION RULE

"THE criterion of jurisdiction as an exclusive test of validity has a dual meaning:

(a) acts done outside the jurisdictional limits are null and void;

(b) acts done within the jurisdictional limits are valid though, possibly, voidable."

17. The learned Author in the said work has drawn distinctions between the nature of the authority which is

exercised, namely, judicial, quasi judicial, administrative, ministerial, policing, whistle-blowing and all discretions. What we can gather from the said learned work is that the area of freedom of expression and the liberty to err is prescribed. The author has very emphasizingly quoted the illuminating speech of Lord Atkinson in Everett v. Griffths, 1921 (1) Appeal Cases Page 631. The same is extracted hereinunder:

> "In his exhaustive and illuminating speech in Everett v. Griffths Lord Atkinson said : 'Whether a proceeding is a judicial proceeding .... depends much more on what is authorized to be done by the named authority: what is done, and the effect of the act upon the rights and interests of others. The test of validity depends, therefore, on the power to make a decision which affects the rights and liabilities of certain individuals....."

18. Applying the said principles on the facts of the present case, there can be no two opinion that the order dated 23rd March, 2018 passed by the learned Single Judge had become final and conclusive closing the curtain on any further authority to be exercised in that regard by the learned Single Judge.

19. We may also gainfully refer to the celebrated Author H.M. Seervai who, in his scholarly work "Constitutional

Law of India" speaks about "jurisdiction" as follows:

> "What is the "jurisdiction" of a Court ? Sometimes "judicial power" and "jurisdiction" are spoken of interchangeably, but this is not correct, because judicial power is at any time exercised by all the Courts, though none of the Courts possess all the jurisdiction for the exercise of judicial power. Thus our Sup. Ct. has jurisdiction in writ matters, but limited only to the enforcement of fundamental rights. Again, its original jurisdiction is limited by the provisions of Art. 131. Similarly, the High Courts have no jurisdiction to try suits which are exclusively triable by the Sup. Ct. Under Art. 131. But the jurisdiction exercised by a Court involves the exercise of judicial power. Judicial power has been defined as :
>
> > "the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects, whether the rights relate to life, liberty or property. The exercise of this power does not begin until some tribunal which has power to give a binding and authoritative decision (whether subject to appeal or not) is called upon to take action."
>
> And jurisdiction has been defined to mean
>
> > "..... the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means."

20. The judgements that have been extracted hereinabove, have referred to famous American Judges like

Justice Benjamin N. Cardozo and Justice Felix Frankfurter. In yet another matter, where sweeping adverse marks had been made, the same was described and dealt with in paragraphs 12 to 15 by the Supreme Court in the case of A.M. Mathur Vs. Pramod Kumar Gupta, AIR 1990 SC 1737, paragraph 12 to 15:

> 12. It is true that the judges are flesh and blood mortals with individual personalities and with normal human traits. Still what remains essential in judging, Justice Felix Frankfurter said:
>
> "First and foremost, humility and an understanding of the range of the problems and (one's) own inadequacy in dealing with them, disinterestedness and allegiance to nothing except the effort to find (that) pass through precedent, through policy, through history, through (one's) own gifts of insights to the best judgement that a poor fallible creature can arrive at in that most difficult of all tasks, the adjudication between man and man, between man and state, through reason called laws."
>
> 3 The judiciary and Constitutional Politics Views from the Bench by Mark W. Cannon and David M.O. 's Brien p. 2.
>
> 13. Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be a constant theme of our judges. This quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary. Judicial restraint in this regard might better be called

judicial respect; that is, respect by the judiciary. Respect to those who come before the Court as well to other co-ordinate branches of the State, the Executive and Legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the judge has failed in these qualities, it will be neither good for the judge nor for the judicial process.

14. The Judges Bench is a seat of power. Not only do judges have power to make binding decisions, their decisions legitimate the use of power by other officials. The Judges have the absolute and unchallengeable control of the Court domain. But they cannot misuse their authority by intemperate comments, undignified banter or scathing criticism of counsel, parties or witnesses. We concede that the Court has the inherent power to act freely upon its own conviction on any matter coming before it for adjudication, but it is a general principle of the highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct. (See (i) R.K. Lakshmanan v. A.K. Srinivasan, (1976) 1 SCR 204: (AIR 1975 SC 1741); (ii) Niranjan Patnaik v. Sashibhushan Kar, (1986) 2 SCR 569 at p 576: (AIR 1986 SC 819 at p 824).”

15. Learned Judge having held that the High Court has no jurisdiction to entertain the review petition ought not to have commented on the professional conduct of the appellant and that too

> without an opportunity for him. We regret to note that the observations made and aspersions cast on the professional conduct of the appellant are not only without jurisdiction, but also they are wholly and utterly unjustified and unwarranted.
>
> 16. We, therefore, allow the appeal and expunge all the remarks made by B.M. Lal, J. against the appellant in the impugned order."

21. A perusal of these basic principles having been laid down by our peers also indicates that a wrong order requires setting aside if it has travelled beyond the objective boundaries and has far reaching consequences in setting a trend which no law recognizes. We are aware that this sparseness of such examples hardly come up as a controversy, but the passing of such an order has the inherent danger of creating uncertainty and a feeling that all things can be set right on the exercise of authority by a Judge even though he may not have a legal power to do so. We may only observe that there are regrettable limits and compulsory restraints that control jurisdiction. The jurisdiction to summon a file and then to pass strictures, comments and issuing administrative directions were all totally outside the scope of the authority of the learned Judge as indicated in the impugned order dated 28th August, 2019. The order is absolutely unsustainable on any count as it suffers from

a dual incompetence of exercise of administrative as well as judicial authority. While exercising jurisdiction, it should be kept in mind that the freedom of expression and the legal authority to express and adjudicate are entirely different concepts, the consequences whereof at times result in irreparable damage to the institution.

22. Having heard Sri Y.V. Giri, learned senior counsel in the connected L.P.A., we find that the rights of the Respondent No. 3 were affected and, therefore, he has the right to question the power of such judicial review on the ground of want of jurisdiction. Shri Giri has invited the attention of the Court to the observations made by a Division Bench in L.P.A. No. 1043 of 2017 arising out of Criminal Miscellaneous No. 22924 of 2016 Co-ordination Committee of Three Association of Lawyers of Patna High Court & Anr. Vs. The State of Bihar & Anr. where in Paragraph 15 it has been held that a Letters Patent Appeal would be maintainable even if the directions have been issued in a Criminal Miscellaneous Application. Paragraph 15 of the said order is extracted hereinunder:

> "15. Having considered the aforesaid judgments and the issue raised in the present appeal, we are of the clear opinion that the nature of the jurisdiction exercised by

the learned Single Judge by issuing the impugned directions, even though is in a bail matter pertaining to the criminal jurisdiction of this Court, yet the nature of the directions issued are in exercise of the jurisdiction by way of a mandamus which partakes the character of a writ under Article 226 of the Constitution of India for regulating the maintenance of the Advocate-on-Record Rules and to take appropriate steps as directed in the judgment so long as the Rules of the High Court are not amended providing for the same. The direction, therefore, issued in the impugned order does not anywhere relate to the merits of the case of the bail applications where a fraud had been detected and where the learned Single Judge has exercised his discretion in recalling an earlier order passed in a bail mater, but at the same time, after having done so, the learned Single Judge has proceeded to take up the issue which concerns the general maintenance of the rolls of the Advocates-on-Record in the High Court in order to check on the identity of advocates who are practising in the High Court. This was not the issue in the original case which was essentially a bail matter. The consequences of a lawyer having manipulated records or having given an incorrect statement could be examined in the bail

application itself and the same would be a matter concerning the merits of that bail application, but any further direction for maintaining the advocates on rolls cannot be treated to be within the jurisdiction of the Court in the exercise of powers under Section 438 or 439 of Cr.P.C. while hearing a bail application. This part of the exercise undertaken by the learned Single Judge is, therefore, severable, inasmuch as these are general directions for ensuing the identity of all advocates who are regularly practising in the High Court and regulating the same as per the directions contained therein which includes the filing of affidavits by advocates in the month of March annually before the Registrar. This direction, therefore, does not form the essential nature of the dispute of the bail application and is an exercise for ensuring the regulation of the practice of advocates in the High Court in general. We find this part of the order to be an attempt made by the learned Single Judge in order to streamline and also prevent any such mishap in future. We, therefore, find this part of the direction to be amenable to appeal, inasmuch as, firstly, the directions have been issued without impleading any lawyer representative or issuing any notice in this regard in general either to the State Bar Council or to any of the

> bar Associations of the High Court. The directions were issued without the participation of the forum of lawyers that were likely to be affected by the issuance of such directions. In effect, it was a suo motu exercise by the learned Single Judge having come to the conclusion that the measures and steps were essential in the interest of the institution."

23. Shri Giri has also invited the attention of the Court to a Division Bench judgment of the Patna High Court in the case of **Damodar Singh & Ors. Vs. The State of Bihar & Ors.**, reported in 1998 (2) PLJR 68. He has also referred to the judgment in the case of **Midnapore Peoples' Coop. Bank Ltd. and Others. Vs. Chunilal Nanda and Others,** reported in **(2006) 5 SCC 399**.

24. Shri Anjani Kumar, learned senior counsel and learned Additional Advocate General as well as the counsel for the Vigilance Department has invited the attention of the Court to Section 362 Cr.P.C. to contend that the learned Single Judge could not have exercised any such *suo motu* jurisdiction in a criminal matter.

25. The order of the learned Single Judge is definitely one of judicial and administrative overreach and,

therefore, the appeal deserves to be allowed.

26. We would say nothing further, but we direct the Registrar General to circulate this judgement amongst all Judges as well as to all concerned, particularly court masters of every court, who will be under a bounden duty to inform the Hon'ble Judge of the manner in which a file can be summoned for adjudication, excluding files being summoned for perusal, only under the authority of the roster as assigned by the Chief Justice and not otherwise. The order dated 28th August, 2019 is a complete nullity and is declared to be *coram non judice* and the same, for all the reasons aforesaid, is hereby quashed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

(Anil Kumar Upadhyay, J)

P.K.P./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	02.09.2019
Transmission Date	