

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.3659 of 2019

In
CRIMINAL MISCELLANEOUS No.4117 of 2018

=====

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

... .. Petitioner/s

Versus

The Union of India

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s :

For the Opposite Party/s :

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE VIKASH JAIN

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE BIRENDRA KUMAR

and

HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

and

HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL ORDER

2 29-08-2019

This *suo motu* Bench has been constituted after taking judicial notice of the print and social media publications of the content of an order dated 28th of August, 2019 passed in Cr. Misc. No.4117 of 2018 by a learned Single Judge after having got it listed as per his oral directions under the heading



“To Be Mentioned” on 28th of August, 2019.

The Chief Justice on the administrative side upon having noticed the circulation of the news on the internet and social media had on the basis of information received and concerns expressed by fellow members of the Bench had issued the following notice:-

Notice

All the matters pending before Hon'ble Mr. Justice Rakesh Kumar, sitting singly including tied up/part heard or otherwise stand withdrawn with immediate effect.

The Registrar (List) will implement this order forthwith subject to further orders with regard to formation of Bench.

The Registrar (List) will inform as to how and in what manner Cr. Misc. No.4117 of 2018 that had been disposed of finally earlier was listed today at Sl. No.1 under the heading “To Be Mentioned-Tied Up” before Hon'ble Mr. Justice Rakesh Kumar.

The concerned Court Master of the court concerned will submit his explanation to me as to under whose



direction was the case listed in the cause list and as to whether any information was given to the Registrar (List) or not.

**By order of the Hon'ble
the Chief Justice**

**Patna High Court,
The 28th August, 2019**

We had commenced the hearing at 10:30 A.M. when after half an hour we were informed that the order has been uploaded on the High Court website from the office of the Hon'ble Judge. We accordingly, summoned the file of Cr. Misc. No. 4117 of 2018 that has been placed before us.

The Court Master concerned Mr. Braj Bhushan Kumar was summoned by us in person, who has stated in writing upon an explanation called upon from him on the administrative side, which is to the following effect, and was transcribed by him during the proceedings of the Court before this Bench. The same is extracted hereinunder:-

“To

Hon'ble The Chief Justice
Patna High Court, Patna

Sub: Regarding explanation dated 28/8/19 in the last page of todays list dt 29/8/19

Lordship,

It is humbly and with folded hand submitted to your lordship that it is directed to be list Cr. Misc 4117/2018 on 28/8/19 before Hon'ble Mr.



Justice Rakesh Kumar in tied-up Matters sitting singly. As per his lordship direction, I send a slip to list section for its listing.

This is for your kind consideration with folded hand.

Your's faithfully
Braj Bhushan Kumar
A.S.O.
29.08.2019."

He has also handed over a photostat copy of the Bench slip said to have been issued by him and was reportedly sent to the Listing Department through Mr. Sumit Kumar, Peon, and was entertained in the Listing Department either by Mr. Binod Kumar or Mr. Satya Prakash, who are in-charge of listing of such matters on directions given by Court Masters on the instructions of an Hon'ble Judge. The Court Master also stated that the Hon'ble Judge had summoned the file for perusal a couple of days ago and had studied the same. It is, therefore, evident that the preparation appears to have commenced a couple of days prior to the passing of the order.

There is no written order nor any application nor any proceeding on the strength whereof the said listing was directed, and as is evident from the opening paragraph of the order dated 28th of August, 2019, the aforesaid statement made by the concerned Court Master stands confirmed that the entire exercise of getting the case listed before the learned



Judge was on his oral directions, without there being any proceeding pending in this regard in the case concerned which had been finally disposed off on 23rd of March, 2018.

We have heard the learned Advocate General Shri Lalit Kishore, the learned A.S.G.I. Shri S.D. Sanjay, learned Senior Counsel Shri Y.V. Giri, Shri Yogesh Chandra Verma, learned Senior Counsel and Chairman of the Coordination Committee of the three Bar Associations, as well as Shri Anjani Kumar, learned Additional Advocate General, who fortunately was present during the dictation of the order by the learned Single Judge yesterday. They all have expressed their concern and anguish about the passing of this order and have prayed that the order dated 28.8.2019 does not deserve to be sustained. They have also informed that none of them were heard and Shri Anjani Kumar, learned Additional Advocate General had only tendered an information about the bail having been granted to the applicant on the same day. No counsel either on behalf of the bail applicant was informed and most surprisingly no one represented anyone against whom sweeping comments have been made in the entire order.

The Cr. Misc. case which has been disposed off was a matter relating to an anticipatory bail under Section 438



Cr. P. C. This was, therefore, a pure anticipatory bail proceeding which stood terminated with the passing of the final order on 23rd of March, 2018.

Some facts relating to the criminal case appears to have been noticed by a learned Single Judge while deciding a writ petition wherein certain directions were issued. Against the orders passed by the learned Single Judge in respect of the applicant of the bail application, L.P.A. No.438 read with 439 of 2019 was filed before a Division Bench of this Court. During the pendency of the appeals, the said applicant had also approached the Apex Court seeking relief of bail at that very stage which ultimately culminated in the passing of the order by a Division Bench of this Court in the aforesaid Letters Patent Appeals on 22nd of April, 2019 that stands reported in 2019 (3) P.L.J.R. 357.

We are mentioning this fact for the reason that after the passing of the final order on 23rd of March, 2018 rejecting the anticipatory bail, the matter had moved much further and had culminated into the passing of the orders by the Apex Court and the Division Bench, and then subsequently a bail order by the Court below with regard to which an anguish has been expressed by the learned Judge in the order dated 28th



of August, 2019. We are mentioning these facts in order to gather the status of jurisdiction of the learned Single Judge to have proceeded in the matter after the proceedings had been terminated on 23rd of March, 2018.

We find that the learned Single Judge committed the gravest of error by assuming a jurisdiction which was not available to him under any law for the time being in force, not even by any administrative order of the Chief Justice. In the absence of any judicial proceeding pending or otherwise, there was no occasion for the learned Single Judge to have assumed an authority which he otherwise did not possess on the subject matter either under the Patna High Court Rules or even under the Code of Criminal Procedure. This very assumption of jurisdiction, therefore, stands explained with the facts on record that the learned Single Judge got the case listed *suo motu* before him and has thereafter passed the order dated 28th of August, 2019 which is under consideration before this Bench.

After the order was passed and even before the order was uploaded, the news print, the social media as well as the entire world had been informed of the passing of the order of the learned Single Judge with almost its exact content, and which stood published in no uncertain terms in several Dailies,



including the Times of India, Dainik Jagaran, Dainik Bhaskar and other Newspapers. We have placed the same on record while taking cognizance of this matter. A perusal of the order which has been uploaded during the course of the hearing of this matter, we find that the same does not materially differ from the news item and contains more details which deserves to be dealt with immediately for reasons hereinafter.

Howsoever unpleasant a task may be, and to whatever extent we may feel that this should never have happened, what brings us together to assemble and deliberate, is the cause for upholding the rule of law and smooth administration of justice. We should not in the least be misunderstood to be insensitive or averse to the concerns expressed by the learned Single Judge (Hon'ble Mr. Justice Rakesh Kumar) in his order reported to have been pronounced in open Court on 28th of August, 2019, as we believe that in the discharge of our onerous duty to live and stand by the oath that we have taken, we should not hesitate in taking prompt action and allow the recurrence of any such irreparable damaging judicial acts so as to undermine the whole judicial system on the strength of an individual's private prejudices founded on his perception of past history and relentless obsessions that



appear to have been expressed in a language that is not only brine, but is malicious, contumacious, demeaning and completely insensitive to the living and dead alike.

The atmosphere of the Court is engulfed in a pall of gloom as if this bench is dictating its own reference, but then that is a compulsion, as extraordinary situations require extraordinary remedies. We, therefore, *prima facie*, find this case both of a miscellaneous nature which deserves to be entertained in the exercise of special extraordinary jurisdiction of this Court that is traceable to Article 226 of the Constitution of India read with Clause 10 of the Letters Patent of the Patna High Court Rules whereunder an order without jurisdiction and which is completely *coram non judice* as in the present case could be appealed against as it entails serious civil and evil consequences. We, therefore, direct the office to register this case as a Miscellaneous M.J.C. before the Special Bench of 11 Judges.

The facts that appear to have been unmindfully unfolded as reported, casts aspersions on the Institution and Judges in particular that can be imagined in a free society these days, but certainly not from a Judge of the same Court through an unwarranted judicial order in a finally disposed off matter



where the learned Single Judge, in our humble opinion had become *functus officio*, as would be evident from the facts narrated in this order, and appears to have acted completely *coram non iudice*. The order passed by the learned Single Judge, therefore, in our view, is a total nullity in the eyes of law. The learned Single Judge has stepped out far ahead and has set an inglorious bench mark in the history of the Patna High Court by wielding his pen like an unmerciful sword as that of a committed revolutionary, who has set out to change the course of history by flouting settled standards of judicial propriety and the sobriety expected of a High Court Judge. The language of the news that has spread like wild fire, is clearly instigating, enough to pollute the readers mind and disrupt healthy social thinking. The tenor and terminology of the expression may not be literally abusive, but are certainly defamatory, uncouth and uncivil.

We may gainfully extract the offending portions of the judgment giving rise to this Special Bench, whereunder the learned Single Judge has made comments far beyond the scope of an anticipatory bail application. In Paragraph 6 of the judgment, the Hon'ble Judge observed that in normal course he would not have passed such order. It is thereafter that he



begins to express his dissent about an incident in the Patna Judgeship without even disclosing the contents of the resolutions passed by the Standing Committee. To the contrary, he has reproduced the contents of an allegation petition which is already subject matter of a Public Interest Litigation filed by the same person and is being continuously listed before a Division Bench of this Court. It is surprising that in spite of the fact that the said case is still being listed and is again to come up in the next week, the learned Judge is insisting upon his own point of view and has issued directions for an inquiry by the Central Bureau of Investigation. We may put on record that the learned Single Judge without even examining the ratio of the various judgments of the Apex Court including the latest judgment in the case of **Shree Shree Ram Janki Ji Asthan Tapovan Mandir and another Vs. State of Jharkhand and others**, reported in (2019) 6 SCC 777 has himself issued a direction in spite of the fact that he had no jurisdiction to deal with a subject matter which was totally alien in the Anticipatory Bail in which he had proceeded to pass the order.

He has then in Paragraph 12 of the order described an incident of his experience as Standing Counsel



of the Central Bureau of Investigation. Paragraph 12 of the order is extracted hereinunder:-

“12. In the year 1995, while I was appointed as Standing Counsel for C.B.I., during holiday period, petition of some coal mafia was served in my residential chamber and I was told that the learned Advocate had already discussed with the then senior-most Judge. He requested to only accompany him to the residence of the said Judge. I reacted, then returned back the file. On the next day, one clerk of a senior Advocate approached me and said that being C.B.I. counsel I must receive the petition. I was not having any option, but I requested him that receipt would be given after one or two hours, then he returned back. There were three anticipatory bail petitions. It was mentioned in the notice that at 11:00 AM in the residential chamber of particular Judge, bail petition will be moved. I was completely perturbed. Immediately I rushed to some senior Judges of the Patna High Court i.e. Hon’ble Mr. Justice B.N.Agrawal (as he then was), Hon’ble Mr. Justice Nagendra Rai, Hon’ble Mr. Justice S.N.Jha, Hon’ble Mr. Justice Shashank Kumar Singh and Hon’ble Mr. Justice R.N. Prasad (as their lordships then were). At the resident of



Hon'ble Mr. Justice S. N. Jha, in presence of those Judges, I orally complained, and I wanted to know as to any Judge can hear a petition or not at his residence. All those Judges were also disturbed and asked me to go and oppose and say that the bail petition cannot be entertained at Patna High Court, since the F.I.R. was lodged at Dhanbad and C.B.I. was investigating the case. At 11:00 AM, I visited the residential chamber of the Judge, who was senior most Judge on the date of said holiday, since Hon'ble Mr. Justice D.P. Wadhwa (the then Chief Justice) was out of country. Ofcourse, I failed to get those anticipatory bail petitions dismissed, but succeeded to some extent that those anticipatory bail petitioners were transferred to Patna High Court Ranchi Bench, Ranchi. The said judge was none else but a senior Judge from Allahabad High Court. This happened in the year 1995. Again, it is known to everyone that one senior Judge from the Allahabad High Court during Fodder Scam period had got his wife nominated, as Rajya Sabha Member. This was not the end. Again, there was a Judge from Allahabad High Court, who granted bail to an accused, whose record of bail petition was lying in the Chamber of Hon'ble Mr. Justice Akhilesh Chandra (as he



then was), who was hearing his bail petition. So, corruption in this High Court is open secret.”

We fail to understand as to what had that incident anything to do with the matter in which this order has been passed and as to the nature of the jurisdiction that the Judge wanted to exercise to express himself. The learned Judge has made references to former Judges some of whom are no more in this world. The reference to the Allahabad High Court had absolutely no nexus with the subject matter before the learned Single Judge.

Then again, the learned Single Judge describes himself to be self righteous and then has assumed that he can write anything and everything about the entire system including his colleagues, former or sitting, if it crosses his self- defined boundaries of righteousness.

Thereafter, the learned Single Judge in the name of corruption has mentioned that on the judicial side he had gone through a number of Cr. Appeals in which judgments were reserved by an Hon’ble Judge who was transferred from Patna and who did not pronounce the judgments even though it had been reserved in the year 2017. We fail to understand



the connection of this disclosure with the subject matter in dispute. We have come across orders on the judicial side of the learned Single Judge (Hon'ble Mr. Justice Rakesh Kumar) who reserved judgment in Misc. Appeal No. 755 of 2009 on 22nd of September, 2014 and then after almost one year the same was released on 1st of October, 2015. The said orders which are available on the website of the High Court are extracted hereinunder:-

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.755 of 2009

Geeta Devi & Ors.

... .. Appellant/s

Versus

Most. Asha @ Indu Devi & Ors.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Sanjay Kr. Ghosarvey

Mr. Raj Kishore Pandit

For the Respondent/s : Mr. Vishwanath Choudhary

Mr. Sunil Kumar Mandal

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

24 22-09-2014

Heard Sri Sanjay Kumar Ghosarvey, learned counsel for appellants and Sri Vishwanath Choudhary, learned counsel for respondents.

Judgment reserved.

(Rakesh Kumar, J.)

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.755 of 2009



Geeta Devi & Ors.

... .. Appellant/s

Versus

Most. Asha @ Indu Devi & Ors.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Sanjay Kr. Ghosarvey

For the Respondent/s : Mr. Vishwanath Choudhary

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

25 01-10-2015

Let this case go out of my list. It may not be treated as part heard. Let it be placed before appropriate Bench after obtaining permission of Hon'ble the Chief Justice.

(Rakesh Kumar, J.)

We can only observe that when one kindles fire then the smoke usually enters his nose first. He has then mentioned about a complaint in a Sub Divisional Court which he had come to know about. We again are surprised as to how the said complaint had got anything to do with the subject matter of the case in which this *suo motu* action was being taken by him.

The learned Judge then has proceeded to talk about allotment of bungalows in Paragraph 18 of the impugned judgment. Surprisingly enough as per the



administrative record of the High Court, the learned Single Judge himself had got a bungalow allotted with expenditures made during his stay between 2010 to 2017.

Apart from this, the learned Single Judge himself was given the mantle of the Chairman of the Purchase Committee who has time and again in the administrative files of the High Court sanctioned and approved such expenditures which are undertaken by the State Government and not by the High Court. The bungalows are maintained by the State Government out of its own exchequer and it is for the State Government to prepare the budget and spend money thereon. If the learned Single Judge had any complaint about any expenditure being made by the Government, there could have been any such expression, but we have been unable to locate any such material that may have been mentioned in the order to substantiate the same. The reference to such matters is reckless and nowhere concerned with the subject matter of this dispute.

He has then in Paragraph 19 mentioned about the ward of some Judge having taken classes in the Bihar Judicial Academy for which he was paid honorarium. The learned Judge has nowhere indicated that the said ward had thrust



himself or had forcibly entered the Bihar Judicial Academy for taking classes. The learned Judge himself was the Chairman of the Bihar Judicial Academy till 17th of August, 2019. We are surprised at such sweeping comments having been made which are totally out of context.

He has then mentioned about the conduct of administrative proceedings in disciplinary matters in Paragraph 20 of the judgement which is subject matter of consideration by the Hon'ble Standing Committee of which the learned Judge himself is a member. His own personal views are something totally against the collective opinion of a responsible body of the High Court headed by the Chief Justice. We have not been able to understand as to how the administrative functioning of the High Court in disciplinary matters had anything to do with the subject matter of an Anticipatory Bail Application.

By a strange reason or logic he has drawn an inference about protection being given to the officers of the Subordinate Judiciary by the High Court. The comment is preposterous and with no basis.

In Paragraph 22 of his order he has made scathing remarks against his colleague Judges who fortunately



had passed together in the year 1986 from the Law College. This has absolutely no relevance to the controversy and then by taking a leap he has also commented upon the association of the Chief Justice with some Judges in a thoroughly indecent language which has no foundation. This is the illustrative rainbow depiction of the order that has compelled us to proceed in the matter.

Unfortunately those who have been castigated, if they are alive, have not been heard, and those who are dead, by providence and nature stand precluded from defending themselves.

Such uncharity unleashed appears to be definitely an outcome of some personal prejudice that may have its genesis in a personal background as the utterances and overtures, as recorded and reported already in the print and social media, are full of anguish tending towards vengeance and not real reform. A sudden leap in the sky through an approach of gaining yellow page fame appears to be one of the motives behind the pronouncement.

This, however, in our opinion is not akin to judicial conduct of a constitutional functionary to go to the extent of imputing personal motives and casting insinuations



on all those who are past or even the present. That too even in a matter in which the learned Single Judge had no jurisdiction. The mention of some Judges, who either adorned the office as occupied by the learned Judge himself, at Patna or even in a neighbouring State, and some of whom are no longer in this world, did not deserve the oblations that have been offered to them. This sort of determined judicial oratory, which is more in the nature of street- sloganeering and high pitched rhetoric is not meant to sound a judicial reform, but to belittle others with whom the learned Single Judge appears to have some personal grudge or prejudice- may be for reasons of professional envy in the past, caste prejudice or on account of some idiosyncrasies which the learned Judge may himself be aware of.

Personal carping and unceremonious comments on all and sundry alike seems to be drowned in some sort of personal belief of the learned Judge that whatever he has perceived from his experience is all 24 carat truth, and the rest of the world, except himself, has created all the misery around. The description is to malign which ought not to have been expressed while occupying a judicial seat with a specified limited jurisdiction, that too in a matter in which for the time being he had no jurisdiction at all. The learned Judge has



ventilated himself on the belief that but for him, the sky is the limit, little remembering that there are many more destinations beyond the horizon. The entire order is a burning example of the violations of principles of natural justice, judicial impropriety and a malicious tirade in the name of some crusade in the opinion of the Judge. The learned Judge has ordained himself to be the only mentor of all his perceptions about different forms of infamy without having the courtesy of the view point of others. The thoughts that pervade the pronouncement seem to believe that the personal impressions of the learned Judge are the only truth, and that the rest of the world is oblivious of the ills of society. This may have impelled the learned Judge to trumpet his voice, but in our humble opinion, from a totally inappropriate altar through somewhat besmirching gossip. This is designed to shake the confidence of the public in the judiciary and to lower its esteem to levels that may amount contemptuous.

A Judge functioning at any level has dignity in the eyes of public and credibility of the entire system is dependent on the use of dignified language, sustained restraint, moderation and sobriety. Independence of judiciary has been an inseparable and inseparable link with its credibility.



To cast a slur and to figuratively assassinate your own brethren should be avoided in all judicial pronouncements but the pride of the learned single Judge has manifested itself so profusely, forgetting the Bible that who judges others, condemns himself and a word spoken is an arrow let fly.

Having said so, the Bench finds this to be a painful task to perform, but, nonetheless, it deserves to be performed in the circumstances given above. When we have to take a just stand to uphold the majesty of the Institution, an individual Judge's identity is inconsequential. We are, therefore, left with no other option but to suspend the entire order dated 28th of August, 2019 with a further direction that the file of the case shall not be placed before the learned Single Judge nor any such directions given by him which as explained above are *coram non judice* shall be implemented by any authority nor shall be dispatched as desired by him. We, therefore, part with this case at the moment for a date to be fixed in future and for further directions in the matter.

The order may be brought to the notice of the Chief Justice for taking appropriate steps on the administrative side.

(Amreshwar Pratap Sahi, CJ)



(Vikash Jain, J)

(Chakradhari Sharan Singh, J)

(Prabhat Kumar Jha, J)

(Anjana Mishra, J)

(Ashutosh Kumar, J)

(Birendra Kumar, J)

(Vinod Kumar Sinha, J)

(Anil Kumar Upadhyay, J)

(Rajeev Ranjan Prasad, J)

(Sanjay Kumar, J)

AFR

Sunil/K.C.Jha/P.K.P.

U			
----------	--	--	--

