

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.803 of 2014

Arising Out of C.C.A. Case No. -01 Year- 2014-15 Thana -null District- BHABHUA (KAIMUR)

1. Sanjay Kumar Singh son of Late Hari Narayan singh, Resident of village- Pasai,
P.S.- Belawn, District- Kaimur (Bhabhua)

.... Petitioner/s

Versus

1. The Chief Secretary, Govt. of Bihar.
2. The Director General of Police, Bihar
3. The District Magistrate Kaimur (Bhabhua)
4. The Superintendent of Police, Kaimur (Bhabhua)
5. The Civil/ S.D.O. (Bhabhua)
6. The Officer Incharge Bhagwanpur (Belawn)

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Anwar Karim, Adv.

For the Respondent/s : Mr. Harish Kumar, GP-32

Mr. Sudhir Kumar Upadhyay, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 18-03-2015

Heard learned counsel for the petitioner and learned
counsel for the State.

This application under Articles 226 and 227 of the
Constitution of India has been filed for issuance of a writ in the nature
of certiorari for quashing the notice issued by the District Magistrate,
Kaimur (Bhabhua) on 29th May, 2014 in C.C.A. Case No. 01 of 2014-
15, as contained in Annexure-5 to the writ petition, whereby and
whereunder the District Magistrate has called for an explanation as to
why the petitioner be not directed to remove himself outside the
district of Bhabhua in terms of section 3(3) of the Bihar Control of

Crimes Act, 1981 (hereinafter referred to as 'the Act').

Learned counsel for the petitioner has submitted that the impugned notice is wholly illegal and arbitrary in nature. The petitioner is not an accused in any of the cases referred to in the notice issued by the District Magistrate. The impugned notice smacks colourable exercise of power by the respondents and hence the same be quashed.

On the other hand, learned counsel for the State has submitted that the present writ petition is thoroughly misconceived. The District Magistrate has committed no illegality by calling for an explanation from the petitioner in respect of material allegations disclosed in the notice. The petitioner may satisfy the District Magistrate by filing an appropriate explanation and show that he is not accused in any criminal case mentioned in the notice.

Having heard the parties and perused the record, I find that in the impugned notice reference has been given of four cases in which the petitioner has been made accused. They are Bhagwanpur (Belao) P.S.Case No. 96/98, Bhagwanpur (Belao) P.S.Case No. 55/99, Bhagwanpur (Belao) P.S.Case No117/07 and Bhagwanpur (Belao) P.S.Case No140/2000. It has also been alleged in the notice that the petitioner has illegally captured certain lands and he is habitual in commission of offences and has created tension in the

society.

I find that sub-section (1) of section 3 of the Act confers powers on the District Magistrate to pass an order of externment on the person on fulfillment of conditions laid down in the sub-section. This power of externment has to be exercised by the District Magistrate upon his personal satisfaction. Clause (a) of sub-section (1) lays down the first condition that the person proceeded against should be an anti social element as defined in section 2(d) of the Act. Clause (b) of sub-section (1) provides other conditions after fulfillment of which an order of externment can be passed by the District Magistrate. The District Magistrate should be satisfied that the movements or acts of such persons in the District or any part of it are causing or calculated to cause alarm, danger or harm to persons or property. Alternatively, the District Magistrate should be satisfied that there are reasonable grounds for believing that such person is engaged or about to engage, in the district or any part thereof, in the commission of any offence punishable under Chapter XVI or Chapter XVII of the Indian Penal Code, or under the Suppression of Immoral Traffic in Women and Girls Act, 1956, or abetment of such offence.

Upon fulfillment of the conditions laid down in Clause (a), (b)(i) and (b)(ii) of subsection (1) of Section 3 of the Act, the District Magistrate is empowered to issue a notice in prescribed form

to the person concerned of the general nature of the material allegation against him. The concerned person shall then be given a reasonable opportunity of tendering an explanation regarding the allegations made against him.

Sub-Section (2) of Section 3 of the Act contemplates a limited enquiry by the District Magistrate on the request of the person concerned to afford him an opportunity of adducing evidence for his explanation. Sub-Section (3) empowers the District Magistrate to pass orders in writing on his satisfaction that the conditions mentioned in Clause (a), (b)(i) and (b)(ii) of subsection (1) of Section 3 of the Act exist.

Regard being had to the legal provision as prescribed under section 3 of the Act, it cannot be said that the notice issued by the District Magistrate seeking an explanation from the petitioner in respect of material allegations disclosed therein is without jurisdiction. If the notice is not without jurisdiction, the petitioner can avail of the remedy provided under the Act. He can submit his explanation to the District Magistrate and satisfy him that the allegations made against him have no basis. The petitioner has not availed of the remedy available under the Act and has chosen to challenge the notice before this Court by filing the writ petition.

In view of the above, I am of the considered opinion

that this application challenging the notice issued by the District Magistrate under section 3(3) of the Act is pre-mature as no adverse order has been passed against the petitioner till date. In case any adverse order is passed against the petitioner by the District Magistrate under section 3(3) of the Act, the petitioner has the remedy of appeal under section 6 of the Act.

For the reasons recorded hereinabove, I find no merit in this application. Accordingly the application is dismissed.

(Ashwani Kumar Singh, J)

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