

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.41 of 2015

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Rajendra Prasad @ Raju Yadav Son of Late Chandeshwar Yadav resident of Village + P.O. - Mora Talab, P.S. - Rahui (Bhagan Bigha), District Nalanda.

.... Petitioner

Versus

1. The State of Bihar.
2. The District Magistrate-cum-Collector, Nalanda.
3. The Superintendent of Police Nalanda at Biharsharif.
4. The Deputy Superintendent of Police Nalandat Biharsharif.
5. The Station House Officer (S.H.O.) Rahui (Bhagan-Bigha), Nalanda.
6. The Station House Officer (S.H.O.) Katrisarai, Nalanda.

.... Respondents

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Appearance :

For the Petitioner : Shri Ashutosh Singh, Advocate.

For the Respondent/s : Shri Subodh Kumar, AC to G.P.-14.

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

ORAL ORDER

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

2 19-01-2015

Heard.

2. The petitioner seeks the quashing of the order dated 22.10.2014 passed by the District Magistrate, Nalanda in B.C.C.A Case No.22 of 2014 (State v. Rajendra Prasad @ Raju Yadav). By the impugned order, the District Magistrate, Nalanda held the petitioner an anti-social element and directed him to report to the Officer-in-Charge of Katrisarai police station for recording his daily attendance and further direction to him to confine his movements within the jurisdiction of that police station. It was



further directed that if at all the petitioner was required to go out of the jurisdiction of above noted police station, then he shall obtain permission of the Officer-in-Charge. In addition to the above direction, the other two directions related to not keeping with him a weapon, like, a lathi or a blade or a knife as also a matchbox and any article made of iron steel which could be falling into the category of a weapon. The last direction was that the petitioner shall behave as an ordinary citizen and would not indulge in any suspicious activities. The above order was effective for a period of six months from the date of the impugned order, i.e., 22.10.2014.

3. Before passing the above order, the District Magistrate, Nalanda passed the initial order issuing notice under Section 3 of the Bihar Control of Crimes Act, 1981(in short the 'Act') on receipt of a proposal to the above effect in the form of a report from the Superintendent of Police, Nalanda vide his letter no.9242/C.R dated 30.09.2014. It was noted in the report that the petitioner was an anti-social element and was out of jail, as a result of which the people in the society was frightened and further, that the petitioner might create law and order problem on the occasion of *Chhath* festival. A copy of the notice which was served upon



the petitioner in the light of the order dated 09.10.2014 passed by the District Magistrate, Nalanda calling upon the petitioner to show cause as to why and order should not be passed against him under Section 3 of the Act has been annexed as Annexure-1 to the present petition.

Section 3 of the Act may reads as follows:-

“3. Externment, etc. of anti-social elements.—(1) Where it appears to the District Magistrate that—

- (a) any person is an anti-social element, and
- (b) (i) that his movements or acts in the district or any part thereof are causing or calculated to cause alarm, danger or harm to persons or property; or

(ii) that there are reasonable grounds for believing that he 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;

The District Magistrate shall by notice in writing inform him of the general nature of the material allegation against him in respect of clauses (a) and (b) and shall give him a reasonable opportunity of tendering an explanation regarding them.

(2) The person against whom an order under this section is proposed to be made shall have the right to consult and be defended by a counsel of his choice and shall be given a reasonable opportunity of examining himself, if he so desires and also of examining any other witnesses that he may wish to produce in support of his explanation, unless for reasons to be recorded in writing the District Magistrate is of opinion that the request is made for the purpose of vexation or delay.

(3) The District Magistrate on being satisfied that the conditions specified in clauses (a) and (b) of sub-section (1) exist, may be order in writing—

- (a) direct him to remove himself outside the district or



part thereof, as the case may be, by such route, if any, and within such time as may be specified in the order and to resist from entering the district or the specified part thereof, until, the expiry of such period, not exceeding six months as may be specified in the order;

(b) (i) require such person to notify his movement, or to report himself, or to do both, in such manner, at such time and to such authority or person as may be specified in the order;

(ii) prohibit or restrict possession or use by him of such article as may be specified in the order;

(iii) direct him otherwise to conduct himself in such manner as may be specified in the order;

until the expiry of such period, not exceeding six months, as may be specified in the order.”

4. As may appear from Section 3 of the Act, any person could be deemed to be an anti-social element if he, inter-alia, gives rise to a reasonable ground for believe to the District Magistrate that he was engaged or about to engage himself in the district or any part thereof, in the commission of any offence punishable under Chapter-XVI and or Chapter-XVII of the Indian Penal Code, or under the Suppression of Immoral Traffic in Women and Girls Act, 1956 or abates commission of such offences.

5. What appears from the very order and the notice (Annexure-1) is that there was a solitary instance of indulgence of the petitioner in commission of offences under the Arms Act, like, those under Sections 25,26 and 35 of the Arms Act for which Rahui (Bhagan Bigha) P.S.Case No.54 of 2013 was registered.



There was no further instance of commission of any offence by the petitioner except a report for which Bhagan Bigha Station Diary Entry No.452 of 2014 dated 20.09.2014 was drawn up. We do not have the contents of that Station Diary Entry, but we could safely note that the complaint was not regarding the indulgence of the petitioner or such likelihood on his part of indulging in commission of any offence under the Acts mentioned in Section 3(1)(a)(ii). Thus, what appears is that the primary fallacy which afflicts the order of the District Magistrate, Nalanda is that the offences which are neither under the Indian Penal Code nor under the Suppression of Immoral Traffic in Women and Girls Act, 1956 have been cited as instance regarding the petitioner being an anti-social element. If the Act does not have a large canvass of criminal activity of an accused beyond the two acts as noted in Section 3, then no authority can add up any such thing to that provision of the Act so as to usurping jurisdiction for passing the order of the nature impugned herein.

6. The other fallacy which has engaged our attention is that the notice itself indicated that he should appear either in person or through a counsel to file his show cause and further point out as to whether he should lead any evidence in support of



causes shown by him. It is mentioned very much in the notice and it is as per the provisions of Section 3(2) of the Act that a right is created in a person who is proposed to be proceeded against to consult and be defended by a counsel of his choice and has also a right to be given an opportunity of examining himself, if he so desired and also of examining any other witnesses that he may wish to produce in support of his explanation. There is discretion granted to the District Magistrate, Nalanda that he may refuse the request of examining the witnesses or examining the person proposed to be proceeded against himself but for turning down the legal right created in the person, the District Magistrate has to record that the request was not only vexatious, it was also to delay the disposal of the proceeding. While perusing the impugned order, what we found is that the petitioner appeared and file his show cause and denied the allegations of being an anti-social element by pointing out that he was a man aged about 61 years and was a peace abiding people. The District Magistrate, Nalanda, we do not know what was the basis for making such record, has recorded that the petitioner has not pointed out through his show cause as to which witness, he desired to examine in support of his show cause. When a law creates a right in a person of being



defended by a counsel or having right either to examine himself or any other person as a witnesses in support of his reasons shown to the authority, like, the District Magistrate, Nalanda under the Act, then it is a right which has to be respected by the authority, like, the District Magistrate, Nalanda and that right further creates a duty, in our opinion, on the District Magistrate, to very clearly elicit a categorical response in writing from a such person that he was not inclined either to examine himself or to produce any witnesses. What we further find is that the District Magistrate did not even care to know from the petitioner as to whether he had to himself defend him, or was to be aided by a counsel of his choice in his defence. Choice to be defended besides being the statutory right under the Act is also a constitutional right as per Article 22(1) of the Constitution of India.

7. We are simply taken aback as to how such orders are being passed where statutory and constitutional rights are denied to a citizen and he is consigned branded an anti-social element merely for no reasons existing in law. We have already noted that the ground which was used by the District Magistrate, Nalanda was virtually no ground in the light of the very provision under which he was acting to declare the petitioner an anti-social

element. The order appears not only against the provisions of Section 3 of the Act rather it appears passed on whims by the District Magistrate, Nalanda without showing any respect to the personal liberties of a person and to the provision which had vested power in him.

8. In the result, the petition succeeds and the same is allowed. The order dated 22.10.2014 passed by the District Magistrate, Nalanda is hereby quashed.

(Dharnidhar Jha, J)

(Amaresh Kumar Lal, J)

B.Kr./-V.K.Pandey/
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