

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.341 of 2014

Arising Out of PS.Case No. -null Year- null Thana -null District- SITAMARHI

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1. Mithilesh Jha @ Jhun Jhun Jha Son of Pawan Jha Resident of village- Bangaon,
P.S.- Bajpatti, District- Sitamarhi

.... Petitioner/s

Versus

1. The State of Bihar Through Director General of Police State of Bihar
2. The District Magistrate Sitamarhi
3. The Superintendent of Police Sitamarhi
4. The Sub- Divisional Police Officer Pupari, District- Sitamarhi
5. The Officer - in - Charge Police Station- Bajpatti, District- Sitamarhi
6. The Officer - in - Charge Police Station- Majorganj, District- Sitamarhi

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ranjit Kr. Mishra & Mr. Rajani Kant Pandey

For the Respondent/s : Mr. Partha Sarthy, GA 11 & Mr.Apurva Kumar,AC to
GA-11

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 29-01-2015

By filing the present application under Articles 226 and 227 of the
Constitution of India, the petitioner seeks quashing of the order dated 5th October,
2013 passed by the learned District Magistrate, Sitamarhi, by which he has
confirmed the order under section 3(3)(B)(i)(ii)(iii) of the Bihar Control of

Crimes Act, 1981(hereinafter referred to as 'the Act') and has directed the petitioner to put daily attendance in the police station, Mejorganj and further directed that the petitioner will not keep Lathi, blade, knife, matches etc. or iron made equipment.

The learned counsel for the petitioner has submitted that the aforesaid order passed by the learned District Magistrate is wholly illegal and arbitrary. He has submitted that in terms of the provision as prescribed under section 3(3)(B)(i)(ii)(iii) of the Act, an order can be passed for a period not exceeding six months. However, the impugned order passed by the District Magistrate does not prescribed the period for which the order has been made. He further submits that even if it is presumed that the aforesaid order was in accordance with law, its validity would have expired on 5th April, 2014; but in view of the nature of the order passed, the same is continuing and is effective against the petitioner till date.

The learned counsel for the State has submitted that there is a provision for appeal under section 6 of the Act and in case the petitioner is aggrieved by the order impugned made under section 3 of the Act, he ought to have filed an appeal before the Commissioner within the time prescribed. He further submits that since the time prescribed for filing the appeal is only 15 days, the petitioner is debarred in law even from filing an appeal. However, he concedes that in terms of section 3(3)(B)(i)(ii)(iii) of the Act, 1981, the order cannot have its effect beyond six months.

Having regard to the facts and circumstances of the case, I am of the view that simply because a remedy of appeal under the Act, 1981 is provided under the Act and an appeal has not been preferred, it would not disentitle the petitioner from filing an application under Article 226 of the Constitution of

India. The impugned order dated 5th October, 2013, as contained in Annexure-9 to the writ petition, is apparently bad in law, as it does not prescribe the period for which the order shall remain in force. After the end of six months the order passed under section 3 of the Act loses its force.

In that view of the matter, the application is allowed. The impugned order dated 5th October, 2013 passed under the Bihar Control of Crimes Act Case No. 10 of 2013 by the learned District Magistrate, Sitamarhi, is quashed.

(Ashwani Kumar Singh, J)

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