

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1214 of 2014

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Md. Rinku Mian, Son of Md. Mojib, Resident of Village/Mohalla Banaulia, PS
Bihar, District Nalanda.

.... Petitioner

Versus

1. The State of Bihar through the Secretary Home Department, Government of Bihar, Patna.
2. The District Magistrate, Nalanda.
3. The Sub-divisional Officer Sadar, Hilsa, Nalanda.
4. The Deputy Collector Law, Nalanda.
5. The Superintendent of Police, Nalanda.

.... Respondents

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Appearance :

For the Petitioner	:	Shri Khurshid Alam, Advocate
		Md. Naseem Mukhtar, Advocate
For the State Respondent	:	Shri Manish Kumar, G.P.8

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 27-01-2015

Heard.

2. The learned counsel appearing for the State, at the very outset, attempted to point out to this Court that it inherently lacks jurisdiction to act under Article 226 or 227 of the Constitution of India by pointing out that Section 6 of the Bihar Control of Crimes Act ('the Act' in short) provides for an appellate forum which is the Commissioner of the Division. But, the Court finds that the powers of this Court under Article 226 and 227 are so wide as to take into its sweep an order, if it is passed in inherent lack of jurisdiction and by usurping jurisdiction, which is not



vested in an authority then this Court has to intervene, specially, when the order directly affects the personal liberties of a person residing within the territory of India. We, as such, hold that the Court has the powers to adjudicate upon the appropriateness of the order within the constitutional guarantees of protecting the liberties of a person.

3. Coming to the facts of the case, the Sub-divisional Police Officer, Sadar, Biharsharif made a report to the District Magistrate, Nalanda citing two substantive criminal cases as also a station diary entry in order to impress upon him that it was desirable that the petitioner be externed from the district for the period as admissible under law. The two substantive criminal cases were Bihar P.S. Case No. 39 of 2012, dated 26.02.2012 under Sections 147, 148, 337, 338, 353, 427, 295, 295A of the Indian Penal Code and Bihar P.S. Case No. 41 of 2012, dated 27.02.2012 under Sections 147, 148, 149, 307, 448, 225 of the Indian Penal Code. The details of the station diary entry is not revealed by the order impugned herein which was passed on the 22nd October, 2014 and on account of the details not appearing in the order, we assume that the information which was the basis for making the station diary entry was definitely not disclosing any anti-social activities either by the petitioner or by anyone with his

connivance or conspiracy.

4. The District Magistrate, Nalanda on receipt of the report from the Sub-divisional Police Officer, Biharsharif issued a notice as per the provision of Section 3 of the Act and accordingly, the petitioner appeared before him and filed his causes pointing out that there was no reason to proceed against him under Section 3 of the Act and thereby to direct him to be out of the district.

5. While considering the order what we found from the operative part of the order, which contains the finding recorded by the District Magistrate, Nalanda, was that in order to holding the petitioner an anti-social element, the District Magistrate, Nalanda was mainly being guided by the law and order situation which might have been adversely affected at the occasion of *Chhath* and *Muharram* festivals which were to ensue around the date when the order was passed. The other finding which was recorded by the District Magistrate, Nalanda preceding the final direction was that the petitioner had not, through his show-cause, placed before him the evidence which he wanted to be considered by him before proceeding to act under Section 3 of the Act.

6. If we could consider the provisions of Section 3 of the Act, one may find that being asked to file a show-cause is the first right of a person who is proposed to be proceeded against.



The second right which is granted by the Act to him is to consult and be defended by a counsel of his choice and the third is that he may adduce evidence in support of the causes he had shown to the detaining authority, i.e., the District Magistrate and if he had expressed the desire to adduce evidence then it has generally to be availed of, unless the detaining authority was of the opinion that the person who was proceeded against was choosing the opportunity to stall the proceedings in a vexatious manner. We do not find anything recorded in the impugned order by the District Magistrate, Nalanda. Besides what we find is that the main concern of the District Magistrate, Nalanda was to maintain peace and tranquility in the society so that there was no disturbance in the peaceful condition prevailing in the society or subsequently in future. In our opinion, the concern mainly to maintain peace and tranquility in the society could be taken care of by exercising the powers under the Code of Criminal Procedure Chapter-X by an Executive Magistrate by issuing notices under Section 111 of the Code. It could not be a case, if an authority is mainly concerned with the law and order situation prevailing in the society, that he should take recourse to somewhat an extraordinary provisions of Section 3 of the Act. This is the fallacy we have found the impugned order suffering from. The other fallacy which we find is

that the District Magistrate, Nalanda was choosing a hybrid procedure unknown to the realm of law and was usurping a jurisdiction which under the facts of the case was not available to him by not allowing the petitioner to adduce evidence. He was acting without jurisdiction and against the provisions of Section 3 of the Act.

7. In the result, the petition appears meritorious and the same is allowed. The impugned order passed on 22.10.2014 by the District Magistrate, Nalanda in BCCA Case No. 44 of 2014 is hereby quashed.

(Dharnidhar Jha, J.)

(Amaresh Kumar Lal, J.)

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