

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.4437 of 2015**

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Bechan Yadav son of Late Sahdeo Yadav, Ex-Chairman, Mahadeopur Primary  
Agriculture Credit Cooperative Society Ltd., Banmankhi Block, District- Purnea

.... .... Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary
2. Department of Cooperative, Government of Bihar through its Principal  
Secretary, New Secretariat, Patna
3. Registrar, Cooperative Society, Government of Bihar, Patna
4. District Cooperative Officer, Purnea
5. The Managing Director, the Purnea District Central Cooperative Bank Ltd.  
Purnea
6. Sri Bal Krishna Jha, In-Charge, the Purnea District Central Cooperative Bank  
Ltd., Banmankhi Branch, Purnea

.... .... Respondent/s

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**Appearance:**

For the Petitioner/s : Ms. Mira Kumari, Advocate  
For the State-Respondent/s: Mr. Binodji Verma, GP-17  
Mr. Tej Pratap Singh, AC to GP-17  
For the Bank : Mr. Rakesh Kumar Jha, Advocate  
Mr. Niti Ranjan Jha, Advocate  
For Respondent No. 6: Mr. Rakesh Kumar Jha, Advocate

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**  
**ORAL JUDGMENT**  
**Date: 13-10-2015**

Ms. Mira Kumari, learned counsel for the petitioner,  
learned counsel for the State and Mr. Yogendra Mishra learned  
counsel appearing for the alleged contemnor.

The writ petition was initially filed questioning the order  
dated 19.1.2015 of the District Co-operative Officer, Purnea in  
Surcharge Case No. 29 of 2015 whereby surcharge proceedings had  
been initiated. While the matter remained pending that final orders  
have been passed in the surcharge proceedings on 24.4.2015 /



09.6.2015 whereunder the petitioner has been directed to make payment of Rs. 9,45,230/- together with interest / penal interest, a copy of such order is placed on record vide Annexure-16 to I.A. No. 4921 of 2015. The impugned order placed at Annexure-16 reflects that the petitioner has appeared before the District Cooperative Officer and placed his stand which was rejected. The petitioner has his remedy under Section 40(3) of the Bihar Cooperative Societies Act, 1935 (hereinafter referred to as the 'Act') by way of an appeal against the order passed in surcharge proceedings which lies before the State Government. Despite the legal position as such, the matter has lingered disposal by virtue of adventurous action by the respondent no. 6 who is the Branch Manager of the Purnea District Central Cooperative Bank Limited, Banmankhi Branch, Purnea.

This matter was heard on 09.7.2015 and considering the issues that was raised by the counsel for the petitioner that parties were directed to maintain status quo on the issue. During operation of the interim order that this respondent no. 6 proceeded to institute an FIR against the petitioner on 23.7.2015 giving rise to Banmankhi P.S. Case No. 231 of 2015 registered under Sections 420 and 409 of the Indian Penal Code, a copy of which is placed at Annexure-3 to I.A. No. 6168 of 2015. The petitioner complained of violation of the interim order by the respondent no. 6 and upon which the respondent



no. 6 was directed to file his reply. A counter affidavit was filed by the respondent no. 6 justifying his action by relying upon the provisions of Section 40 (2) of the 'Act' to submit that the two actions initiated against the writ petitioner have different source and although insofar as the order passed in which surcharge proceedings, has not been acted upon but since the answering respondent was not restrained from invoking the other jurisdiction hence on the basis of the legal advice taken, the FIR has been instituted. The counter affidavit was rejected by this Court vide order passed on 10.8.2015 and the respondent no. 6 was asked to show cause as to why he be not proceeded for contempt for violation of the order of status quo passed by this Court on 09.7.2015.

A show cause has been filed thereafter by the respondent no. 6 and while trying to modify his earlier stand it is now stated that it is on a bona fide understanding of the statutory provisions that has resulted in institution of the FIR. It is stated that since the petitioner is charged with defalcation hence although no proceedings for recovery has been initiated by the respondents in the light of the order passed in surcharge case in view of the interim order but considering his conduct that the FIR has been instituted for determination of his criminal liability in the matter.

I have heard Ms. Meera Kumari, learned counsel for the



petitioner, learned counsel for the State and Mr. Yogendra Mishra for the respondent no. 6. There is no doubt about the powers vested in the authorities to take steps against a defaulting officer of the Society and there are different options available to the statutory authorities for determination of a civil and a criminal liability. The issue in the present case is that even if a civil liability has been determined under the surcharge proceedings under Section 40(1) of the Act whether, the respondent no. 6 could have proceeded with an institution of the FIR which has admittedly been done after passing of the interim order passed on 09.7.2015 for the FIR was instituted on 23.7.2015.

Thus even if the respondent no. 6 is vested with statutory powers to take recourse to criminal prosecution he had to await the outcome of the present proceedings before he could exercise such power and certainly not in view of the interim order passed on 09.7.2015 requiring him to maintain status quo meaning thereby the position which existed on 09.7.2015 had to prevail until modified. The adventurism shown by respondent no. 6 to institute the FIR in Banmankhi P.S. Case No. 231 of 2015 even though legally permissible is clearly in violation of the order of status quo. It is taking into notice such overreach that this Court directed the respondent no. 6 to file his show cause and also be present in Court to answer the charges and in obedience Mr. Bal Krishna Jha is present in

Court.

Mr. Mishra while explaining the exercise has referred to the apology tendered by the respondent no. 6 and to submit that it also rested upon a mistaken legal advise and that no steps has been taken nor the matter has been pursued since thereafter. He submits that the respondent no. 6 would not be pursuing the FIR and would be taking no such step to perpetuate the action so initiated under the FIR.

Although the violation is apparent but considering the fact that it also rests upon a mistaken legal advise and the respondent no. 6 also seeks cover under the statutory provisions to explain his action, with much reluctance this Court would accept the apology to drop this proceeding.

The issue is what happens to the FIR instituted in violation of the interim order. In this regard law is well settled and any order passed or any action taken in violation of an order of the Court, has been held to be a nullity. Reference in this regard is made to the judgment of the Supreme Court since reported in **(2010) 11 SCC 557** (*Manohar Lal vs. Ugrasen*) paragraph 24 to 29.

The F.I.R. thus having been instituted by the respondent no. 6 in violation of the interim order of this Court passed on 09.7.2015 is thus held a nullity. In consequence the FIR in Banmankhi P.S. Case No. 231 of 2015 and the entire proceedings arising

therefrom is quashed and set aside.

Insofar as the final order passed in surcharge proceeding is concerned, the petitioner would be at liberty to exhaust the appellate remedy so available to him under Section 40(3) of the 'Act' and which shall be considered and disposed of on its own merits in accordance with law.

The writ petition is allowed to the aforementioned extent. The contempt proceeding initiated is disposed of. Mr. Bal Krishna Jha is discharged of the notice as well as to his presence from the present proceedings.

S.Sb/-

**(Jyoti Saran, J)**

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