

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10549 of 2013

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1. Pankaj Kumar Son Of Late Jitendra Prasad Mandal Resident Of Village - Haseli, P.S. - Falka, District - Katihar, The Then Sub-Divisional Police Officer, Masaurhi, Patna, Presently Posted As Deputy Superintendent Of Police, S.T.F. , Patna and Residing In Flat No. 101, Kush Apartment, Tilak Nagar Road, North Rukunpura, P.S. - Rupaspur, District - Patna

.... Petitioner

Versus

1. The State Of Bihar through the Law Secretary, Govt. Of Bihar, Patna
2. The Bihar Human Right Commission, 9 Bailey Road, Patna , Through Its Secretary
3. The Secretary, Bihar Human Right Commission, 9, Bailey Road, Patna
4. The Deputy Secretary, Bihar Human Right Commission, 9, Bailey Road, Patna
5. The Section Officer, Bihar Human Right Commission, 9, Bailey Road, Patna
6. The Home Commissioner, Govt. Of Bihar, Patna
7. The Director General of Police, Bihar, Patna
8. The Deputy Inspector General of Police, Central Range, Patna
9. The District Magistrate, Patna
10. The Senior Superintendent of Police, Patna
11. The Assistant Commissioner, Excise, Patna
12. The Sub-Divisional Officer, Masaurhi, Patna
13. The Circle Officer, Masaurhi, Patna
14. The Station House Officer, Masaurhi, P.S., Patna
15. The Sub-Inspector of Excise, Masaurhi Anchal, Patna
16. Ajit Singh Son Of Ram Pandit Singh Resident Of Village - Bellari, P.S. - Katari Sarai, District - Nalanda, The Then Licensee Of Nagar Parishad Country Made Liquor , Shop No. 6, At Mohalla - Sanghatpar, Masaurhi, District - Patna

.... Respondents

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Appearance :

For the Petitioner : Mr. Satyavrat Verma
For the State : Mr. Ajay Kumar Sharma, AC to PAAG
For the Respondent No.16 : Mr. Chandra Bhushan Kumar Das

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT

Date: 22-09-2015

Heard counsel for the petitioner, the State and the
respondent no.16 (complainant).

The petitioner during the relevant time was posted as
Sub Divisional Police Officer, Masaurhi. A complaint (Annexure-3)
was lodged on 28.5.2012 by the respondent no. 16 before the Bihar
Human Rights Commission (for short 'the Commission') alleging



therein that while the complainant was doing his business, the Station House Officer (for short 'the SHO'), Masaurhi police station came to the shop and got the same sealed on 8.5.2012 inasmuch as he also arrested six persons from the shop and dispatched them to jail. Consequently, Masaurhi P.S. case no. 127 of 2012 was instituted. On account of such illegal acts of the SHO in presence of the Circle Officer , the shop remained closed from 08.05.2012 to 18.5.2012. The illegal acts of the officer caused business loss to the applicant besides the loss of his reputation. The Commission called for a report on the complaint from the Senior Superintendent of Police which ,in turn, was assigned to the petitioner who after completing enquiry submitted the report which was forwarded to the Commission. By the impugned order dated 18.4.2013 (Annexure-9), the respondent Commission held the SHO, Masaurhi Police Station as well as the petitioner guilty of misconduct which caused loss of reputation besides loss of revenue to the complainant as well as the State. Having held so, the Commission directed for payment of monetary compensation to the complainant in the sum of Rs. 50,000/- to be shared equally by the SHO, Masaurhi and the petitioner. The Commission also recommended for a departmental proceeding against the two erring officers. Aggrieved by that part of the order by which the petitioner has been held guilty of having committed an act which resulted in loss of revenue as well as

reputation to the complainant, the present writ petition has been filed.

Mr. Verma appearing for the writ petitioner has submitted that the petitioner while functioning as Sub Divisional Police Officer, P.S. Masaurhi during the year 2012 was never involved in the acts of commission/omission. He referred to the complaint (Annexure-3) wherein no such allegation was levelled against the petitioner. He submits that, in fact, the petitioner under the orders of the Commission and the Senior Superintendent of Police conducted inquiry into those allegations and submitted the report which was later forwarded to the Commission. On 8.3.2013 a notice was directed to be issued on the petitioner also by the Commission to appear and submit written defence which was actually dispatched from the office of the Commission on 2.4.2013 and received by the petitioner on 8.4.2013. The petitioner was taken aback by the notice calling upon him to submit the written defence although he was not at all associated with the said occurrence/event which was complained of. However, he appeared on 11.4.2013 and submitted his written defence stating all relevant facts with regard to his complete innocence in the matter. The complainant, however, did not appear on that date. No hearing was, therefore made and the order was reserved. Subsequently by order impugned the proceeding was disposed of holding the petitioner besides the SHO Masaurhi Police Station guilty of the allegations made by the complainant.

A counter affidavit has been filed on behalf of the complainant-respondent no.16. Mr. Das who appears on behalf of the respondent no.16-complainant draws attention of the Court to paragraph nos. 3 and 5 thereof which read as under:-

“3. That being aggrieved with the act of SHO, Masaurhi Police Station this answering respondent filed a complaint before the Hon’ble State Human Rights Commission stating thereby that the SHO got the FIR instituted against this answering respondent and sealed the license liquor shop with a demand to make Rs. 2500/- per month available to him. In the entire complaint petition filed by this answering respondent before State Human Rights Commission, it has nowhere been discussed that this petitioner, namely, Pankaj Kumar, who happened to be the Sub Divisional Police Officer at Masaurhi, had no role in harassing this answering respondent. Neither this petitioner sealed the shop nor he was available at the place of occurrence. It was solely the act of SHO, Masaurhi Police Station as well as the Circle Officer, Masaurhi on the direction of Sub Divisional Magistrate, Masaurhi, But the State Human Rights Commission in place of taking action against the Sub Divisional Officer, Masaurhi took the action against this petitioner which, in my view, is not justified. It is also important to mention here that the license shop was not even sealed on the direction of this petitioner nor this petitioner had ordered to seal the shop. It was the self decision and design of the SHO Masaurhi, with a view to harass this answering respondent.

5. That in reply to paragraphs 1 to 29 of the writ petition, it is submitted that this respondent has nothing to say against this petitioner since the entire issue runs around the SHO, Masaurhi Police Station who is solely responsible for the act

done against this respondent.”

It has been submitted by Mr. Das that actually the complainant had not made any complaint against the petitioner who was then serving as the Sub Divisional Police Officer, Masaurhi P.S.

It appears the aforesaid fact escaped notice of the respondent Commission. If the complainant himself states that he did not attribute any charge/allegation to the writ petitioner in relation to the occurrence taking place on 08.05.2012 then the order which the respondent Commission passed becomes vulnerable in the sense that the basis of the conclusion was absent. This Court would not further dwell upon this aspect of the matter since having regard to the factual profile of the case and the submissions of the parties, the matter would now be dealt with by the Commission afresh in so far as the case of the petitioner is concerned .

Before I part with the case the submission of Mr. Verma merits to be noticed. He submitted that actually no personal hearing was afforded to the petitioner. Had it been given, the matter would have been clarified to the respondent Commission. On 11.4.2013, only written statement/defence was filed and due to absence of the complainant on that date no hearing was made.

Taking into account the aforesaid fact this Court is persuaded to find much substance in the submission of the petitioner. As a result of the above discussion, this Court keeps that

part of the order dated 18.4.2013 passed by the respondent - Commission in abeyance wherein the petitioner was directed to pay part/portion of the compensation amount quantified by the Commission as also the recommendation to the State Government for initiation of departmental proceeding against the petitioner in abeyance until a fresh order is passed by the respondent Commission. The matter is remitted to the respondent- Commission for passing a fresh order in accordance with law in so far as the case of the petitioner is concerned but after affording opportunity of hearing to the petitioner .

Needless to observe that the order dated 18.04.2013 in no way shall preclude the respondent-Commission from passing a fresh order.

(Kishore Kumar Mandal, J)

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