

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1094 of 2015

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

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Noor Alam, son of Sk. Sadique, Resident of village – Amaithi, Khurd,
P.S. – Thawe, District – Gopalganj.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Government of Bihar, Patna.
2. The District Magistrate, Gopalganj.
3. The Superintendent of Police, Gopalganj.
4. The Officer-in-Charge of Baikunthpur Police Station, District – Gopalganj.
5. The Sub-divisional Officer, Gopalganj.

.... Respondents

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Appearance :

For the Petitioner : Mr. Anisur Rahman, Advocate

For the State : Mr. Sanjeev Kumar, AC to SC.I

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 16-10-2015

By this writ petition, the petitioner has challenged the order dated 06.10.2015, passed by the District Magistrate cum Collector, Gopalganj, as contained in Annexure – 3, issued in relation to Crime Control Case No. 20/2015 (State of Bihar Versus Noor Alam Miyan) under Section 3(3) of the Bihar Crime Control Act, 1981. The challenge is simple. The petitioner has been visited with the order of making his Haziri at a distant police station of

Gopalganj which is Baikunthpur police station, whereas, petitioner is a resident of Thawe, Gopalganj which is at a distance of 5 to 10 K.Ms. away. This order has been issued in purported exercise of powers under Section 3(3) of the Bihar Crime Control Act, 1981 (hereinafter referred to as 'Act').

Learned counsel for the petitioner submits that a bare perusal of the order would itself show that the proceeding were sought to be initiated on the ground that petitioner is an accused in one case i.e. Thawe P.S. Case No. 44/2008 (Sessions Trial No. 30/2012). The petitioner pointed out to the authority itself that he had already been acquitted in that case on 25.08.2012, and filed a copy of the judgment. Notwithstanding this, only to maintain law and order for the assembly election such order has been passed. In other words, it is submitted that exercise of jurisdiction is *ultra vires* of the Act, and thus, wholly without jurisdiction. Learned counsel for the State is at a loss to justify the action.

Having considered the matter, in our view, the order as contained in Annexure – 3 cannot be sustained. Firstly, before the Collector chooses to exercise jurisdiction under the Act, Section 3 of the Act, contemplates that the person must be a “habitual offender” as defined in Section 2(d)

of the Act. It is settled and beyond doubt that, in the Act, to be a habitual offender, a person has at least to be an accused in several cases to make law and order problem into a public order problem. Here, there was only one case mentioned in which petitioner was accused wherein he has already been acquitted. Thus, he is no more accused in any other case.

We are at a loss to understand under what jurisdiction such an order would be passed. It must be remembered that any order passed under the Act is a serious infringement of fundamental right of the party. It is not to be exercised casually or in a cavalier manner. On this ground alone, we are unable to sustain the order of the Collector-cum-District Magistrate, Gopalganj. It is, accordingly, quashed.

This writ application is allowed.

Let a copy of the order be communicated to the Collector cum District Magistrate, Gopalganj.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Rajeev/-

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