

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.18254 of 2016

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

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High Court Legal Services Committee, Patna High Court, Patna through its Secretary Shri Kishore Prasad, Joint Registrar (Judicial)-cum-secretary, Patna High Court Legal Services Committee, Patna.

.... Petitioner

Versus

1. The State of Bihar.
2. The High Court of Judicature at Patna through the Registrar General, Patna High Court, Patna.
3. The Registrar General, Patna High Court, Patna.
4. The Secretary, General Administrative Department, Government of Bihar, Patna.

Opposite Party 1st Set

5. Mr. Nilesh Kumar, Advocate, Patna High Court (in Cr. Appeal No. (D.B.) 462/93).
6. Mr. Amish Kumar Jha, Advocate Patna High Court, Patna (in Cr. Appeal No. (DB) 529 of 1993).
7. Mr. Bindhyachal Singh, Advocate, Patna High Court, Patna in Cr. Appeal No. (DB) 538 of 1993).

Opposite Party 2nd Set

8. Ram Uchit Rai, Son of Late Shital Rai.
9. Prahlad Rai, Son of Late Shital Rai.
10. Ram Babu Rai, Son of Sri Indradeo Rai.
11. Raghu Nath Rai, Son of Late Sonful Rai.
12. Rameshwar Rai, Son of Late Shital Rai.
13. Ram Balak Rai, Son of Late Shital Rai.
14. Mahendra Prasad, Son of Late Bhagwat Mahto.
15. Beldar Rai, Son of Late Sonful Rai. All are resident of Village Bakhari, Police Station- Kalyanpur, P.O. Bakhari, District- East Champaran.
16. Ram Ayodhya Singh, Son of Late Anaka Singh, resident of Village Bishambharpur, Police Station Kalyanpur, P.O. Bishambharpur, District- East Champaran (Appellants in Cr. Appl. No. 462/1993).
17. Ramadhar Rai Son of Shital Rai, resident of Village Bakhari, Police Station- Kalyanpur, District- East Champaran.
18. Sita Ram Singh Son of Ram Ayodhya Singh, resident of Village Bishambharpur, Police Station Kalyanpur, District- East Champaran (Appellants in Cr. Appl.(DB) No. 529/1993).
19. Indradeo Rai, Son of Tota Rai, resident of Village Bakhari Tola Patparia, Police Station- Kalyanpur, District- East Champaran (Appellant in Cr. Appeal (DB) No. 538/1993)

.... Opposite Party 3rd set

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Appearance:

For the Petitioner/s : Mr. Abhishek, Advocate.

For the Opposite Party/s : Mr. Satyabir Bharti, Advocate.

**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE VIKASH JAIN**

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 19-11-2016

Heard learned counsel for the petitioner and learned counsel for the State.

2. The present application has been filed by Patna High Court Legal Services Committee for modification of the order dated 24th of April, 2015 passed in Criminal Appeal (DB) No. 462 of 1993 by the Division Bench of this Court awarding a fee of Rs. 5000/- to the Amicus Curiae.

3. The argument of the learned counsel for the petitioner is that under the Bihar State Legal Services Authority Regulation, 1998, the fee has been fixed; therefore, the High Court Legal Services Committee cannot pay more fee than what is fixed in the said Regulation.

4. We do not find any merit in the argument raised by learned counsel for the petitioner. Bihar State Legal Services Authority Regulation, 1998 regulates a fee payable to a counsel engaged by Patna High Court Legal Services Committee but not a fee ordered to be paid by the Court appointed Amicus. The fee of Rs.

5000/- awarded by the Court cannot be said to be unjust keeping in view the fact that the criminal appeal in which Amicus was appointed was against conviction of the accused under Section 302 of the Indian Penal Code.

5. The other orders relied upon by the Petitioner were passed in Civil Review No. 452 of 2011 and Civil Review No. 453 of 2011 which are the cases wherein the fee was granted to an Amicus in the civil cases. Such orders will not be relevant in respect of fee paid for defending an accused convicted for the offence under Section 302 of the IPC. Still further, reliance on the orders dated 16th of September, 2016 passed in Criminal Miscellaneous No. 24032 of 2016 and Criminal Miscellaneous No. 25601 of 2016 is again not tenable. The Court has not interfered with the quantum of fee but observed that the Patna High Court Legal Services Committee has no onus or duty to pay the fee to the Amicus.

6. We find that the Patna High Court Legal Service Committee is constituted to provide legal aid to the convicts who cannot represent themselves in view the mandate of the Constitution and the judgment of the Supreme Court to provide legal aid to the under trials and convicts. The Committee cannot be permitted to avoid making payment of fee. The Committee will be failing in its

constitutional and legal duty, if this Court appointed Amicus is not to be paid fee by it. It cannot be said that the Patna High Court Legal Services Committee cannot and should not pay such fee as it is not just, fair and reasonable and in the interest of justice.

7. We do not find any reason to modify the order dated 24th of April, 2015 passed in Criminal Appeal (DB) No. 462 of 1993. The application is accordingly dismissed.

(Hemant Gupta, ACJ)

(Vikash Jain, J)

Mishra

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	23.11.2016
Transmission Date	23.11.2016