

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1183 of 2015

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Dharmendra Kumar Pandey @ Dharmendra Pandey, son of Lakshmi Kant Pandey, resident of village- Manikpur, P.S.- Dhansoin, District- Buxar.

.... Petitioner.

Versus

1. The State of Bihar through the Home Secretary Govt. of Bihar, Old Secretariat, Patna.
2. The District Magistrate, Buxar.
3. The Superintendent of Police, Buxar.
4. The Sub-Divisional Officer, Buxar.
5. The Officer-in-Charge, Dhansoin, Police Station, Buxar.

.... Respondents

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Appearance :

For the Petitioner : Mr. Dr. Kamal Deo Sharma, Advocate.

For the Respondents : Mr. A.N. Deo, S.C. 26.

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

C.A.V. ORDER

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

4 11.02.2016 This writ application has been filed by the petitioner, initially for quashing the show cause notice contained in Memo No. 190 dated 01.10.2015 (Annexure-4), issued by the District Magistrate, Buxar (Respondent No. 2), thereafter seeking amendment in the prayer by way of Interlocutory Application No. 1946 of 2014, for quashing the final order dated 07.10.2015 (Annexure-5), passed by the Respondent No. 2 in connection with Bihar Control of Crimes Act Case No. 175/2015, in exercise of power conferred under Section 3 of Bihar Control of Crimes Act, 1981 (hereinafter referred to as 'the Act'), by which the petitioner

was directed to appear physically, before the Officer In-charge of Semri Police Station since 14.10.2015 to 09.11.2015, at 10.00 A.M. and 5.00 P.M., twice daily.

In short, case of the petitioner, is that on 01.10.2015, he received a notice contained in Memo No. 190 dated 01.10.2015 issued by the District Magistrate, Buxar, in terms of Section 3 of the Act, for submitting his explanation on 07.10.2015, as to why the proceeding under Section 3 of the Act be not initiated against him? The notice referred above was issued on the basis of the letter of the Superintendent of Police, Buxar, bearing no. 5258 dated 29.09.2015 and Memo No. 2946 dated 26.09.2015 of the Sub-Divisional Police Officer, Dumraon. The said notice mentions that the petitioner is an anti-social element and being involved in many criminal incidents and by the time he was out of jail custody and intended to threaten the voters, in the Bihar Assembly Election, 2015. The Superintendent of Police, Buxar, while submitting report for initiation of proceedings under Section 3 of the Act against the petitioner, mentioned a criminal case being registered as Rajapur P.S. Case No. 55/2002 dated 28.04.2002 instituted under Section 392 of the Indian Penal Code and Station Diary Entry No. 477 of Dhansoi Police Station dated 24.09.2015 against him.

The petitioner filed his reply before the District Magistrate, Buxar, but the same was not considered. The further case of the petitioner is that he is not an anti-social element rather he is an elected member of Zila Parishad, Buxar, from Rajapur East, Constituency in the district of Buxar. The petitioner also contended that so far the criminal case registered against the petitioner i.e., Rajapur P.S. Case No. 55/2002, as mentioned in the impugned notice dated 01.10.2015, as also in the order under challenge dated 07.10.2015 is concerned, he has been acquitted in the said case (Rajapur P.S. Case No. 55/2002) by the court of learned Additional District & Sessions Judge, Fast Track Court-III, Buxar, vide Judgment dated 22.07.2008, passed in Sessions Trial No. 59/07/05/07. The counsel for the petitioner submits that the impugned notice as well as the order mention about an station diary entry also, bearing no. 477 dated 24.09.2015 of Dhansoi Police Station, which has been brought on record vide Annexure-4 series of the counter-affidavit of the Respondent No. 2 but the very entry made in the station diary does not disclose about the source of information and it appears that such entry in the station diary was made by the Officer In-charge of Dhansoi Police Station with ulterior motive. The counsel for the petitioner further submits that the petitioner is not an anti-social element as defined in

Section 2(d)(i) of the Act and the order impugned is unwarranted and illegal.

A counter-affidavit has been filed on behalf of the Respondent No. 2, the District Magistrate, Buxar, contending that the Superintendent of Police, Buxar, vide its Letter No. 5258/Crime Branch dated 29.09.2015 had made recommendation for initiation of proceeding under Section 3 of Bihar Control of Crimes Act against the petitioner. The said recommendation of the Superintendent of Police, Buxar, was made on the basis of the report of Sub-Divisional Police Officer, Buxar and Officer In-charge of Dhansoi Police Station as well as noticing the Station Diary Entry No. 477 dated 24.09.2015. It has been also contended in the counter-affidavit that there was an apprehension about the petitioner that he could disturb the voting in his locality. The last contention of the respondent is that after completion of election process, the order under challenge has lost force in itself thus the writ has become infructuous.

A counter-affidavit has also been filed on behalf of the Respondent No. 3, but the same is only reiteration of the facts and plea mentioned in the counter-affidavit of the District Magistrate, Buxar, as referred above.

We may notice here the relevant provision of the Act,

which reads thus:-

“Section 3. Externment, etc., of anti-social element:- (1) Where it appears to the District Magistrate that:-

(a) any person is an anti-social element, and

(b) (i) that his movements or acts in the district or any part thereof are causing or calculated to cause alarm, danger or harm to persons or property; or

(ii) that there are reasonable grounds for believing that he is engaged or about to engage, in the district or any part thereof, in the commission of any offence punishable under Chapter XVI or Chapter XVII of the Indian Penal Code, or under the Suppression of Immoral Traffic in Women and Girls Act, 1956, or abetment of such offence;

The District Magistrate shall by notice in writing inform him of the general nature of the material allegation against him in respect of clauses (a) and (b) and shall be given him a reasonable opportunity of tendering an explanation regarding them.

(2) The person against whom an order under this section is proposed to be made shall have the right to consult and be defended by a counsel of his choice



and shall be given a reasonable opportunity of examining himself, if he so desires and also of examining any other witnesses that he may wish to produce in support of his explanation unless for reasons to be recorded in writing the District Magistrate is of opinion that the request is made for the purpose of vexation or delay. The District Magistrate on being satisfied that the conditions specified in Clause(a) and (d) of sub-Section 1(1) exist, may be order in writing-

(a) Direct him to remove himself outside the district or part thereof, as the case may be, by such route, if any, and within such time as may be specified in the order and to resist from entering the district or the specific part thereof, until, the expiry of such period, not exceeding six months as may be specified in the order.

(b) (i) require such person to notify his movement, or to report himself, or to do both, in such manner, at such time and to such authority or persons may be specified in the order;

(ii) prohibit or restrict possessions or use by him of

such article as may be specified in the order;

(iii) direct him otherwise to conduct himself in such manner as may be specified in the order;

Until the expiry of such period, not exceeding six months, as may be specified in the order.

Section 3 of the Act as referred above, makes it abundantly clear that a person has to be an anti-social element within the meaning of Section 2(d) of the Act, in order to bring him within the ambit of Section 3 of the Act, so that an order under Section 3(3) of the Act can be made against him, otherwise a District Magistrate does not have jurisdiction, as to pass such order in terms of Section 3 of the Act.

The definition of the anti-social element as contained in Section 2(d) of the Act, which reads as under:

“2(d) ‘ Anti-social element’ means a person who-(i) either by himself or as a member of or leader of a gang, habitually commits or attempts to commit or abates the commission of offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code;

(ii) Habitually commits or abates the commission of offences under the suppression of immoral traffic in Women and Girls Act, 1956:

(iii) Who by words or otherwise promotes or attempts to promote on grounds of religion, race, language, caste or community or other grounds whatsoever, feeling of enmity or hatred between

different religions, racial or language groups or castes or communities; or

(iv) has been found habitually passing in decent remarks to or teasing Women or Girls; or

(v) who has been convicted of an offences under Sections 25,26,27,28 or 29 of the Arms Act, 1959.

The questions, therefore, arise for our consideration: whether in the facts and circumstances of the case, the petitioner is an anti-social element as defined under Section 2 (d) of the Act and the order under challenge dated 07.10.2015 is a valid order?

It appears from the order under challenge dated 07.10.2015 (Annexure-5) that the District Magistrate, Buxar, had taken notice of Rajapur P.S. Case No. 55/02 being registered against the petitioner as also the station diary entry of Dhansoi Police Station being no. 477 dated 24.09.2015, in order to bring him within the ambit of anti-social element.

In the facts of this case, if the petitioner is not shown to be habitually committing, or attempting to commit, or abating commission of, offences punishable under Chapter XVI and XVII of the Indian Penal Code, he would not be regarded as an anti-social element within the meaning of Section 2(d)(i) of the Act and the definition of anti-social element contained in Sub-Section(ii), (iii), (iv) and (v) of Clause (d) of Section 2 is not

relevant in the present case.

It is noteworthy to point out that the Supreme Court, in the case of **Vijay Narayan Singh- Vs- The State of Bihar, reported in (1984) 3 SCC 14**, has clearly held that the expression “habitually” means “repeatedly” or “persistently”. It implies a thread of continuity stringing together similar repetitive acts.

In the instant case, the petitioner is alleged to have been involved in a solitary case referred above i.e., Rajapur P.S. Case No. 52/2002 which could not have made the petitioner a person, who can be said an anti-social element.

There is no material on record to show that the petitioner committed any offence between 28.04.2002 (i.e., the date of registration of the Rajapur P.S. Case No. 55/2002 and 07.10.2015 (i.e., the date of passing of the impugned order) and also there is no reasoning assigned in the order under challenge to show as to how the alleged commission of offences by the petitioner in the year 2002 would have any bearing in the year 2015 for passing such order, in terms of Section 3 of the Act. Such absence, of any reason mentioned in the order does not qualify the word and expression “reasonable ground for believing” as envisaged in Section 3(1)(b)(ii) of the Act.



In view of decision rendered by this Court, reported in 2015(4) PLJR 407, on the date of passing of the order in terms of Section 3 of the Act, there has to be material available that the person against whom the order is to be made must be engaged or about to engage in the commission of any offence punishable under Chapter XVI & XVII of the Indian Penal Code, or under the Suppression of Immoral Traffic in Women and Girls Act, 1956 or abetment of such offence, and also the movement or acts of the person in the district or any part thereof are causing or calculated to cause alarm, danger or harm to persons or property for recording his satisfaction.

In Shiv Prasad Bhatnagar-Vs- State of M.P. reported in (1981)2 SCC 456, the order of preventive detention was challenged on several grounds including the order under challenge being suffered from the vice of staleness. The relevant observations appearing in Shiv Prasad Bhatnagar Case read thus:

“It is now well settled that grounds of detention must be pertinent and not irrelevant, proximate and not stale, precise and not vague. Irrelevance, staleness and vagueness are vices, any single of which is sufficient to vitiate a ground for detention”.

From the facts and circumstances of the present case, we are of the opinion that no such order against the petitioner was required to be passed in exercise of power conferred under

Section 3 of the Act, especially in view of Annexure-6, which is the judgment of acquittal of the petitioner in Rajapur P.S. Case No. 55/2002. The order impugned even does not qualify the requirement of law as envisaged under Section 2 (d)(i) and 3(1)(a)& (b) of the Act. The direction upon the petitioner to appear physically before the Officer In-charge of Simri Police Station since 14.10.2015 and 09.11.2015, has also been passed in contravention of Rule 6 of the Bihar Control of Crimes Rules, 1978, as the said police station is 50 Kilo Meters away from the residence of the petitioner.

In view of the foregoing discussions, the impugned order dated 07.10.2015 (Annexure-5), passed by the District Magistrate, Buxar, is hereby, quashed.

The writ application is disposed of, in view of the observations and directions, made above.

(Sudhir Singh, J)

I agree.
(Ramesh Kumar Datta, J)

(Ramesh Kumar Datta, J)

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