

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1113 of 2015

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Uday Chandra Rai, Son of Sri Jagdish Rai, resident of Village - Dhabolia,
P.S. - Kusheshwarasthan, District - Darbhanga.

.... Petitioner

Versus

1. The State of Bihar through the District Magistrate Darbhanga.
2. Superintendent of Police Darbhanga.
3. Officer - In - Charge Biroul.
4. Officer - In - Charge Kusheshwar Asthan. Both under District-Darbhanga.

.... Respondents

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Appearance :

For the Petitioner : Mr. Diwakar Prasad Singh, Advocate.

For the Respondents : Mr. Mritunjay Kumar, A.C. to S.C. 23.

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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)

5 11.02.2016 The petitioner has filed this writ application for quashing the order dated 04.07.2015 (Annexure-6), passed in Bihar Control of Crimes Act Case No. 14/2015, by the District Magistrate, Darbhanga, 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 ensure his physical appearance on each and every Monday at 11.00 A.M. in Biraul Police Station since 13.07.2015 till completion of Bihar Assembly Election, 2015.

In short, case of the petitioner, is that he is a man of



good moral and character and he is a law abiding citizen. The District Magistrate, Darbhanga, in exercise of power conferred under Section 3 of the Act, on the basis of recommendation vide Letter No. 1932/D.C.B dated 24.06.2015 made by the Senior Superintendent of Police, Darbhanga, considering the two criminal cases bearing Kusheshwar Asthan P.S. Case No. 65/2011 dated 27.03.2011 registered under Sections 147,149, 323, 436, 504 I.P.C. and 3(i)(x) of SC/ST Act and Kusheshwar Asthan P.S. Case No. 75/2011 dated 10.04.2011 registered under Sections 147, 148, 149, 323, 324, 325, 333, 353, 307 and 504 Indian Penal Code, passed the order under challenge. The contention of the petitioner is that while passing the order impugned, the District Magistrate, Darbhanga, considered the said two criminal cases instituted against the petitioner and recorded his satisfaction that in order to hold free and fair Election, preventive order in terms of Section 3 of the Act was required to be passed. The further contention of the petitioner is that the District Magistrate, Darbhanga, did not consider the explanation submitted by the petitioner and without application of mind, passed the order under challenge, which does not qualify Section 2(d) and Section 3(1)(a) & (b) (ii) of the Act and the same is required to be interfered with.

A counter-affidavit has been filed on behalf of the



Respondent Nos. 2 to 4, but no counter-affidavit has been filed on behalf of the District Magistrate, Darbhanga(Respondent No. 1). The contention of the respondent is that a proposal under the Bihar Control of Crimes Act was submitted by the then Officer In-Charge of Kusheshwar Asthan Police Station through proper Channel to the Senior Superintendent of Police, Darbhanga, on the grounds that the writ petitioner was accused in Kusheshwar Asthan P.S. Case No. 65/2011 and Kusheshwar Asthan P.S. Case No. 75/2011 and the presence of the petitioner in the district of Darbhanga, during the Assembly Election might have caused disturbance in free and fair Election. It is also contended that after completion of Assembly Election, the order dated 04.07.2015(Annexure-6) has lost its force.

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.

From a bare reading of Section 3 of the Act as referred above, it is 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 by taking recourse 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 04.07.2015 is a valid order?

It appears from the order under challenge dated 04.07.2015 (Annexure-6) that the District Magistrate, Darbhanga, had taken into account, Kusheshwar Asthan P.S. Case No. 65/2011 and 75/2011 as referred above being registered against the petitioner, in order to bring him within the ambit of anti-social element and the said order also notices the recommendation of the Senior Superintendent of Police, Darbhanga.

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 are 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 be involved in two criminal cases of the year 2011, referred above, which could not have made the petitioner a person, who can be said to have been “habitually” committing of offences under Chapter XVI and XVII of the Indian Penal Code and would not, bring the petitioner within the purview of definition of an anti-social element as envisaged in Section 2(d) (i) of the Act.

There is no material on record to show that the petitioner committed any offence between 10.04.2011 (i.e., the date of registration of the Kusheshwar Asthan P.S. Case No. 75/2011) and 04.07.2015 (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 2011 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 the 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 and in view of foregoing discussion, we are of the opinion that the petitioner could not have been regarded as anti-social element within the meaning of Section 2(d) of the Act and further no such

order to require his physical appearance in Biraul Police Station of Darbhanga district, would have been passed by the District Magistrate, Darbhanga, in exercise of power conferred under Section 3 of the Act, because of the fact that two criminal cases referred against the petitioner were of the year 2011 and both were not relevant rather stale and the impugned order dated 04.07.2015(Annexure-6) requires interference, therefore hereby, quashed.

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

(Sudhir Singh, J)

I agree.
(Ramesh Kumar Datta,J)

U.K./-A.F.R.

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(Ramesh Kumar Datta, J)