

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1171 of 2015

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Sanjay Mishra, S/o Sri Rashbihari Mishra, R/o Village + P.O.- Yogia, P.S.-
Brahmpur, District- Buxar.

.... Petitioner.

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna.
2. The District Magistrate, Buxar.
3. The Superintendent of Police, Buxar.
4. Dy. Superintendent of Police Dumraon, Buxar.
5. Dy. Inspector General of Police, Patna Region, Patna.
6. The Officer-in-Charge, P.S.- Brahmpur, District- Buxar.
7. The Officer-in-Charge, P.S.- Dhansoi, District- Buxar.

.... Respondents

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Appearance :

For the Petitioner : Mr. Vishwajeet Kumar Mishra, Advocate.

For the Respondents : Mr. Saroj Kumar Sharma, A.C. to A.A.G. 5.

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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)

6 11-02-2016 The petitioner has filed this writ application for quashing the order dated 10.10.2015(Annexure-4) passed in Bihar Control of Crimes Act Case No. 159/2015, by the District Magistrate, Buxar, (Respondent No. 2), 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 Dhansoi Police Station from 15.10.2015 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 30.09.2015, a notice contained in Memo No. 179 dated 30.09.2015(Annexure-1) was issued upon the petitioner, by the District Magistrate, Buxar, in terms of Section 3 of the Act, for submitting his explanation on 06.10.2015, 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. 5228 dated 29.09.2015 and Memo No. 1532 dated 23.09.2015 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 that 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 registered as Brahampur P.S. Case No. 199/2013 dated 24.07.2013 instituted under Sections 147, 148, 149, 341, 323, 307, 379, 427 of the Indian Penal Code and 27 of the Arms Act, pending against this petitioner.

The petitioner filed his reply before the District Magistrate, Buxar, contending therein that he has been granted anticipatory bail in connection with the said Brahampur P.S. Case



No. 199/2013 and he is not an anti-social element within the definition of Section 2(d) of the Act, rather he is a law abiding citizen and elected Mukhiya of Gram Panchayat, Yogia, Block – Brahampur, District – Buxar. The petitioner also contended in his reply to the said notice that vide Letter No.4001 dated 23.09.2008, the Superintendent of Police, Buxar, had sent a proposal to the Superintendent of Police (C), Crime Investigation Department, Bihar, Patna, for giving award to the petitioner, considering his contribution and assistance to the police department. The petitioner also stated that he was provided security guard by the District Administration considering life threat, but subsequently it was withdrawn. It is submitted by the petitioner that the respondent no. 2 did not consider the reply properly but passed the order impugned, which is illegal and requires interference.

A counter-affidavit has been filed by the Respondent No.2, the District Magistrate, Buxar, submitting that the Superintendent of Police, Buxar, on the basis of report of the Sub-Divisional Police Officer, Dumraon, vide Letter No.5228 /Crime Section, dated 29.09.2015, made recommendation for initiation of proceeding against the petitioner under Section 3 of the Act, on the basis of Sanha (Station Diary Entry) No. 523/2015 dated 18.09.2015 and taking note of a criminal case being registered as



Brahampur P.S. Case No.199/13. In the said recommendation, the S.D.P.O., Dumraon, mentioned about the petitioner being an out-law person and was intended to cause disturbance in free and fair poll. It is also contended in the counter-affidavit that the petitioner is an anti-social element, has been charge sheeted in Brahampur P.S. Case No.199/2013. The further contention is that the petitioner was directed to appear before the Officer In-charge of Dhansoi Police Station as to avoid his presence in Brahampur Police Station so he could not disturb the free and fair poll and the petitioner is in habit of disobeying the government order, as he never appeared before the Officer In-charge of Dhansoi Police Station in terms of the order under challenge and earlier the petitioner did not deposit his fire arms in the concerned police station after suspension of his licence, in compliance of Memo No. 090193 dated 30.03.2014 (Annexure-E).

A counter-affidavit has also been filed on behalf of the respondent nos.3, 4, 6 and 7, but the same is only reiteration of the facts stated 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 give 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 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 as 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 10.10.2015 is a valid order ?

It appears from the order under challenge dated 10.10.2015 (Annexure-4) that the District Magistrate, Buxar, has taken into account, Brahampur P.S.Case No.199/2013 being registered against the petitioner, in order to bring him within the ambit of anti-social element and the said order also notices the report of the Officer In-charge of Brahampur Police Station that public tranquility might have been disturbed by the petitioner, as he was highly active in Bihar Assembly Election, 2015.

In our view, if a person 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.

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 a solitary case 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 24.07.2013 (i.e. the date of registration of the Brahampur P.S.Case No.199/2013) and 10.10.2015 (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 2013 would have any bearing in the year

2015 for passing such order, in terms of Section 3 of the Act. Such absence, of any reasons 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.

From a bare reading of Section 3 of the Act, it transpires that besides being an anti-social element, it must appear to the District Magistrate that the movements or acts of the person in the district or any part thereof are causing or calculated to cause alarm, danger or harms to persons or property, or there are reasonable grounds for believing that the person is engaged or about to engage in the district or any part thereof in commission of any offence punishable under Chapter XVI and XVII of the Indian Penal Code or under the Suppression of Immoral Traffic in Women and Girls Act, 1956, or abetment of such offence.

In view of the decision rendered by this Court, reported in 2015(4) PLJR 407, on the date of passing of the order of externment, 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.

From the material available on record, it is apparent that no such order against the petitioner was required to be passed in exercise of power under Section 3 of the Act. The order impugned even does not qualify the requirement of law as envisaged under Section 2(d) (i) and 3(1)(b)(ii) of the Act. The direction upon the petitioner to appear physically before the officer In-charge of Dhansoi Police Station from 15.10.2015 to 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 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 foregoing discussion, we are of the opinion that the petitioner could not have been regarded an anti-social element within the meaning of Section 2(d) of the Act and further no such order to require physical appearance of the petitioner in Dhansoi Police Station of Buxar District, would have been passed by the District Magistrate in exercise of power conferred under Section 3 of the Act because of the fact that the solitary criminal case referred against the petitioner was of 2013 and it was not relevant rather stale and the impugned order dated 10.10.2015(Annexure-4) requires interference, therefore, accordingly, the same is quashed.

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

(Sudhir Singh, J)

I agree.
(Ramesh Kumar Datta,J)

(Ramesh Kumar Datta, J)

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