

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1082 of 2015

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Bittu Singh @ Abhimanyu Singh, Son of Tejbali Singh, resident of village
& P.O. - Mujaan, P.S. - Mohania, District -Kaimur, Bihar.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Home, Government of Bihar, Patna.
3. The District Magistrate-cum-Collector, Kaimur at Bhabhua, Bihar.
4. The S.D.M., Bhabhua/ Mohania, District - Kaimur, Bihar.
5. The Block Development Officer, Mohania/ Adhaura, District - Kaimur, Bihar.
6. The Superintendent of Police, District - Kaimur, Bihar.
7. The Station House Officer, P.S. - Adhaura, District - Kaimur, Bihar.
8. The Station House Officer, P.S. - Mohania, District - Kaimur, Bihar.

.... Respondents

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Appearance :

For the Petitioner : Mr. Arun Kumar, Advocate.

For the Respondents : Mr. P. K. Singh, S.C. 12.

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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, passed under exercise of power conferred under Section 3(3) of Bihar Control of Crimes Act, 1981, (hereinafter referred to as 'the Act') by the District Magistrate, Kaimur (Bhabhua) contained in Memo No. 2700/Legal dated 30.09.2015, in Bihar Control of Crimes Act Case No. 07/2015-16(Annexure-3), by which he had been directed with immediate



to appear daily, in Aghaura Police Station with immediate effect and remain physically present there upto 5.00 P.M. everyday till 09.11.2015 with further directions, to record the minimum travelling distance of train and bus route, in the attendance register, and also to provide his Mobile Number as to trace his location, and to furnish bond of Rs. One Lac with surety bond of equal amount in Form-IV, in terms of Section 7(b) of the Bihar Control of Crimes Act.

In short, case of the petitioner is that he is a man of repute and has been elected Chairman of Mujan Primary Agriculture Credit Society (PACS) since the year 2009. The petitioner contends that he is not an anti-social element, but has been wrongly implicated in two criminal cases i.e., Mohania P.S. Case No. 172 dated 07.06.2012, registered under Section (s), 147, 148, 149, 448, 323, 307, 386, 504 and 506 of the Indian Penal Code and also under Section 27 of the Arms Act, in which bail has already been granted vide order dated 14.06.2012 by the learned Sessions Judge, Kaimur at Bhabhua in Bail Petition No. 343/2012 and another case being Mohania P.S. Case No. 173 dated 07.06.2012, registered under Sections 25(1-b) a/26/35 of the Arms Act, in which also, bail has been granted to the petitioner vide order dated 29.06.2012 passed by the learned Sessions Judge,



Kaimur at Bhabhua in Bail Petition No. 345/2012, and except for above mentioned two cases, petitioner is not accused in any other case. The petitioner also contends that the impugned order is actuated by malafides, having intention to prevent the petitioner from supporting the candidate of his choice in the Bihar Vidhan Sabha Election, 2015 and the order of furnishing bond of Rs. One Lac is very unreasonable and unfounded and the direction, to make his physical appearance recorded at Aghaura Police Station and stay there till 5.00 P.M. every day, which is about 85 K.M. away from the residence of the petitioner, is unreasonable also. It has been also contended that the order under challenge does not refer any criminal case against the petitioner but mere registration of two criminal cases does not bring the petitioner within the purview of 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 Nos. 3, 5, 6 and 8, contending therein that the petitioner is named and charge sheeted accused in Mohania P.S. Case No. 172/2012 dated 07.06.2012 and Mohania P.S. Case No. 173/2012 dated 07.06.2012, and Mohania Police Station Diary Entry No. 252 dated 09.09.2015, being registered against the petitioner on the report of S.H.O., Mohania. It is also contended



by the said respondents that the petitioner is an anti-social element and he is accused for the offence of Section 386 of the Indian Penal Code and for the offences of Arms Act, thus, there are sufficient grounds for initiation of proceeding under Section 3(3) of the Act and the proceedings against the petitioner was initiated on the basis of the report of the Mohania Police, as the petitioner could be prevented from threatening the general voters and committing crimes. The next contention is that Aghaura Police Station is properly connected with the District Headquarter as well as Mohania Police Station, so it is/was not difficult for the petitioner to appear daily in the Aghaura Police Station.

The petitioner has also filed the reply to the counter-affidavit of the respondents, contending that in terms of the order passed by learned Sessions Judge, Kaimur at Bhabhua dated 31.10.2015, passed in Criminal Revision No. 120 of 2015(Annexure-4), he can not be considered as habitual offender.

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 of 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 impugned dated 30.09.2015 is a valid order?

From the order under challenge contained in Memo No. 2700/Legal dated 30.09.2015 passed in Bihar Control of Crimes Act Case No. 07/2015-16, it is apparent that the District Magistrate, Kaimur (Bhabhua) has not made reference of any criminal case instituted against the petitioner in the order rather he has recorded his satisfaction in respect of the petitioner being an anti-social element on the basis of Section 2(d)(i) of the Act and further held the utmost necessity, to control the criminal activities of the petitioner as to conduct peaceful, fearless and fair forthcoming Bihar Legislative General Election, 2015.

The said two criminal cases as stated in the counter affidavits of the respondents, do not find reference anywhere, in the entire order of the District Magistrate, Kaimur(Bhabhua)



impugned hereunder. The order under challenge, only notices the submissions made by the Public Prosecutor that the petitioner being involved in many criminal cases and report of the concerned Officer In-charge of the Police Station made against the petitioner, having apprehension that petitioner might have committed serious offences.

In the order impugned dated 30.09.2015, does not reflect that what was the material fact before the District Magistrate to record his satisfaction that the petitioner was an anti-social element in terms of Section 2(d) (i) of the Act and how he felt necessitated to pass such order in terms of Section 3(3) of the Act, against the petitioner.

In the said order of the District Magistrate there is no reasoning, even discussion about forming of such opinion against the petitioner as well as regarding necessity of passing such order against the petitioner.

From the definition of anti-social element, as envisaged under Section 2(d) of the Act, a person who habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI & XVII of the Indian Penal Code; or who has been convicted of an offence under Sections 25, 26, 27, 28 and 29 of the Arms Act, 1959 are relevant consideration,

for the present case, rest of the conditions as envisaged under Section 2(d) are not relevant in the facts and circumstances of the case of the petitioner.

At this juncture, it would be relevant to notice the order dated 31.10.2015 (Annexure-4) passed by the learned Sessions Judge, Kaimur at Bhabhua in Criminal Revision No. 120/2015, which seems to be attained finality as the respondents State has not advanced any submission with regard to any challenge to the said order. There is specific finding regarding the petitioner in paragraph 5 of the said order of the learned Sessions Judge, Kaimur at Bhabhua, which reads thus:-

“5- The petitioner is said to be involved in two cases of the same day of the occurrence, one is against extortion and another is of Arms Act. Habitual offender means that a person is committing the specific offence as mentioned above regularly or being done constantly as a habit. On the basis of single case of extortion the petitioner cannot be considered as habitually committing the offence of extortion. So far the said reasons he cannot be considered as habitual offender, so the impugned order is not sustainable and is not accordance with law, accordingly, set aside. In the result, this revision application is allowed”.

Apart from the said finding, referred above, even we

may notice the cases instituted against the petitioner, which are of the year 2012, we are not convinced that how the cases of the year 2012 could become relevant in the year 2015, for the purpose of passing of such order, especially when there is no explanation in the impugned order, nor any suggestive materials being available in this regard on record.

Now, it is noteworthy that an order of such nature cannot be passed merely because a person is an anti-social element within the meaning of Section 2(d) of the Act unless the qualifying conditions mentioned in Section 3 of the Act, are satisfied.

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 & 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 the order under



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.

Therefore, a person's act or omission of the past, which may have become stale, cannot establish relevance for passing such order, in terms of Section 3 of the Act. The order impugned or the counter-affidavit does not reflect that the petitioner committed any offence between 07.06.2012 and 30.09.2015 and also there is no reasoning assigned in the order to show as to how the alleged commission of offences by the petitioner in the year 2012 would have any bearing in the year 2015 for passing such order. Such absence, of any reasons mentioned in the order does not qualify the words and expression "reasonable ground for believing" as envisaged in Section 3(1)(b)(ii) of the Act.

From the material available on record, we find that the order of the District Magistrate contained in Memo No.



2700/Legal dated 30.09.2015 does not refer any criminal case being instituted against the petitioner, nor mentions the substance of the allegations against the petitioner. It appears from the order that the satisfaction recorded by the District Magistrate, Kaimur (Bhabhua) is ipse dixit of him and there was no material available on record to hold the petitioner as an anti-social element within the meaning of Section 2(d) of the Act. The order passed against the petitioner to appear in Aghaura Police Station and stay there till 5.00 P.M. every day, is in contravention of Rule 6 of the Bihar Control of the Crimes Rules, 1978 as the said police station is 85 K.M. away from the residence of the petitioner. So far the two criminal cases registered against the petitioner as referred above, are concerned, they appear to be registered for the same offence and on the same date, in the year 2012 itself.

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 as 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 Aghaura Police Station of Kaimur District, would have been passed by the District Magistrate in exercise of power conferred under Section 3(3) of the Act because of the fact that the criminal cases instituted against the petitioner were of 2012 and they are not relevant rather stale and the impugned order contained in Memo No. 2700/Legal dated 30.09.2015 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)

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

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