

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.598 of 2015

=====

AMIT KUMAR SINGH, SON OF SRI UPENDRA SINGH, R/O VILLAGE-AKABARPUR, P.S.-SAMHO, DISTRICT-BEGUSARAI .	 APPELLANT/S
VERSUS	
THE STATE OF BIHAR	 RESPONDENT/S

=====

with
Criminal Appeal (SJ) No.615 of 2015

=====

AMIT KUMAR SINGH, SON OF SRI UPENDRA SINGH, R/O VILLAGE-AKABARPUR, P.S.-SAMHO, DISTRICT-BEGUSARAI .	 APPELLANT/S
VERSUS	
THE STATE OF BIHAR	 RESPONDENT/S

=====

with
Criminal Appeal (SJ) No.662 of 2015

=====

AMIT KUMAR SINGH, SON OF SRI UPENDRA SINGH, R/O VILLAGE-AKABARPUR, P.S.-SAMHO, DISTRICT-BEGUSARAI .	 APPELLANT/S
VERSUS	
THE STATE OF BIHAR	 RESPONDENT/S

=====

with
Criminal Appeal (SJ) No.620 of 2015

=====

AMIT KUMAR SINGH, SON OF SRI UPENDRA SINGH, R/O VILLAGE-AKABARPUR, P.S.-SAMHO, DISTRICT-BEGUSARAI .	 APPELLANT/S
VERSUS	
THE STATE OF BIHAR	 RESPONDENT/S

=====

with
Criminal Appeal (SJ) No.639 of 2015

=====

AMIT KUMAR SINGH, SON OF SRI UPENDRA SINGH, R/O VILLAGE-AKABARPUR, P.S.-SAMHO, DISTRICT-BEGUSARAI .	 APPELLANT/S
VERSUS	
THE STATE OF BIHAR	 RESPONDENT/S

=====

with
Criminal Appeal (SJ) No.642 of 2015

=====

AMIT KUMAR SINGH, SON OF SRI UPENDRA SINGH, R/O VILLAGE-AKABARPUR, P.S.-SAMHO, DISTRICT-BEGUSARAI .	 APPELLANT/S
--	-----------------------



VERSUS
THE STATE OF BIHAR RESPONDENT/S

with
Criminal Appeal (SJ) No.643 of 2015

AMIT KUMAR SINGH, SON OF SRI UPENDRA SINGH, R/O
VILLAGE-AKABARPUR, P.S.-SAMHO, DISTRICT-BEGUSARAI .
..... APPELLANT/S

VERSUS
THE STATE OF BIHAR RESPONDENT/S

with
Criminal Appeal (SJ) No.648 of 2015

AMIT KUMAR SINGH, SON OF SRI UPENDRA SINGH, R/O
VILLAGE-AKABARPUR, P.S.-SAMHO, DISTRICT-BEGUSARAI .
..... APPELLANT/S

VERSUS
THE STATE OF BIHAR RESPONDENT/S

with
Criminal Appeal (SJ) No.651 of 2015

AMIT KUMAR SINGH, SON OF SRI UPENDRA SINGH, R/O
VILLAGE-AKABARPUR, P.S.-SAMHO, DISTRICT-BEGUSARAI .
..... APPELLANT/S

VERSUS
THE STATE OF BIHAR RESPONDENT/S

with
Criminal Appeal (SJ) No.654 of 2015

AMIT KUMAR SINGH, SON OF SRI UPENDRA SINGH, R/O
VILLAGE-AKABARPUR, P.S.-SAMHO, DISTRICT-BEGUSARAI .
..... APPELLANT/S

VERSUS
THE STATE OF BIHAR RESPONDENT/S

with
Criminal Appeal (SJ) No.655 of 2015

AMIT KUMAR SINGH, SON OF SRI UPENDRA SINGH, R/O
VILLAGE-AKABARPUR, P.S.-SAMHO, DISTRICT-BEGUSARAI .
..... APPELLANT/S

VERSUS
THE STATE OF BIHAR RESPONDENT/S

Appearance:
(In CR. APP (SJ) No.598 of 2015)
For the Appellant/s : Mr. Akhileshwar Pd. Singh, Sr. Adv.



Mr. Surendra Kishore Thakur
 For the Respondent/s : Mr. Abhay Kumar (App)
 (In CR. APP (SJ) No.615 of 2015)
 For the Appellant/s : Mr. Akhileshwar Pd. Singh, Sr. Adv
 Mr. Surendra Kishore Thakur
 For the Respondent/s : Mr. S.A.Ahmad(App)
 (In CR. APP (SJ) No.662 of 2015)
 For the Appellant/s : Mr. Akhileshwar Pd. Singh, Sr. Adv
 Mr. Surendra Kishore Thakur
 For the Respondent/s : Mr. Abhay Kumar(App)
 (In CR. APP (SJ) No.620 of 2015)
 For the Appellant/s : Mr. Akhileshwar Pd. Singh, Sr. Adv
 Mr. Surendra Kishore Thakur
 For the Respondent/s : Mr. Z.Hoda(App)
 (In CR. APP (SJ) No.639 of 2015)
 For the Appellant/s : Mr. Akhileshwar Pd. Singh, Sr. Adv
 Mr. Surendra Kishore Thakur
 For the Respondent/s : Mr. Abha Singh (App)
 (In CR. APP (SJ) No.642 of 2015)
 For the Appellant/s : Mr. Akhileshwar Pd. Singh, Sr. Adv
 Mr. Surendra Kishore Thakur
 For the Respondent/s : Mr. Sujeet Kumar Singh(App)
 (In CR. APP (SJ) No.643 of 2015)
 For the Appellant/s : Mr. Akhileshwar Pd. Singh, Sr. Adv
 Mr. Surendra Kishore Thakur
 For the Respondent/s : Mr. S.A.Ahmad(App)
 (In CR. APP (SJ) No.648 of 2015)
 For the Appellant/s : Mr. Akhileshwar Pd. Singh, Sr. Adv
 Mr. Surendra Kishore Thakur
 For the Respondent/s : Mr. Abhay Kumar(App)
 (In CR. APP (SJ) No.651 of 2015)
 For the Appellant/s : Mr. Akhileshwar Pd. Singh, Sr. Adv
 Mr. Surendra Kishore Thakur
 For the Respondent/s : Mr. Binod Bihari Singh (App)
 (In CR. APP (SJ) No.654 of 2015)
 For the Appellant/s : Mr. Akhileshwar Pd. Singh, Sr. Adv
 Mr. Surendra Kishore Thakur
 For the Respondent/s : Mr. Z.Hoda (App)
 (In CR. APP (SJ) No.655 of 2015)
 For the Appellant/s : Mr. Akhileshwar Pd. Singh, Sr. Adv
 Mr. Surendra Kishore Thakur
 For the Respondent/s : Mr. Bipin Kumar(App)

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT
Date: 18-07-2017

Heard learned counsel for the appellant as well as learned
 counsel for the Additional Public Prosecutor.

2. Though, during course of argument it has been submitted
 on behalf of appellant that smacking some sort of foul smell, there was
 complaint before the High Court in Administrative side against the learned



P.O. which the order impugned also disclose and to substantiate the allegation, different bail orders having been passed by the learned P.O. was also to be furnished and for that, requisites were filed by the appellant, being as an advocate clerk which caused annoyance to the learned P.O. whereupon eleven cases have been drawn up under Section 345 Cr.P.C. by the learned P.O. against the appellant, wherein similar kind of order has been passed on the same day and so, eleven appeals have been preferred and those are Criminal Appeal (SJ) No.598 of 2015, Criminal Appeal (SJ) No.615 of 2015, Criminal Appeal (SJ) No.662 of 2015, Criminal Appeal (SJ) No.620 of 2015, Criminal Appeal (SJ) No.639 of 2015, Criminal Appeal (SJ) No.642 of 2015, Criminal Appeal (SJ) No.643 of 2015, Criminal Appeal (SJ) No.648 of 2015, Criminal Appeal (SJ) No.651 of 2015, Criminal Appeal (SJ) No.654 of 2015, Criminal Appeal (SJ) No.655 of 2015 which have been preferred against the order dated 09.09.2015 passed in Cr. Misc. Case No. 1/2015, Cr. Misc. Case No. 2/2015, Cr. Misc. Case No. 5/2015, Cr. Misc. Case No. 3/2015, Cr. Misc. Case No. 9/2015, Cr. Misc. Case No. 7/2015, Cr. Misc. Case No. 8/2015, Cr. Misc. Case No. 11/2015, Cr. Misc. Case No. 4/2015, Cr. Misc. Case No. 10/2015, Cr. Misc. Case No. 6/2015 passed by Additional Sessions Judge, VIIth, Begusarai convicting the appellant for an offence punishable under Section 345 Cr.P.C. read with Section 228 of the IPC and sentenced him to undergo S.I. for six month as well as fined appertaining to rupees one thousand and in default thereof, to undergo S.I. for one month relating to all the cases.

3. Learned counsel for the appellant instead of arguing the appeals on its merit involved in stressing upon identification of appellant



as an Advocate Clerk with submission as well as supplementing his activity that being Advocate Clerk, Appellant was quite competent to procure certified copy of the orders relating to disposed of Bail Petitions irrespective of the fact that he was not at all engaged in his professional capacity by the respective clients or by the learned counsel who had filed those bail petition. That being so, it is the submission having made on behalf of appellant that as the appellant happens to be legally entitled to obtain certified copy of the order being an advocate clerk, consequent thereupon applied for obtaining certified copy of eleven orders relating to bail petition which had already been disposed of by the P.O. concerned and for that, he would not have been prosecuted in a manner as proceeded by the learned lower court as well as convicted therefor.

4. It has also been submitted that no opportunity was given to the appellant during course of conduction of the summery proceeding in spite of the fact that against the show cause having served upon him, has been subject to challenge before the High Court. In the aforesaid backdrop it was incumbent upon the learned lower court to have granted an adjournment of at least twenty-one days awaiting adjudication at the end of the High Court over the validity of show cause. That being so, the learned lower court had violated the principle of natural justice by not allowing the appellant to participate as well as defend his cause. As such, the order impugned happens to be bad, illegal and is fit to be set aside.

5. The learned Additional Public Prosecutor though submitted that the order impugned divulges some sort of lapses but those are mere irregularity and not illegality affecting upon prospect of the order impugned. That being so, the order is fit to be confirmed.



6. Before coming to discuss the propriety of the order, certain salient feature visualizing from the lower court record is to be noted down.

The first order sheet dated 22.07.2015 speaks with regard to initiation of an inquiry in accordance with Section 345 of the Cr.P.C. perceiving upon the activity of the appellant punishable in accordance with Section 228 of the IPC and for that, show cause was issued fixing the next date as 04-08-2015. On 04.08.2015 P.O. was on leave simultaneously, there was absence of the appellant. Next date was fixed on 17-08-2015. On 17.08.2015 again there was absence of appellant and so, by way of last chance an adjournment was granted fixing next date as 25.08.2015. On 25.08.2015 also there was absence and so, the matter was fixed for order on 09.09.2015 on which date, the order impugned has been passed separately relating to all the misc. cases. Because of the fact that there was no appearance of the appellant on account thereof, there was no communication at his end before the court with regard to the fact that the show cause served upon him has been challenged before the High Court. So, the learned P.O. was unaware with the aforesaid development.

7. Now coming to another aspect, first of all the show cause notice dated 22.07.2015 issued under memo no.199 dated 22.07.2015 and others are to be seen. After going through the same, it is evident that learned lower court took two allegation against him, the first one, he was not concerned with the Bail Petition No.1595/2014 and others even then, he had applied for obtaining certified copy and accordingly, in terms of Rule-168 of Criminal Court Rules he was not competent enough to act in aforesaid manner and further, being, acquainted with the aforesaid rule as an Advocate Clerk and further, the delinquent was in habit in such kind of



activity whereby intentionally and deliberately interrupted as well as interfered with the judicial proceeding as well as judicial work.

8. Chapter-XXVI of the Code of Criminal Procedure falling in between Section 342 to 352 relates with the event affecting the administration of justice whereunder, the court has been vested with extraordinary power to deal with the situation whenever confronted therewith. Section 345 is one of them, allowing the court to tackle delinquent who puts hindrance during course of due discharge of judicial function which, in the opinion of the court happens to be properly identifiable in terms of Section 228 of the IPC, in summary manner. That means to say, application of Section 345 of the Cr.P.C., though summary in nature will be applicable only in the case where the ingredients of Section 228 of the IPC is found duly satisfied. That means to say there should be an involvement of the delinquent by an action contrary to the procedure by way of putting some sort of obstacle in due discharge of judicial function. That means to say there should be intentional insult or interruption to a public servant at any stage of a judicial proceeding. However, some sort of embargo is found duly acknowledged, which is going to be discussed at appropriate stage herein after.

9. Now coming to present context, it is evident that there happens to be requisites at the end of the appellant for obtaining certified copy of the order by which the bail petition had been finally disposed of, and that activities have been found by the learned P.O. as contempt in accordance of Section 345 Cr.P.C., though was not related with any judicial proceeding running on board of the learned lower court.

10. Appellant's status as an advocate clerk is admitted one. In



likewise manner, it is also found apparent from the record that in all the relevant bail petition he was not engaged. In the aforesaid background, whether he was legally entrusted to get the certified copy of the bail orders, by which bail petitions were already disposed of. Though, it does not happens to be relevant one, however is to be taken note of on account of present nature of controversy.

11. Criminal Court Rules which guide the activity of subordinate court prescribe Rule-253 and on ward, dealing with the activity of Pleader and Mukhtar registered clerks. Rule-261 reads as follows:-

“261. (a) No clerk registered as the clerk of one Pleader or Mukhtar shall work or do business on behalf of any other Pleader or Mukhtar or in any case in which his employer is not engaged.

(b) No clerk registered as the clerk of a particular Pleader or Mukhtar shall, except in the absence of his employer, pass or hand over to another Pleader or Mukhtar any paper written by him to be filed in a case unless such paper also bears his employer’s signature.”

12. The Chapter-IV of Criminal court Rules deals with information. Rule-166 authorizes any person to apply for getting information from the records as well as registers of any court. Rule-168 commands the activity relating to criminal case and for better appreciation same is quoted below:

“168. In criminal cases, parties are entitled to obtain copies of any portion of the record of trial; this rule covers such Police Papers as may be made use of as evidence at the trial;

¹[Provided that in cases where there arises a doubt as to whether copy of any particular paper from the record of a pending case should be granted or not specific orders of the Presiding Officer of the Court concerned shall be obtained at the earliest opportunity before sending the paper to the Copying



Department:

Provided further that for copies of depositions in a Cr. case which is being heard the procedure laid down in rule 369 of the Civil Court Rules, Vol. I shall be followed.]”

13. After conjoint reading of Rule-168 as well as 261, it is apparent that no one save and except the parties concerned or on his behalf are entitled for getting the certified copy and in likewise manner, the advocate clerk of those Advocate or Pleader being duly engaged at the end of concerned party is authorized to take proper steps for which may include apply for getting C.C. of the documents. Admittedly, appellant was not at all concerned with the aforesaid bail petitions and so, was not at all entitled for filing requisite to get certified copy on his own.

14. In the aforesaid background now it has to be seen whether by such activity, appellant had put hurdle in judicial function. Proviso of Rule-168 suggest that whenever a doubt has arisen regarding prayer of the applicant whether it should be allowed or not permitting of issuance of C.C. of document as claimed for the opinion of the P.O. would be there and the nature of power, as could be perceived from the language, speaks an administrative function instead of judicial function. That being so, even having indulgence of the learned P.O., it would be in due discharge of administrative function instead of judicial function. As a result of which, it could not be said that while deciding the aforesaid issue, the P.O. has been prevented in due discharge of his judicial function.

15. Then coming to other aspect, from lower court record, it is evident that show cause was issued on account of perception of the learned lower court identifying the activity of the appellant to be detrimental by way of putting hurdle in due discharge of judicial function which, as



indicated above, has been negatived, is taken together with the order impugned, it is apparent that the learned lower court had acted contrary to the spirit of Section 345 Cr.P.C.

16. Before proceeding ahead Section 345 Cr.P.C. is to be taken note of which reads as follows:-

“345. Procedure in certain cases of contempt.

(1) When any such offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code (45 of 1860) is committed in the view or presence of any civil, Criminal or Revenue Court, the Court may cause the offender to be detained in custody and may at any time before the rising of the Court on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, sentence the offender to fine not exceeding two hundred rupees, and, in default of payment of fine, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

(2) In every such case the Court shall record the facts constituting the offence, with the statement (if any) made by the offender as well as the finding and sentence.

(3) If the offence is under section 228 of the Indian Penal Code (45 of 1860), the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.”

17. From plain reading of the Section it is apparent that only fine has been prescribed in lieu of sentence and in default of non-payment of fine, sentence is contrary to it, learned lower court inflicted the substantial sentence in utter violation of whatever been prescribed in Section 345 of the Cr.P.C. Admittedly, the section does not permit prescription of sentence while dealing with activities within the purview of Section 345 Cr.P.C., and if the court is of the opinion that the sentence prescribed thereunder would not cater the situation, then in that event, the matter is to be referred to magistrate, for the aforesaid purpose in



accordance of Section 346 Cr.P.C., which completely been ignored. That means to say, the learned P.O. illegally doursed the appellant for which, law does not permit.

18. From plain reading of the Section, it is evident that it happens to be summary proceeding and for that, the court is required to complete the exercise on the same day before rising of the court which in the facts and circumstances of the case, has not at all been complied with.

19. As perceived herein above, it is apparent from the lower court record, show cause that the court had not found activity of appellant with regard to any pending judicial proceeding rather it relates with administrative function which, did not find favour in terms of Section.

20. Apart from this, if the court would have found the action of the appellant putting infringement of exercise of judicial function by way of encroaching upon then, in that event, a complaint in terms of Section 195 Cr.P.C. would have been launched instead of proceeding with summary proceeding.

21. From the order impugned, it is also apparent that the learned P.O. had taken into consideration those facts which were not all available on the record, and manner whereunder the matter in hand has been dealt with speaks a lot at least, biasness of the court towards appellant, which should not have been.

22. Thus, the cumulative effect did not justify the finding of the learned lower court whereupon, it set aside. All the appeals are allowed.

23. However, the mode of presentation having at the present moment coupled with the activity of the appellant who did not show



ramorse with regard to his activity at least towards the institution of which, we all are part and parcel, having an obligation to maintain its purity, sanctity, to bow down by its ethics, frustrated and further, as uncontroverted at the end of the appellant that he obtained license of advocate clerk even concealing the fact that he happens to be convict of Begusarai P.S. Case No.272/1996 on account thereof, vide order dated 19.11.2015 passed by the District & Sessions Judge, Begusarai cancelled his license, will remain effective irrespective of having these appeals allowed. Considering the agony having discussed on that very score by the Apex Court in R.K. Anand vs. Registrar, Delhi High Court reported in (2009) 1 SCC 106 as well as (2013) 1 SCC 218 it has been held:-

“261. As regards the complaint to the Prime Minister in which Sarin, J. was said to be a member of the alleged coterie around the Chief Justice, Sarin, J. commented that until a copy of the complaint was filed with the recusal application he was not even aware of it.

262. Having thus dealt with the rest of the allegations made in the recusal application, the order, towards its end, said something which alone was sufficient to reject the request for recusal. It was pointed out that the applicant had a flourishing practice; he had been frequently appearing in the Court of Sarin, J. ever since he was appointed as a Judge and for the past twelve years was getting orders, both favourable and unfavourable, for his different clients. He never complained of any unfair treatment by Sarin, J. but recalled his old “hostility” with the Judge only after the notice was issued to him.

263. In the order the Judge concerned further observed:

“The path of recusal is very often a convenient and a soft option. This is especially so since a Judge really has no vested interest in doing a particular matter. However, the oath of office taken under Article 219 of the Constitution of India enjoins the Judge to duly and faithfully and to the best of his knowledge and judgment, perform the duties of office without fear or favour, affection or ill will while upholding the Constitution and the laws. In a case where unfounded and motivated allegations of bias are sought to be made with a



view of forum hunting/Bench preference or browbeating the court, then, succumbing to such a pressure would tantamount to not fulfilling the oath of office.”

The above passage, in our view, correctly sums up what should be the court’s response in the face of a request for recusal made with the intent to intimidate the court or to get better of an “inconvenient” Judge or to obfuscate the issues or to cause obstruction and delay the proceedings or in any other way frustrate or obstruct the course of justice.

264. We are constrained to pause here for a moment and to express grave concern over the fact that lately such tendencies and practices are on the increase. We have come across instances where one would simply throw a stone on a Judge (who is quite defenceless in such matters!) and later on cite the gratuitous attack as a ground to ask the Judge to recuse himself from hearing a case in which he would be appearing. Such conduct is bound to cause deep hurt to the Judge concerned but what is of far greater importance is that it defies the very fundamentals of administration of justice. A motivated application for recusal, therefore, needs to be dealt with sternly and should be viewed ordinarily as interference in the due course of justice leading to penal consequences.”

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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

