IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.17839 of 2016

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High Court Legal Services Committee, Patna High Court, through its Secretary Shri Kishore Prasad, Joint Registrar (Judicial) -cum- Secretary, Patna High Court Legal Services Committee, Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. The High Court of Judicature at Patna through the Registrar General, Patna High Court, Patna
3. The Registrar General, Patna High Court, Patna.
4. The Secretary, General Administrative Department, Government of Bihar, Patna
5. Mr. Praveen Kumar, Advocate, Patna High Court, Patna
6. Ghamandi Paswan
7. Madhesh Paswan Both are sons of Chanarik Paswan, Both resident of village- Jarkha, P.S.- Sigori, District- Patna

.... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Jitendra Prasad Singh, Advocate
For the High Court : Mr. Satyabir Bharti, Advocate
Ms. Aparna Arun, Advocae

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

2 02-03-2017 Heard learned counsel for the petitioner and learned counsel for the State.

2. The present application has been filed by Patna High Court Legal Services Committee for modification of the order dated 9th of April, 2015 passed in Criminal Appeal (DB) No. 394 of 1993 by the Division Bench of this Court awarding a fee of Rs. 5000/- to the Amicus Curiae.

3. The argument of the learned counsel for the

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petitioner is that under the Bihar State Legal Services Authority Regulation, 1998, the fee has been fixed; therefore, the High Court Legal Services Committee cannot pay more fee than what is fixed in the said Regulation.

4. We do not find any merit in the argument raised by learned counsel for the petitioner. Bihar State Legal Services Authority Regulation, 1998 regulates a fee payable to a counsel engaged by Patna High Court Legal Services Committee but not a fee ordered to be paid by the Court appointed Amicus. The fee of Rs. 5000/- awarded by the Court cannot be said to be unjust keeping in view the fact that the criminal appeal in which Amicus was appointed was against conviction of the accused under Section 302 of the Indian Penal Code.

5. The other orders relied upon by the petitioner were passed in Civil Review No. 452 of 2011 and Civil Review No. 453 of 2011 which are the cases wherein the fee was granted to an Amicus in the civil cases. Such orders will not be relevant in respect of fee paid for defending an accused convicted for the offence under Section 302 of the IPC. Still further, reliance on the orders dated 16th of September, 2016 passed in Criminal Miscellaneous No. 24032 of 2016 and Criminal Miscellaneous No. 25601 of 2016 is again not tenable. The Court has not

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interfered with the quantum of fee but observed that the Patna High Court Legal Services Committee has no onus or duty to pay the fee to the Amicus.

6. We find that the Patna High Court Legal Service Committee is constituted to provide legal aid to the convicts who cannot represent themselves in view the mandate of the Constitution and the judgment of the Supreme Court to provide legal aid to the under trials and convicts. The Committee cannot be permitted to avoid making payment of fee. The Committee will be failing in its constitutional and legal duty, if this Court appointed Amicus is not to be paid fee by it. It cannot be said that the Patna High Court Legal Services Committee cannot and should not pay such fee as it is not just, fair and reasonable and in the interest of justice.

7. We do not find any reason to modify the order dated 9th of April, 2015 passed in Criminal Appeal (DB) No. 394 of 1993. The application is accordingly dismissed.

(Hemant Gupta, ACJ)

(Sudhir Singh, J)

S.Pandey/-

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