

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.7641 of 2012

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Kamlesh Singh, S/O Late Parashuram Singh, R/O Vill+P.O.Khanethi, P.S.Sonhan,
Distt-Kaimur (Bhabua), At Present -Principal, Bhupesh Gupta Inter College,
Ramlal Nagar, Bhabua, Distt-Kaimur at Bhabua

.... Petitioner/s

Versus

1. The State of Bihar
2. Dudh Nath Prasad, son of Sri Khurpat Prasad, resident of village and P.O-
Akhlaspur, P.S.- Bhabua, District- Kaimur at Bhabua.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. A.Kumar, Advocate.
Mr. Ramchandra Singh, Advocate.

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 26-04-2017

Heard learned counsel for the petitioner and the State.

2. This petition has been filed for quashing the order dated
06.01.2012 passed by the learned Chief Judicial Magistrate, Bhabua
whereby cognizance has been taken under Section 175 of the Indian
Penal Code in official complaint Case No. 01 of 2012.

3. A brief fact giving rise to the case is that a Judicial
Member of Permanent Lok Adalat, Kaimur at Bhabua had filed an
official complaint before the learned Chief Judicial Magistrate,
Kaimur at Bhabua, alleging therein that the complainant, being the
Presiding Officer of Permanent Lok Adalat, directed the petitioner
Kamlesh Singh, Principal of Bhupesh Gupta Inter College, being



custodian of the college record, to produce the payment register of the Lecturers in connection of Pre-litigation Case No. 94 of 2011. The aforesaid direction was given on 03.09.2011 and 28.09.2011, despite that documents were not produced till 04.11.2011 so on the basis of the complaint, cognizance has been taken under Section 175 of the Indian Penal Code.

4. Learned counsel for the petitioner submits that in fact the nature of dispute involved in the case is not maintainable before the Lok Adalat, as before this forum disputes are settled on the basis of compromise only and not otherwise. Moreover, the Permanent Lok Adalat does not exist at present in the State of Bihar. A continuous Lok Adalat is constituted under Section 19 of the Legal Services Authority Act, 1987 (hereinafter referred to as the 'Act') which is not a Permanent Lok Adalat, rather the provision of Permanent Lok Adalat is under Section 22-B of the Legal Services Authority Act 1987. However, the petitioner had earlier preferred a writ application, bearing CWJC No. 9914 of 2011, regarding maintainability of pre-litigation case before the Lok Adalat, Kaimur at Bhabua and by order dated 04.11.2011, the Court directed to raise the issue before the Lok Adalat itself within three weeks from the date of passing of the order and till adjudication of the issue, further proceeding in pre-litigation case was stayed.



5. Learned counsel further submits that on 12.11.2011, the said order of the Hon'ble Court was produced before the Lok Adalat for hearing the matter, but the petitioner was not heard and on 23.12.2011 passed the order for lodging prosecution against the petitioner under Section 175 of the Indian Penal Code. So in this backdrop of the fact, no *prima facie* case under Section 175 of the Indian Penal Code is made out. It is also submitted that Pre-litigation Case No. 94 of 2011 was filed by the O.P. No. 2 for getting subsistence allowance, as he was put under suspension for charge of defaulcating money of the college. It is submitted that the dispute in question could not be decided by the Lok Adalat, therefore, the petitioner preferred a writ application, bearing CWJC No. 3099 of 2012, so by order dated 14.02.2014, the Hon'ble Court held that Presiding Officer of Lok Adalat, Kaimur at Bhabua, without considering the law laid down by the Hon'ble Supreme Court, has wrongly held that the Permanent Lok Adalat has the jurisdiction in view of Section 22(C) of the Act because there is serious dispute between the parties, the same cannot be decided by the Permanent Lok Adalat constituted under Section 19 of the Act rather the Permanent Lok Adalat has only conciliatory function and has got no adjudicatory function to decide the contested issue so the writ application was allowed.



6. Considering rival submissions of both sides and on perusal of the record, I find that the matter was earlier set at rest by this Court by order dated 14.02.2014 passed in CWJC No. 3099 of 2012 that the Lok Adalat has got no jurisdiction to decide contesting issues between the parties in Pre-litigation Case No. 94 of 2011. in the said judgment the court observed as follows:

“In the case of State of Punjab and another vs. Jalour Singh and others, (2008) 2 Supreme Court Cases 660, 3 Judges Bench of the Hon’ble Supreme Court has held that “the Lok Adalats have no adjudicatory or judicial functions. Their functions relate purely to conciliation. A Lok Adalat determines a reference on the basis of a compromise or settlement between the parties at its instance, and puts its seal of confirmation by making an award in terms of the compromise or settlement. When the Lok Adalat is not able to arrive at a settlement or compromise, no award is made and the case record is returned to the court from which the reference was received, for disposal in accordance with law. No Lok Adalat has the power to “hear” parties to adjudicate cases as a court does. It discusses the subject-matter with the parties and persuades them to arrive at a just settlement. In their conciliatory role, the Lok Adalats are guided by the principles of justice, equity and fair play.”

In the case of Life Insurance Corporation of India vs. Suresh Kumar, (2011)7 Supreme Court Cases 491, the Hon’ble Supreme Court has held that “the permanent Lok Adalat is not a regular court authorized to adjudicate the disputes between the parties on merits. It is needless to state that permanent Lok Adalat has no jurisdiction or authority vested in it to decide any lis, as such, between the parties even where the attempt to arrive at an agreed settlement between the parties has failed.”

7. Earlier, the petitioner had also preferred CWJC No. 9914 of 2011 raising issue of maintainability but the court, by order dated 04.11.2011, directed to raise the issue before the Permanent Lok



Adalat and till the adjudication was made further proceeding in Pre-litigation Case No. 94 of 2011 was stayed. The petitioner appeared before the Lok Adalat and filed copy of the order of the Court, but the case was being adjourned simply without any reason for few dates and one day in absence of the petitioner, the order for filing prosecution by way of complaint was passed. So for aforesaid reason, filing of the complaint by a Judicial Member of the Lok Adalat, Kaimur was wholly without jurisdiction for the reason stay was already operating in Pre-litigation Case No. 94 of 2011 in view of the order dated 04.11.2011 passed in C.W.J.C. No. 9914 of 2011. So in this view of the matter, impugned order of taking cognizance in the present case against the petitioner under Section 175 of the Indian Penal Code is set aside besides further criminal proceeding as the same would be sheer abuse of the process of the court.

8. In the result, the application is allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
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