

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.609 of 2009

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Dr. Birendra Nath Pandey, Vice Chancellor Magadh University, Bodh Gaya, son of late Vidya Nand Pandey, resident of Vice Chancellor's residence, Town and P.S. Gaya, District-Gaya.

.... Appellant/s

Versus

Mrs. Anjana Ganguli

.... Respondent/s

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Appearance :

For the Appellant/s :

For the Respondent/s :

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 01-03-2017

The challenge in the present appeal is to an order passed by the learned Single Bench on 28th October, 2009 in MJC No.2996 of 2008 whereby, the Vice Chancellor of the University was found guilty of gross contempt. Instead of awarding any punishment, the Court considered it appropriate to send a copy of the order to the Hon'ble Chancellor of the Universities for necessary action as he may deem fit and proper.

It appears from the record that vide Order dated 20.08.2008, the Writ Court had directed the Vice-Chancellor, Registrar and Finance Officer of the Magadh University to be present in the Court on 3rd September, 2008 and they were asked to make their



explanation “as to why cost of this litigation as well as interest of the due amount may not be directed to be paid by them from their own salary”.

On 03.09.2008, an affidavit on behalf of the Vice-Chancellor was filed informing the Court that the Vice-Chancellor was ill, therefore, he could not appear before the Court. Whereas, others were present before the Writ Court and a composite show-cause was also filed on behalf of the Vice-Chancellor and others regarding payments of all the admissible dues of the petitioner by handing over the cheques.

On the next day of the proceeding it was brought to the notice of the Learned Writ Court, bringing a Newspaper-cutting, on record that on 03.09.2008 the Vice-Chancellor though participated in a meeting at Gaya College, Gaya, but he made wrong information of his illness, being reason to his non-appearance before the Court on 03.09.2008.

The Writ Court, was of opinion that Vice-Chancellor deliberately supplied such wrong information, thus played fraud with the Court and vide Order dated 29.09.2008, and *suo motu* initiated a contempt proceeding against the Vice-Chancellor, rejecting unqualified and unconditional apology tendered by him.

By the Order under challenge dated 28th of October,



2009, passed in MJC No. 2996 of 2008, the Learned Single Bench did not accept the personal Show – Cause of the Vice-Chancellor and held him guilty of gross contempt, which necessitates this present Miscellaneous Appeal.

It is contended on behalf of the appellant that on the relevant date i.e. 3rd of September, 2008, the Vice-Chancellor was sick, so he was not medically fit to travel such a long distance from Gaya to Patna by road. He was on medication and felt some improvement in his health condition. On the very same date there was a meeting of HRD Minister in Gaya College, Gaya, situated just across the boundary wall of the residence of the appellant. The appellant, anyhow, went to meet him, regarding the issue of stoppage of payment of salary of employees, but the Learned Single Bench, took different view that the Vice-Chancellor preferred to meet the HRD Minister, Govt. of Bihar, than obey the Judicial Order of the Court.

We find from the record of C.W.J.C No. 6509 of 2005 that just on the next date i.e. 15.09.2008, the Vice-Chancellor was already in appearance before the Writ Court, in compliance of order dated 03.09.2008, and Vice-Chancellor had been appearing on many subsequent dates before the Learned Single Bench, until exemption of his personal appearance by the Court.

We are of the view that the appearance of Vice-



Chancellor on 15.09.2008 and on many subsequent dates, is suggestive to his conduct that earlier non-appearance on 03.09.2008, might not be deliberate and intentional.

The 'intention' of a person is inferred from the past and subsequent conduct of him and the prevailing circumstances. Now the circumstances as stated by the Vice-Chancellor for his non-appearance on 03.09.2008 are taken by us, into consideration, keeping in mind that on the same date he was present in a meeting held in Gaya College, Gaya with HRD Minister, Govt. of Bihar.

The appellant Vice-Chancellor, who was ill and on medication, was expected to stay at his residence normally, if was not admitted in hospital, but he was found present in a meeting with HRD Minister at Gaya College, Gaya.

We have been informed that the place, where the presence of the appellant is in question, is not elsewhere from the Vice-Chancellor campus rather it is located across the boundary wall. The Vice-Chancellor campus has been carved out from the campus of Gaya College, Gaya.

Therefore, if the Vice-Chancellor would had been found present out of Gaya Township or even at a distant place from his campus, in that Case, there would had been a logical conclusion that he intentionally and deliberately disobeyed the Court Order dated



20.08.2008, of his personal appearance and decided to choose his participation in the meeting with the Minister.

It is an usual thing that a sick person on meditation, sometimes feels improvement in his health condition as to discharge some routine work, duty and responsibility at his home /residence. The meeting place was located across the boundary wall of the Vice-Chancellor residence, which makes no such difference as to the place of residence.

There is nothing on record to suggest that the Vice-Chancellor made incorrect/wrong information on affidavit regarding his illness and submitted forged medical certificate, before the Learned Single Bench. The very fact i.e. incorrect information about illness and forged medical certificate require to be proved. We may appreciate that his appearance in the said meeting at Gaya College, Gaya, would be a relevant fact as to disprove his illness and the genuineness of the medical certificate in support thereof, but mere existence of such fact, cannot disprove the factum of illness and genuineness of medical certificate of the Vice-Chancellor. Any 'fact in issue' has to be proved or disproved independently with the aid of relevant facts and the probative force attached therewith.

In the light of the Judgment rendered by the Hon'ble Supreme Court, in the Case of Mrityunjoy Das & Anr. Versus



SayedHasiburRahaman(2001) 3 SCC 739, we are of the view that the contempt proceedings under The Contempt of Courts Act, 1971, are quasi Criminal Proceeding. The standard of proof required is that of Criminal Proceedings. Therefore, the Charge has to be proved beyond reasonable doubts.

Consequently, we deem it appropriate to set-aside the Order passed by the Learned Single Bench on 28th of October, 2009 in M.J.C No. 2996 of 2008. The appeal stands allowed.

(Hemant Gupta, ACJ)

(Sudhir Singh, J)

Sunil/-

AFR/NAFR	N.A. F.R.
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