

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.170 of 2018

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1. Raj Kishore Singh, S/o Vijay Singh, Resident of Purab Sarai, P.S.- Kotwali,
District- Munger.

.... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary Department of Home, Bihar, Patna.
2. The Principal Secretary, Department of Home, Government of Bihar, Patna.
3. The Deputy Secretary to the Government of Bihar, Department of Home.
4. The Director General of Police, Bihar, Patna.
5. The Inspector General (Patna Range), Patna.
6. The Deputy Inspector General of Police (Central Range), Patna.
7. The Senior Superintendent of Police, Patna.
8. The Superintendent of Police (Rural), Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Siddhartha Prasad

For the Respondent/s : Mr. P.K.VERMA -AAG3

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 17-07-2018

1. Heard learned counsel for the petitioner and counsel appearing on behalf of the State.

2. In the present case, the petitioner is challenging the order of punishment dated 28.11.2017 by which the petitioner has been awarded two punishments, namely, Censure second stoppage of three increment with cumulative effect.

3. Before dealing with the merit of the case it will be appropriate to dispose of the I.A. application bearing No.4381 of 2018, which has been filed by one Surendra Prasad. He wants to be



added as an intervener-respondent, he persuaded this Court that he should be added as party respondent because the proceeding was initiated at his behest and pursued the matter, even he approached to the Human Right Commission bringing the fact to the notice of commission with regard to the act perpetrated by the petitioner against him and on the intervention of the Human Right Commissions, the proceeding has been initiated and the order of punishment has been passed. In the present case, the locus is very much important of a person who made a complaint, he can be a witness to proceeding but cannot be allowed to participate in their proceeding which is basically arising from departmental proceeding initiated against the petitioner. He may have jurisdiction in the matter of criminal proceeding as well as in civil proceeding so far as with regard to the departmental proceeding in which punishment has been passed, he cannot be allowed to intervene and to make submission. Accordingly, this Court does not find his locus in the present case as the intervener is neither a necessary party nor proper party but for the purposes of this case he is completely stranger not a person aggrieved in any manner, so his application bearing I.A. No.4381 of 2018 is rejected.

4. Short facts of this case, that one Surendra Prasad has three Dal Mill, two mills are in the name of his two sons and one in his own name. The petitioner was approached by one Harish Kumar Gupta



who had a good business connection with the Surendra Prasad and he was working as a middlemen of Nikhil Poddar and has good relationship with Nikhil Poddar who was engaged in the business of import and export of Dal as he used to import the Dal from different country and through different broker used to supply the Dal to the different business men. Accordingly, as per the allegation made by Harish Kumar Gupta and Nikhil Poddar, 199.90 quintal, the Masur Dal at the rate of Rs.80/- was supplied to the Surendra Prasad with a condition to make payment within stipulated period, except paying certain meager amount always made assurance of payment and gave excuses for non-payment of consideration amount. When ultimately failed to make payment and they have arrived to a conclusion of non-payment, they approached to the Patna Police and brought to the notice the money has been misappropriated by Surendra Prasad whereupon the present petitioner gave notice to Surendra Prasad to appear before him in his chamber as per the petitioner he tried to settlement the dispute but when failed to strike, a settlement, FIR was lodged. It also appears that the Dal mill was seized by the police Inspector accompanying Circle Officer of the Area as alleged that the sealing made by police was completely illegal and further allegation has been made that Surendra Prasad was arrested illegally without lodging FIR, assaulted badly totally denied the supply of dal but later



on, he was released on payment of Rs.17 lakhs as per the orders of competent Court. And after release from the jail custody, he approached the Human Rights Commission making allegation against the petitioner of violation of his Human right whereafter the Human Right Commission gave direction for proper enquiry by the Inspector General of Police, the Inspector General of Police, Dy. Inspector General of Police submitted their respective reports in which they did not find truth of any allegation made against the petitioner but at later stage S.P.(Rural) submitted its report where he found that the petitioner had exceeded jurisdiction in discharging his official duty and whereafter the Papatra-‘Ka’ was issued wherein the allegation has been made that the case was registered on 2.5.2013 whereas notice was sent to Surendra Prasad on 27.4.2013 asking him to appear before him at 8 A.M. in the morning. This power was wrongly exercised under Section 160 Cr.P.C. as can only be exercised during the investigation.

5. Another charge has been made that Rural, S.P. in his supervision note, found charges against Chandar Prasad and Manish Prasad to be correct and different directions were issued in that case. Surendra Prasad had made complaint of wrong sealing of his mill which was found illegal, proper action were to be taken when the charges against the accused person was yet to establish but action of



petitioner, in sealing of mill of Surendra Prasad was illegal. The enquiry was conducted in which he participated, finally the Enquiry Officer submitted enquiry report.

6. Second show cause was issued along with enquiry report to the petitioner which he has replied by way of explanation (Annexure 19), giving details of facts and grounds of his defence, whereafter another application dated 05.07.2017 was also filed to the Principal Secretary, Home Department, finally passed the order of punishment dated 28.11.2017 whereby the two punishments censure and stoppage three increments has been inflicted upon the petitioner. This Court is not entering into the merits of the case as it can be disposed of on short point, in terms of Rule 17 Bihar CCA Rules, 2005 a second show cause along with enquiry report was served upon him, in turn he filed, detailed explanation before the competent authority, it appears from the order that the disciplinary authority has not applied his mind as points of his defence raised in his explanation has not been considered and without dealing with the point raised, passed the order of punishment.

7. In such view of the mater, this Court feels that the order requires interference. Accordingly, the order of punishment is set aside and the mater is remanded back to the Authority who will



consider the objection raised by petitioner and pass a reasoned order.

This Court directs disciplinary authority will also provide opportunity of personal hearing to the petitioner.

8. With the aforesaid observation and direction, this writ petition is allowed.

(Shivaji Pandey, J)

Sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09/08/2018
Transmission Date	NA

