

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.781 of 2019

In
Letters Patent Appeal No.1871 of 2017

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1. The State Of Bihar
 2. The Secretary, Food and Consumer Protection Department, Government of Bihar, Patna
 3. The Deputy Secretary, Department of Food Supply and Commerce at present known as the Food Supply and Commerce, Government of Bihar, Patna
 4. The Collector, Jehanabad

... .. Petitioner/s

Versus

1. Sri Shyam Narayan Mallick, Son of Late Baldeo Mallick, Permanent resident of Village- Nahamia, P.O.- Harlakhi Via Basopatti, District- Madhubani, Present Resident of Mohalla-New Chakdah, P.O. and District- Madhubani (Bihar)
2. The President, District Consumer Protection Forum, Jehanabad
3. The Managing Director, Bihar State Food and Civil Supplies Corporation Ltd., Sone Bhawan, Birchand Patel Path, Patna
4. The Accountant General, Bihar, Birchand Patel Path, Patna

... .. Opposite Party/s

Appearance :

For the Petitioner	:	Mr. Anjani Kumar, AAG Mr. Ram Shankar Prasad, A.C. to G.P.-14
For Opposite Party No.1 :		Mr. Rajendra Lal Das, Advocate Mr. Yogendra Prasad, Advocate
For Opposite Party No.2 :		Mr. Sanjay Singh Thakur, Advocate
For Opposite Party No.4 :		Mr. Ram Kinker Choubey, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

5 14-08-2019 Heard Shri Anjani Kumar, learned Additional

Advocate General, who informs that M.J.C. No.2414 of 2018

has already been disposed of and has been consigned.

It has further been brought to our notice by the



learned counsel for the opposite parties that the State of Bihar had preferred S.L.P.(Civil) Diary No.18112 of 2019 against the final judgment dated 2nd of July, 2018 passed in this proceeding. The said special leave petition came up on 2nd of July, 2019 before the Apex Court and the same was dismissed as infructuous.

We may put on record that we had entertained this M.J.C. by passing an order on 06th March, 2019 to the following effect:

“Issue notice to the respondents by both modes i.e. under Registered Cover with A/D. and by ordinary post returnable at an early date, steps for which be taken within a week.

We are informed that Respondent No.1, Shyam Narayan Mallik, has filed M.J.C. No.2414 of 2015 that are contempt proceedings for compliance of the judgment of the learned Single Judge.

This review application has been filed for review of the judgement of a Division Bench dated 2nd of July, 2018 contending that this application is seeking only a clarification/modification in the light of a pronouncement of the Full Bench directly on the issue in the case of Harishankar Prasad Vs. State of Bihar (C.W.J.C. No.13495 of 2008) and other analogous cases, decided on 1st of November, 2018.

Learned counsel submits that



subject to the outcome of this review application, the applicants have complied with the direction of the learned Single Judge and have passed an order on 26th of February, 2019, a copy whereof has been placed before us today.

Shri Anjani Kumar, learned Additional Advocate General appearing for the appellant submits that in view of the aforesaid compliance, which is subject to the outcome of this review application, further proceedings in M.J.C. No.2414 of 2015 may be kept in abeyance.

Having heard the submissions at length, the first issue is as to whether such an application would be maintainable for either review or modification or clarification or not. The Court would like the assistance of learned Additional Advocate General in the light of the Full Bench judgement of the Allahabad High Court in the case of Nataraj Chhabigrih Vs. State of U.P., AIR 1996 Allahabad 375 (FB) that has been affirmed by the Apex Court in the case of U.P. Vs. Kamla Palace, (2000) 1 SCC 557.

For that matter, there is yet another pronouncement of the Apex Court in the case of State of U.P. Vs. Brahma Datt Sharma & Anr. (1987) 2 SCC 179, where also the Apex Court has held that after the disposal of a writ petition finally, unless there is a ground of review, a clarification or a modification application may not be maintainable.

The remedy, therefore, in such



circumstances, may lie before the higher Court of appeal, but, at the same time, we have to take notice of the impact of the Full Bench judgement delivered in the case of Harishankar (supra), decided on 1st of November, 2018. The argument of the learned counsel for the appellant is that in view of the pronouncement of the Full Bench, the directions issued by the learned Single Judge may not be available for compliance and, therefore also, in the wake of a decision to that effect a contempt proceeding may not be maintainable for adjudicating as to whether the applicant has wilfully disobeyed the judgement of the learned Single Judge. This matter requires scrutiny and, therefore, for all the aforesaid reasons, let the matter come up whenever this Bench is constituted next on 15th of May, 2019.

Until further orders of the Court and in view of the compliance order passed by the applicants on 26th February, 2019, further proceedings in M.J.C. No.2414 of 2018 shall remain stayed.”

Perusal of the aforesaid order would indicate that the said order had been passed virtually enabling the State of Bihar to question the correctness of the judgment before the higher Court of appeal. The Special Leave Petition was therefore filed, but the order passed thereon declares the matter having become infructuous.

In the light of the above, when the contempt petition has been consigned and the proceedings have been declared to



be infructuous by the Apex Court, we see no reason now to keep this M.J.C. pending or proceed further in the matter. It is consigned with the observation that in the event any such legal issue is sought to be raised in some other matter, the closure of this proceeding would not be a legal impediment.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

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