

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8836 of 2019

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K. K. Pathak @ Keshav Kumar Pathak S/o Late Major G.S. Pathak, Principal Secretary, Minor Water Recourses Department, Govt. of Bihar.

... .. Petitioner/s

Versus

The High Court of Judicature at Patna through Registrar General, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner	:	Mr. Bishwajeet Kr. Singh, Advocate Mr. Kumar Abhimanyu, Advocate Mr. Kundan Kumar Singh, Advocate
For the Respondent	:	Mr. Mrigank Mauli, Advocate Mr. Sanjay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
CAV JUDGMENT

Date : 08-07-2019

Heard the learned counsel for the parties.

2. The petitioner, a senior officer of the Government, has sought setting aside of the letter dated 18.02.2019 written by the Registrar General of the High Court of Judicature at Patna to the Chief Secretary, Government of Bihar, on the ground of same being misconceived and factually incorrect.

3. Before advertng to the letter impugned in the present petition, it would be necessary to first have a look at the facts of the case.



4. A criminal writ vide Cr.W.J.C. No. 431 of 2016 was filed for quashing of Bikram P.S. Case No. 52 of 2016 dated 18.03.2016 which was registered for offences under Sections 409, 419 and 420 of the Indian Penal Code. There was an additional prayer in the aforesaid writ petition for a direction to the State Government to take appropriate departmental action against the concerned person who had directed for the lodging of the FIR. The aforesaid criminal writ petition was heard along with six other criminal writ petitions, all of which were disposed of by a common order dated 28.08.2018.

5. The FIRs which were sought to be quashed contained allegation that Branch Managers of State Bank of India of different branches were directed to make available data/statements showing transfer of money from the account of the concerned registry office to Government treasury but the same had not been furnished and as a result thereof, difficulties were posed in calculation of the interest. All concerned branches of State Bank of India were required to transfer the collected amount within a



period of five days from the date of collection from the account of concerned registry to the Government treasury. Because of the non-compliance of the aforesaid requirement, there had been a loss of interest of a huge amount. The Branch Managers of the respective Branches were directed to transfer the aforesaid amount in the Government account latest by 29.09.2016 and in the event of non-compliance, FIR was directed to be lodged. In some of the FIRs which were challenged before this Court, even the amount of money was not disclosed.

6. It would not be necessary to enter into the thickets of facts of each case. All that is required to be noted is that the learned Single Judge while hearing the aforesaid criminal writ petitions, found that none of the offences of cheating, criminal breach of trust or misappropriation, attracting penal provisions, were made out from the facts of the case.

7. Taking reference of several case laws viz.

Binod Kumar & Ors. vs. State of Bihar & Anr.

reported in ***(2014) 10 SCC 663; S.W. Palanitkar &***



Ors. vs. State of Bihar & Anr. reported in ***(2002) 1 SCC 241*** and ***Parbatbhai Aahi @ Parbatbhai Bhimsinhbhai Karmur and Ors. vs. State of Gujarat & Anr.*** reported in ***2017(9) SCC 641***, the Hon'ble Single Judge took the view that the Principal Secretary, Government of Bihar had directed the Sub-Registrar to lodge the FIR without application of mind, especially towards RBI guidelines and instead of following the procedure for recovery of penal interest, a peculiar/coercive method was adopted to ensure compliance of the RBI guidelines. The Hon'ble Judge was not at all satisfied with the submission on behalf of the State that such FIRs were lodged in an effort to collect the interest amount of several crores of rupees.

8. It was further noted that lodging of FIR has serious consequences and such FIRs ought not to have been lodged. The subject FIRs therefore were quashed. It was also directed that the State Government would be liable to pay a cost of Rs. 25000/- each to the petitioners as cost of litigation.



9. The Hon'ble Judge further went on to hold as

follows:

34. Time has also come when the State Government should consider and take a view on the action of the then Principal Secretary, Department of Registration, Excise and Prohibition, Govt. of Bihar and find out as to why appropriate action be taken against him for directing such whimsical prosecution of the Bank Officials, in haste without following the R.B.I. guidelines which were well within his knowledge. The cost which the State Government is now liable to pay to each of the petitioner(s) in this batch of writ application(s) may be recovered from the then Principal Secretary, Department of Registration, Excise and Prohibition, Govt. of Bihar.

35. Since this Court has come to a conclusion that it is a case of baseless prosecution, a whimsical act of the then Principal Secretary of the department and harassment to these petitioner(s), they will have liberty to seek their remedies for



malicious prosecution in accordance with law.

10. The petitioner preferred a modification application against the order dated 28.08.2018 vide M.J.C. Case No. 3928 of 2018 for recalling/modifying/expunging paragraphs 34 and 35 in the order. The Bench vide order dated 31.10.2018 sought a response from the State and the Opposite Party No. 1 and fixed the case for 05.12.2018. In the meantime, the Bench directed that till the next date, the observations and directions of the Court shall be kept in abeyance. The aforesaid M.J.C. Case No. 3928 of 2018 was finally disposed of on 01.02.2019 and the prayer made in the petition for recall of paragraphs 34 and 35 in the order dated 28.08.2018 was rejected. While rejecting the aforesaid modification, the Court took note of the fact that against the order dated 28.08.2018, all the SLAs (Cri.) Nos. 10025-10031/2018 preferred by the State of Bihar before the Supreme Court were dismissed on 30.11.2018.



11. It is also relevant here to note that the petitioner preferred a Special Leave to Appeal (Cri.) No. 3566 of 2019 against the order dated 01.02.2019 in M.J.C. Case No. 3928/2018 passed by the learned Single Judge which too stood dismissed on 26.04.2019.

12. It appears from the records as also from the submissions made on behalf of the petitioner that the petitioner sent a personal and confidential letter addressed to Hon'ble the Acting Chief Justice Dr. Ravi Ranjan, as he then was, by speed post on 09.11.2018. Since the Hon'ble the Acting Chief Justice had been transferred from Patna High Court, the unserved letter was returned to the petitioner. The aforesaid letter was again sent by the petitioner to the Hon'ble the Chief Justice of Patna High Court on 29.11.2018.

13. In the personal and confidential letter sent to the Hon'ble the Chief Justice on 29.11.2018, the petitioner drew the attention of Hon'ble the Chief Justice of paragraphs 33 and 34 of the judgment/order dated 28.08.2018 and has stated that he expects many more



strictures (personal penalties and perhaps contempt cases) by the Hon'ble Judge in days to come. In the last part of the letter, it has been stated that the learned Judge in his hurry to pass strictures against him, did not even hear him or the RBI whose sample audit was the primary cause of action in the entire matter. It was further averred by him that the strictures, apart from generating cheap media headlines, has also the potency of scaring other officers of the Government and discouraging them from taking any legal action against law violators. The petitioner thereafter went on to state that the learned Judge had been holding bias against him since his lawyer days and therefore the petitioner expects more strictures and penalties in future. The letter however ended with an unconditional and sincere apology for anything stated in it as he has utmost regard for judiciary. The letter though sent on 29.11.2018 appears to have been signed on 08.11.2018.

14. It has been submitted on behalf of the petitioner that thereafter the Registrar General of the High Court sent a letter to the Chief Secretary of Government



of Bihar on 18.02.2019 intimating to him the observations made by Hon'ble the Chief Justice on the aforesaid personal and confidential letter of the petitioner and asking the Chief Secretary to take appropriate action in that regard. The observations of Hon'ble the Chief Justice which has been quoted in the letter dated 18.02.2019, referred to above, is being reproduced below:

"A letter dated 29.11.2018 appears to have been received on 04.12.2018 in the High Court from one Mr. K.K. Pathak, an IAS Officer who is the Principal Secretary, Department of Minor Water Resources & Industries, Govt. of Bihar regarding his personal opinion about the judgment delivered on the judicial side on 28th August, 2018 by a Hon'ble Single Judge of this Court.

The Officer did not tender any information that the Special Leave to Appeal (Cri.) Nos. 10025-10031/2018 filed by the State of Bihar against the said judgment was dismissed on 30th November, 2018 (a copy of the order is enclosed herewith) prima facie, it appears that even though the letter



of the Officer is dated 29.11.2018, yet from the envelope the letter appears to have been dispatched on 30th November, 2018 and received in the High Court on 04.12.2018. The letter has been dispatched on the same day when the SLPs were dismissed in the Apex Court.

It appears that after the dismissal of the SLPs an application seeking modification was filed in CRWJC No. 431 of 2016 that was registered as MJC No. 3928 of 2018. The said application has been heard and decided on 1st of February, 2019 (a copy whereof is enclosed herewith). The same also takes notice of the dismissal of the SLPs. The application has been dismissed declining to expunge and directions with regard to realization of cost from the concerned Officer or deleting with the observations made in the judgment of this Court dated 28.08.2018.

The language and tenor of the letter addressed to me prima facie contains scathing remarks touching contemptuous and expressing disgust like a disgruntled litigant showing almost complete disrespect



to the majesty of Law and to the august office of a Judge of the High Court which tends to lower the dignity of the Court and malign the image of the judiciary.

Before the matter is proceeded with any further, these facts be brought to the notice of Chief Secretary, Govt. of Bihar for dealing with the matter at his end after calling upon the officer and informing me as to whether any further judicial proceedings are pending or not and as to whether the Govt. of Bihar has proceeded to comply with the judgment dated 28.08.2018 as affirmed by the Supreme Court or not.

The information be called for within fifteen days to enable me to take appropriate steps in the matter. The letter to be dispatched to the Chief Secretary, Govt. of Bihar should contain Photostat Copies of the entire material as referred to above."

15. The challenge to the aforesaid letter therefore is on the ground that dispatching of such letter amounted to seeking execution of the order dated 28.08.2018 passed in Cr.W.J.C. No. 431 of 2016 and analogous cases which was not permissible. The petitioner has laid a



grievance that before forming an opinion on his letter, the Hon'ble Chief Justice ought to have accorded audience to him. It has also been argued that there is an in-house procedure for enquiry into the conduct of an Hon'ble Judge, which procedure has been formulated by the Supreme Court and in such in-house procedure, if a complaint is received against a judge of the High Court by the Chief Justice of the High Court, the same is required to be examined. If it is found to be frivolous or related to the merits of a substantive decision in a judicial matter or does not involve any serious complaint of misconduct or impropriety, the same is required to be filed/consigned. If the complaint is of a serious nature, the response of the respective judge need be invited, which if found satisfactory, the matter could again be consigned. If the allegations against a judge require a deeper probe, the response of the concerned judge and the complaint has to be forwarded to the Chief Justice of India.

16. It was thus argued, while castigating the letter of the Registrar General dated 18.02.2019, that



even in discharge of administrative functions, if it affects the rights of a person, there is a necessity of adherence to the principle of natural justice and that any action which is likely to adversely affect a person need not be carried out behind the back of the concerned person.

17. By way of supplementary affidavit, the petitioner has also brought on record the letter which he has received from the General Administrative Department, Government of Bihar dated 25.02.2019, desiring that the petitioner ought to explain and inform within three days whether any appeal or judicial proceeding preferred by him in his personal capacity against the order dated 28.08.2018 is pending in any court of law and why the cost paid by the State Government to the bank officials be not recovered from him immediately and a disciplinary action be taken against him for writing a letter to Hon'ble the Chief Justice, criticizing and adversely commenting upon a judicial order passed by one of the Hon'ble Judges of the Court and making personal comment against him in an indignified manner.



18. It has been submitted on behalf of the petitioner that he has already given his explanation to the General Administration Department. The petitioner has also brought on record a copy of the letter dated 01.03.2019 issued by the General Administration Department informing the Registrar General of High Court that the Government has decided to pay the cost of Rs. 1,75,000/- (Rs. 25000/- to each of the bank officials against whom FIR was lodged) and the process of payment is afoot. The petitioner also has been informed by letter dated 07.03.2019 that his show cause reply has been rejected and that the Government has decided to recover the aforesaid cost paid to the bank officials from him.

19. The petitioner has now sought information from the High Court under RTI Act whether the in-house procedure in cases of complaint against a judge has been followed by the High Court or not but no information is said to have been provided by the PIO of the High Court and therefore the petitioner has preferred an appeal before



the appellate authority viz. the High Court on 08.05.2019 which is pending.

20. The stand of the High Court is that the writ petition is misconceived and premature and there is no reason for the petitioner to feel aggrieved by the letter of the Registrar General dated 18.02.2019 which contains observations of Hon'ble the Chief Justice of Patna High Court. In the affidavit of the High Court, it has been stated that this writ petition was filed simultaneously with the Special Leave to Appeal No. 3566 of 2019 before the Supreme Court against the order passed in M.J.C. Case No. 3928/2018, which has been dismissed on 26.04.2019. It has further been averred that in the M.J.C. Case No. 3928 of 2018, preferred by the petitioner for recall of certain paragraphs in the order dated 28.08.2018, the stand of the State was categorical that the directions issued in the order dated 28.08.2018 passed in Cr.W.J.C. No. 431 of 2016 and other analogous matters shall be complied with promptly.



21. Mr. Mrigank Mauli, learned advocate for the High Court has further submitted that the present writ petition is premised on the understanding of the petitioner that the communication dated 18.02.2019 made by the Registrar General of the High Court to the Chief Secretary, which has been impugned in the present petition, will have an adverse bearing on his career as it is stigmatic and such communication only seeks to have the judicial order complied with through an administrative action. It was argued by Mr. Mrigank Mauli that the impugned letter dated 18.02.2019 of the Registrar General of the High Court only records a *prima facie* view of the matter and is aimed at seeking further information before proceeding any further in the matter. The information sought by such letter is relevant in as much as the petitioner has not disclosed that he had challenged the order rejecting the M.J.C. application dated 01.02.2019 before the Supreme Court of India. There cannot be any grievance against the Registrar General seeking information whether the State has proceeded to comply with the judgment passed by the



learned Single Judge on 28.08.2018 against which the S.L.P. preferred by the State of Bihar before the Supreme Court has been dismissed.

22. The personal/confidential letter of the petitioner refers to the merits of a judgment which was absolutely unwarranted and impermissible, more so when the order has been tested before the Supreme Court and no interference was made with the order. A serious exception has been taken by the High Court that the statement of the petitioner in his personal and confidential letter regarding an Hon'ble Judge of the High Court, holding bias against him since his lawyers days, is not based or supported on any materials and particulars viz. whether the Hon'ble Judge had ever worked for or against the petitioner etc.

23. The sum and substance of the submissions made on behalf of the High Court is therefore that the petitioner is aggrieved by the judicial order dated 28.08.2018 passed in Cr.W.J.C. No. 431 of 2016 and other analogous cases. It has additionally been submitted



that the personal letter dated 29.11.2018 addressed to Hon'ble the Chief Justice was dispatched on 30.11.2018 only contained the merits of the judicial order apart from unsubstantiated and scurrilous remarks against an Hon'ble Judge of this Court.

24. From the perusal of the letter dated 18.02.2019 written by the Registrar General of the High Court to the Chief Secretary of the State of Bihar, it plainly appears that information was sought from the Government about any challenge to the order dated 28.08.2018 at the behest of the petitioner and whether the directions in such order after the rejection of the S.L.A in the Supreme Court has been complied or not. This does not at all mean that the order dated 28.08.2018 was sought to be complied with. Seeking information and passing an order (administrative or judicial) for compliance of a judicial order are two different things. The letter impugned does contain the observations of Hon'ble the Chief Justice, which has prompted such letter to the Chief Secretary by the Registrar General so that all necessary



facts are gathered before any decision is taken over the issue of the petitioner making contumacious/contemptuous/scurrilous remark against an Hon'ble Judge of the High Court without there being any foundation or basis for the same. The necessity of seeking further information arose out of the fact that almost simultaneously with the confidential letter to Hon'ble the Chief Justice, the petitioner had challenged the order rejecting the M.J.C. application before the Supreme Court. The *prima facie* view regarding the statement made by the petitioner having the potency of adversely commenting upon a judge, without there being any basis, cannot at all be said to be a formation of an opinion in that regard. Whether the information/comment of the petitioner is genuine or only a reaction against a judicial order, is required to be confirmed.

25. The in-house procedure which the petitioner has harped upon is to be invoked only when it is found that the allegations are serious, requiring any probe. So far as the comment on the merits of a judicial order is



concerned, that was not required to be gone into as the merits of a judicial order is assayed only in a higher judicial forum. However, while commenting upon the judgment/order of a Court, if a scurrilous and undeserved remark is made then before initiating any proceeding, it is necessary to know the actual state of affairs and the stage of the case.

26. I find nothing wrong in such communication which is only an information seeking exercise. The challenge to the order dated 28.08.2018 passed in Cr.W.J.C. No. 431 of 2016 and analogous cases has miserably failed. The comments on the author of the judgment therefore cannot be taken lightly, especially if there is no basis for the same. Whether a letter/complaint like this is consigned or is acted upon, is in the domain of Hon'ble the Chief Justice who has received the representation/complaint. There can be no gainsaying that before initiating a contempt proceeding against any person, much less a senior officer of the Government, all necessary information must be in hand with respect to the stage of



the case; as after all the anger/ire against an Hon'ble Judge has been generated only after the judgment and perhaps its impact and fallout. Had there been any material or instance in support of such statement of the petitioner regarding a judge holding bias against him, the matter would have been different which may have required a deeper probe. A general complaint and that also after passing of a judicial order against an officer, is not to be dealt with always by giving a personal audience to such complainant. It all depends upon specific facts in each instance and no uniform principle could be laid down for the same.

27. I have gone through the confidential letter of the petitioner which has been annexed with this petition. I do not deem it necessary to refer to the comments of the petitioner on the rationale and reasoning in the judgment of the Hon'ble Judge. But the bald allegation of bias of the Hon'ble Judge against him only reflects that the petitioner has been rather reckless in making such comment against an Hon'ble Judge without offering any basis or justification



for the same. This is contempt of Court simplicitor, especially when viewed in the context of the Hon'ble Judge having given a reasoned judgment which adversely affects him and the challenge to such judgment before the Supreme Court has also failed. This definitely is required to be viewed and dealt with seriously.

28. In ***C. Ravichandran Iyer Vs. Justice A.M. Bhattacharjee & Ors.*** reported in ***(1995) 5 SCC 457***, the Supreme Court has held that:

In a democracy governed by the rule of law under a written constitution, judiciary is the sentinel on the qui vive to protect the fundamental rights and to poise even scales of justice between the citizens and the State or the States inter se. Rule of law and judicial review are basic features of the Constitution. As its integral constitutional structure, independence of the judiciary is an essential attribute of rule of law. It is, therefore, absolutely essential that the judiciary must be free from executive pressure or influence which has been secured by making elaborate provisions in



the Constitution with details. The independence of judiciary is not limited only to the independence from the executive pressure or influence; it is a wider concept which takes within its sweep independence from any other pressure and prejudices. It has many dimensions, viz., fearlessness of other power centres, economic or political, and freedom from prejudices acquired and nourished by the class to which the Judges belong.

Independent judiciary is, therefore, most essential when liberty of citizen is in danger. It then becomes the duty of the judiciary to poise the scales of justice unmoved by the powers (actual or perceived), undisturbed by the clamour of the multitude. The heart of judicial independence is judicial individualism. The judiciary is not a disembodied abstraction. It is composed of individual men and women who work primarily on their own.

29. If a judge is criticized unnecessarily and without any basis, it only amounts to damaging the very bastion of the independence of judiciary, for a judge under



comment has no forum to defend himself. The concept of democracy, liberty and justice which form the backbone of rule of law gets a serious jolt when a judicial office, which is more in the nature of a public trust, is adversely commented upon without any reason. There is no personal interest of a judge in deciding a matter and he does so on his moral conviction and knowledge of law and always keeps an exacting standard of propriety in his judicial conduct. Such a diatribe against a judge, that also when a serious view has been taken by him in a case involving the petitioner surely has the potency of damaging the moral and ethical fabric of judiciary and thereby lessen public confidence in the justice delivery system. Such action cannot be taken lightly.

30. The letter of the Registrar General seeking information from the Chief Secretary is only aimed at dealing with this aspect viz. upholding the majesty and independence of judiciary.

31. Since this Court has been called upon to decide whether the letter of the Registrar General dated



18.02.2019 is required to be quashed/expunged as it is unwarranted, I say no further, but reject the petition as being without any basis and as a further attempt of the petitioner to deflect the course of justice.

32. The petition is dismissed.

33. It would be for the Registrar General to place the information collected by him from the Government before Hon'ble the Chief Justice for any further action which he may deem fit in the facts of the case.

34. Cost easy.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	AFR
CAV DATE	02.07.2019
Uploading Date	08.07.2019
Transmission Date	

