

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18818 of 2019

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Dinesh @ Dinesh Singh @ Dinesh Kumar, aged about 46 years, male, gender Male, S/o Sri Akhileshwar Prasad Singh, Permanent resident of Kurthaul Rajputana, P.S. Parsa Bazar, District- Patna.

... .. Petitioner/s

Versus

1. The High Court of Judicature at Patna through the Registrar General, Patna High Court, Patna.
2. The Registrar General, Patna High Court, Patna.
3. The State of Bihar through the Chief Secretary, Govt. of Bihar Old Secretariat, Patna.
4. The Chief Secretary, Govt. of Bihar Old Secretariat, Patna.
5. The Law Secretary, Govt. of Bihar Old Secretariat, Patna.
6. The Registrar, List, Patna High Court, Patna.
7. The Central Bureau of Investigation, through its Zonal Director, Bihar Raj Bhawan, Marg, Patna.
8. The Vigilance Investigation Bureau, Govt. of Bihar, through its Inspector General, Daroga Prasad Rai Path, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Dinesh Kumar, Adv.
For the Respondent/s	:	Mr.Lalit Kishore (AG)
		Mr. Satyabir Bharti, Adv.
For the Vigilance	:	Mr. Anjani Kumar, Adv.
		Mr. Deepak Sahay Jamuar, Adv.
For the CBI	:	Mr. Bipin Kumar Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SHIVAJI PANDEY)

Date : 11-09-2019

Heard the petitioner, in person, and counsel for the respondents.



In this case, the petitioner has filed the public interest litigation in which the relief has been sought for in paragraph no.1 which reads as follows:-

“1. That the instant writ petition is being filed for grant of following reliefs:

i. For the issuance of a writ of mandamus, and/or, any other appropriate writ/direction/order commanding the respondent no.1, 3, 4 and 5 to close down all the special courts in the State of Bihar which are hearing and deciding cases arising out of the Prevention of Corruption Act, 1988.

ii. For the issuance of a writ of mandamus, directing the respondents no.7 and 8 to refrain from lodging/registering cases under the provisions of Pretention of Corruption Act, 1988 against all sorts of public servants/ Govt. employees.

iii. For the issuance of a writ of mandamus, and or any other writ/direction/order commanding the respondents no.2 and 6 not to accept the filing of criminal cases arising out of the Prevention of Corruption Act, 1988 and not to list such cases for hearing/admission before the benches of the Hon'ble Patna High Court.”

Basically, the relief has been sought for issuing a writ of mandamus for closing down of special courts as they are not functioning properly on account of some video footage has been made viral giving a title “cash for justice”.

Already the petitioner himself has filed another Public Interest Litigation vide C.W.J.C. No. 21341 of 2018 in which the



petitioner has sought a relief that this Court should give a direction for lodging a criminal case on the basis of video footage made viral.

This Court is not dealing any fact with regard to that case which is still pending for adjudication. During submission, the petitioner has submitted that he has been compelled to file the present application on account of the stand taken by the High Court in its counter affidavit that the administrative side of High Court is not intending to lodge criminal case in the matter.

It does not stand to the reason to this Court as to how this would create cause of action for filing the present case, when the matter is still pending for adjudication. It is also beyond imagination as to how this Court would give a direction for closing down of the courts created under the various statutory provision under the different special Acts, legislated by different legislative bodies. Merely because some incident has taken place that has been caught in camera and made the same viral cannot be a basis and ground to issue such direction. At best, those persons, found involved in the said episode, may be prosecuted in a proper manner and punished in accordance with law.

Mr. Lalit Kishore, learned Advocate General, has submitted that this Court does not have a jurisdiction or power to give direction to close down any court constituted under different Special Acts. Some Special Courts have been constituted on the basis of enactment legislated by Parliament and certain Special Courts have been constituted under the statutory enactment by the State from time to



time. The Special Courts have been constituted for achieving certain purpose. At the same time, the State Government has brought legislation vide Bihar Prohibition and Excise Act, 2016 which gave result to creation of Special Court under that Act and, further more, the Special Court has been constituted under The Prevention of Corruption Act, 1988.

We can take a judicial notice of the fact that there are many persons in different institutions are facing criminal cases but, that does not mean that the Court would issue a writ of *mandamus* for closing down the institution itself which will bring catastrophic situation and would bring a complete anarchy to the democratic set up. The prayer of petitioner is de hors to the basic structure of Constitution as this Court cannot give a direction to any authority or public body to act contrary to law. Writ of mandamus may be issued to compel an authority to do particular act, provided it must be shown, there was legal duty emanating from statutory provision and corresponding legal right in favour of claimant. Reliance can be placed on the judgment passed in the case of M/s Chingleput Bottlers Vs. M/s Majestic Bottling Company reported in AIR 1984 SC 1030 and in the case of Tirumala Tirupati Devasthanams v. K. Jotheeswara Pillai (Dead) by LRS. & Ors. reported in 2007 (9) SCC 461, relevant portion whereof reads as follows:-

(Para-13 of the M/s Chingleput Bottlers case)



“13. In order that a writ of mandamus may issue to compel the Commissioner to grant the licence, it must be shown that under the Act and the Rules framed thereunder there was a legal duty imposed on the Commissioner to issue a licence under Rule 7 of the Rules without the prior approval of the State Government and that Messrs Majestic Bottling Company had a corresponding legal right for its enforcement. No mandamus will lie where the duty sought to be enforced is of a discretionary nature nor will a mandamus issue to compel the performance by such public body or authority of an act contrary to law. The Commissioner of Prohibition and Excise was under no legal duty to grant a licence to Messrs Majestic Bottling Company till it received the prior approval of the State Government under Rule 7. Even assuming that the Commissioner recommended the grant of a licence to them under Rule 7, the State Government were under no compulsion to grant such prior approval. The grant or refusal of such licence was entirely in the discretion of the State Government. The High Court had no jurisdiction to issue a writ of mandamus to the Commissioner to grant a licence to Messrs Majestic Bottling Company contrary to the provisions of Rule 7 of the Rules.”

(Para-10 of the Tirumala Tirupati Devasthanams case)

“10. There being no statutory provision or rule providing for exemption from eligibility criterion, the learned Single Judge clearly erred in issuing a writ of mandamus against the appellant directing it to consider the case of Writ Petitioner 5 for granting him exemption from the rule providing for upper age-limit for fresh appointment.”



The petitioner has not challenged the statutory provision under which the Special Court has been created. There cannot be multiplication of the litigation on the identical issue as it appears that this case has been filed on account of T.V. show 'cash for justice' was made viral by the Republic TV. A relief of mandamus could be sought to perform statutory or public duty but, that cannot be utilized for seeking direction from this Court to pass order dehors to the constitutional and statutory provision.

We do not find any merit in the present writ petition and the same is, accordingly, dismissed.

(Shivaji Pandey, J)

(Partha Sarthy, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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