

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.3928 of 2018

In
Criminal Writ Jurisdiction Case No.431 of 2016

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K. K. Pathak @ Keshav Kumar Pathak Son of Late Major G.S. Pathak, the then Principal Secretary, Registration, Excise and Prohibition, Govt. of Bihar (at present posted as Additional Member, Board of Revenue, Govt. of Bihar).

... .. Petitioner/s

Versus

1. Ravi Shankar Prasad and Ors S/o Late Gopal Singh, Resident of 104, Sudhanil Apartment, PO PS- New Patliputra Colony, Town and District- Patna, presently posted as Branch Manager, State Bank of India, Bikram Branch, District Patna.
2. The State of Bihar through the Principal Secretary, Home Department, Government of Bihar, Main Secretariat, Patna.
3. The Principal Secretary, Home, Government of Bihar, Main Secretariat, Patna
4. The Director General of Police, Bihar, Patna
5. The Sr. Superintendent of Police, Patna
6. The Superintendent of Police, Rural, Patna
7. The Officer In- charge, Bikram Police Station, Bikram, Patna
8. The Sub Registrar, Bikram, Office of Sub Registrar, Bikram, P.S. Bikram, District Patna
9. The Principle Secretary, Department of Registration, Excise and Prohibition, Vikas Bhavan, Bailey Road, Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Kumar Abhimanyu Pratap, Adv.
Adv. For Respondent-1	:	Mr. S.D. Sanjay, Sr. Advocate.
		Mrs.Priya Gupta, Advocate.
For the Respondent Nos 2 to 9	:	Mr.P.K.Verma, AAG 3
		Dr. Anand Kumar, AC to AAG 3.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 01-02-2019



Heard learned counsel for the petitioner, learned counsel representing the State as well as learned counsel representing the private respondents.

2. This application has been preferred seeking modification of the order dated 28.08.2018 passed in Cr. W.J.C No. 431 of 2016. Learned counsel for the petitioner, at the outset submits that the petitioner is not looking for any recall or review of the order on its merit. The prayer of the petitioner is only with respect to the observations of this Court occurring in Paragraph Nos. 34 and 35 of the order passed by this Court wherein this Court while directing the State to pay the cost of Rs.25,000/- to each of the petitioners observed that the same may be recovered from the then Principal Secretary, Department of Registration, Excise and Prohibition, Government of Bihar. This Court also observed that the State Government should consider and take a view on the action of the then Principal Secretary, Department of Registration, Excise and Prohibition, Government of Bihar and find out as to why appropriate action be not 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. Thereafter, the Court observed that it has come to a conclusion that it is a case of baseless prosecution, a



whimsical act of the then Principal Secretary, Department of Registration, Excise and Prohibition, Government of Bihar and has caused harassment to these petitioners, therefore, they will have liberty to seek their remedies for malicious prosecution in accordance with law.

3. Mr. Kumar Abhimanyu Pratap, learned counsel representing the petitioner submits that the petitioner who then happened to be the Principal Secretary of the Department had directed for lodgment of the First Information Report against the Bank Officials for valid reasons as according to him the Bank Officials were not remitting the money deposited in the Bank on account of the Department. Learned counsel submits that the writ application was preferred by the petitioners-respondent no.1 and others without impleading the Reserve Bank of India as party respondent. Learned Advocate submits that he is not praying for any modification of the order passed in writ petitions save and except the observations which may result in realization of cost amount from the petitioner and other steps may be taken by the State pursuant to the observation of this Court.

4. Dr. Anand Kumar, learned AC to AAG 3 representing the State submits that in fact, the State of Bihar had challenged the order dated 28.08.2018 passed in Criminal Writ Jurisdiction Case



No.431 of 2016 and other analogous writ applications before the Hon'ble Supreme Court of India giving rise to Petitions for Special Leave to Appeal (Criminal) Nos.10025-10031/2018. Those Special Leave to Appeal (Criminal) Petitions came for consideration before the Bench presided over by Hon'ble the Chief Justice of India on 30.11.2018. The Hon'ble Apex Court, could not be persuaded to entertain the Special Leave to Appeal Petitions and those were dismissed in the following terms:-

“Upon hearing the counsel the Court made the following

ORDER

Heard learned counsel for the petitioner and perused the relevant material.

We are not inclined to interfere with the orders impugned in the special leave petitions. The same are, accordingly, dismissed.”

5. Dr. Anand Kumar, learned AC to AAG 3 representing the State categorically submits that once the Judgment of this Court has been virtually affirmed by the Hon'ble Supreme Court, the State would have no option but to comply with the order by paying the cost to the petitioners and then the further follow-up action shall be taken in terms of the observations of the Court. He also submits that in terms of the order of the Court, the State Government would take steps for realizing the cost amount from the petitioner and is obliged to comply with the order.



6. Learned counsel representing the private respondents submits that once the Judgment of this Court has been affirmed by the Hon'ble Supreme Court the reasons and rationale provided therein for quashing of the F.I.R. and imposition of cost against the State and it's realisation will be taken to have been upheld by the Hon'ble Supreme Court. It is submitted that the State is custodian of the public money and if it is being saddled with cost for any whimsical act of the petitioner, the observation of this Court that the same may be recovered from the then Principal Secretary, Department of Registration, Excise and Prohibition, Government of Bihar is fully in consonance with the reasons and rationale provided in the Judgment itself. It is further submitted that in fact, in the garb of the modification application the petitioner is seeking total review of the Judgment which is not permissible.

7. Having heard learned counsel for the parties, and on perusal of the records, this Court finds that in fact, in the garb of a modification application, the petitioner is looking for a dilution with the reasonings and the rationale provided in the Judgment and Order of this Court. A bare perusal of the Judgment would show that the First Information Reports were quashed by this Court after holding that the F.I.R(s) were lodged by way of a coercive act for



recovery of money and it was a result of totally unmindful and irresponsible act of the then Principal Secretary of the Department.

8. The quashing of the F.I.R.(s) and imposition of the cost and other directions/observations for the reasons stated in the order were subject matter of challenge before the Hon'ble Supreme Court of India. The Hon'ble Apex Court while hearing the challenge has gone through the materials and then declined to interfere with the order of this Court. The submission of learned counsel for the State saying that in fact there is an affirmation of the order of this Court has got force.

9. Now, the prayer of the petitioner to modify the order by which this Court has granted liberty to the State to recover the cost and also to consider taking action for such whimsical acts is to be considered in the light of a question that where the Court finds that an Officer/Authority of the Government has acted whimsically and the exercise of power by such Officer/Authority resulted in imposition of cost of litigation and/or compensation for harassment and agony to a person then if the State has been saddled with cost or compensation for such litigation or harassment and agony and made liable to pay the cost or compensation ultimately who will be responsible.



10. In the present case this Court has granted cost of litigation only to the writ petitioner(s). The petitioners have been granted liberty to seek compensation in accordance with law.

11. This Court would reiterate the observations of the Hon'ble Apex Court in one of its judicial pronouncements in the case of **Lucknow Development Authority vs. M.K. Gupta** reported in **1994 (1) SCC 243** observed in Paragraph 11 as under:-

“11.....Public administration, no doubt involves a vast amount of administrative discretion which shields the action of administrative authority. But where it is found that the exercise of discretion was malafide and the complainant is entitled to compensation for mental and physical harassment then the officer can no more claim to be under protective cover.....”

12. In the case of **Delhi Airtech Services Private Limited and Anr. Vs. State of Uttar Pradesh & Anr.** Reported in **2011(9) SCC 354** observed in Paragraph 215 as under:-

“215.....The principles of public accountability and transparency in State action are applicable to cases of executive or statutory exercise of power, besides requiring that such actions also not lack bona fides. All these principles enunciated by the Court over a passage of time clearly mandate that public officers are answerable for both their inaction and irresponsible actions. If what ought to have been done is not done, responsibility should be fixed on the erring officers; then alone, the real public purpose of an answerable administration would be satisfied.”



13. Further Paragraph 218 of the Judgment in **Delhi**

Airtech Services Private Limited (Supra) reads as under:-

“218. Principles of public accountability are applicable to such officers/officials with all their rigour. Greater the power to decide, higher is the responsibility to be just and fair. The dimensions of administrative law permit judicial intervention in decisions, though of administrative nature, which are ex facie discriminatory. The adverse impact of lack of probity in discharge of public duties can result in varied defects, not only in the decision making process but in the final decision as well. Every officer in the hierarchy of the State, by virtue of his being “public officer” or “public servant” is accountable for his decisions to the public as well as to the State. This concept of dual responsibility should be applied with its rigours in the larger public interest and for proper governance.”

14. This Court has given its observation by which liberty has been granted to the State to recover the cost from the then Principal Secretary (the petitioner) keeping in mind that State is custodian of public money and such public money if are being spent by way of cost to the writ petitioner(s) who had to rush to this Court due to a whimsical action of lodging of F.I.R against them on the direction of an Officer of the State, the same is liable to be recovered. Other directions or observations to the State and for the writ petitioners are duly in tune with the principles laid down by Hon’ble Supreme Court. This however, goes without saying that in the matter of taking action(s) which have been



directed/observed and liberty has been granted to the State, the State shall follow the principles of natural justice.

15. This Court does not find any merit in the modification application, it is dismissed, accordingly.

(Rajeev Ranjan Prasad, J)

R.R.OJha/-

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