

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5940 of 2020

Arising Out of PS. Case No.-1439 Year-2018 Thana- WEST CHAMPARAN COMPLAINT
District- West Champaran

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1. Rajendra Kumar Sah @ Rajeendar Sah, S/o Atma Sah, R/o village- Bairiya, P.S.- Bairiya, District- West Champaran
 2. Atma Sah, S/o Late Dukhi Sah @ Sundar Sah, R/o village- Bairiya, P.S.- Bairiya, District- West Champaran

... .. Petitioners

Versus

1. The State of Bihar
2. Shakuntla Devi, W/o Rajeendar Sah, R/o village- Bairiya, P.S.- Bairiya, District- West Champaran, presently residing as D/o Bigu Sah, R/o village- Bagahi Ratanpura, P.S.- Bairiya, District- West Champaran

... .. Opposite Parties

Appearance :

For the Petitioner/s	:	Mr.Gauri Shankar Thakur, Advocate
For the State	:	Mr.A.M.P. Mehta, A.P.P.
For the Informant	:	Mr. U.C. Verma, Advocate
		Mr. S.K. Verma, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

9 17-02-2021 Heard learned counsel for the parties.

This matter has been listed for considering the show cause filed on behalf of the petitioner no.1.

The show cause has been filed by changing the lawyer. In the show cause a stand has been taken that there was a communication gap between the petitioners and their counsel. The petitioner no.1 has further stated in paragraph ‘6’ that the stand of the petitioners was not incorporated in the petition rather an usual stand was taken in paragraph ‘9’ and the same was submitted before this Court.



Learned counsel for the complainant-opposite party no. 2 submits that the manner in which the petitioner no. 1 has tried to explain his stand in the show cause is liable to be taken very strictly because such stand has been taken by a change of lawyer and behind the back of the lawyer who was earlier representing the petitioner no.1.

Learned counsel submits that before taking such stand and filing of the show cause, learned counsel now representing the petitioner no.1 should have enquired into the fact from the earlier lawyer and only after informing him that such stand is being taken by the petitioner no.1 after knowing the complete facts this kind of stand could have been taken.

Learned counsel submits that if this kind of stand is allowed to succeed, it will set a bad precedent for the sanctity of the pleadings made in the petition which is on affidavit.

Learned counsel for the complainant-opposite party no. 2, therefore, submits that the stand taken by the petitioner no.1 is liable to be rejected and criminal contempt proceeding be initiated against him for filing such affidavit which is nothing but a complete 'U' turn from the submissions made in the original petition.

On the query made by this Court from learned counsel



for the petitioner as to whether before taking such stand in the show cause he had talked to the earlier lawyer in order to know what was the instruction given to him and how the error occurred in making statement in paragraph '9' of the original petition, learned counsel submits that he has not talked to the earlier lawyer in this regard.

Having heard learned counsel for the parties, in the light of the discussion hereinabove, this Court is of the considered opinion that the stand which is being taken in the show cause at this stage is only to save the petitioner no. 1 from being prosecuted for making wrong and false statement before this Court. It was expected from learned counsel for the petitioner no.1 now representing him in this Court that before taking such stand attributing communication gap between the petitioners and in the then lawyer and then saying that what was stated in paragraph '9' of the original petition was not in terms of the stand of the petitioners, he should have talked with the earlier lawyer and then only on being satisfied he could have written such stand in the show cause.

This Court is afraid that a lawyer appearing on 'No Objection' from the earlier lawyer, filing a fresh Vakalatnama for the same petitioner in the same case takes such stand, which



is against the pleadings in the original petition filed through earlier lawyer without giving him an opportunity to know that his earlier client is now taking an unilateral stand against the pleadings filed through him, it would go against the professional ethics and the very sanctity of the pleadings before this Court would be lost. This Court deprecates this kind of stand taken in the show cause. The show cause is, therefore, rejected. However, considering that this matter relates to a matrimonial dispute, the Court is not willing to initiate a criminal contempt proceeding against the petitioner no.1, but he is cautioned that in future no such stand be taken without talking to the earlier lawyer and without bringing it to his notice.

This application stands disposed off.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

