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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No.1139 of 2019

Order reserved on: 27-8-2020

Order delivered on: 27-10-2020

Ram Nagina Gupta, S/o Shri Ram Awtara Gupta, Aged about 59 years, R/o 64 no Dafai, Koriya Colliery, P.S. Chirmiri, Distt. Koriya (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Home Affairs, Secretariat at Mahanadi Bhawan, New Raipur, Distt. Raipur (C.G.)

2. High Court of Chhattisgarh, through the Registrar General, Bodri, Bilaspur, Distt. Bilaspur (C.G.)

3. Director General of Police, Police Headquarter, New Raipur, Distt. Raipur (C.G.)

4. Superintendent of Police, Baikunthpur, Distt. Koriya (C.G.)

5. Officer in Charge of the Police Station Chirmiri, Distt. Kioriya (C.G.)

6. Arvind Kumar, Additional Sessions Judge (FTC), Baikunthpur, Distt. Koriya (C.G.)

7. Madan Mohan Sharma, S/o Ayodhya Prasad Sharma, R/o Shiv Mandir, Dafai, Koriya Colliery, Ward No.7, Chirmiri, Distt. Koriya (C.G.)

8. Karmraj Sharma, S/o Madan Mohan Sharma, R/o Shiv Mandir, Dafai, Koriya Colliery, Ward No.7, Chirmiri, Distt. Koriya (C.G.)

9. Bittu Sharma, S/o Madan Mohan Sharma, R/o Shiv Mandir, Dafai, Koriya Colliery, Ward No.7, Chirmiri, Distt. Koriya (C.G.)

---- Respondents

For Petitioner: Mr. Jai Prakash Shukla, Advocate.
For Respondents No.1 and 3 to 5 / State: -
Mr. Ayaz Naved, Govt. Advocate.
For Respondent No.2: -
Mr. Prafull N. Bharat, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Proceedings of this matter have been taken-up through video conferencing.

2. The petitioner herein lodged First Information Report No.145/2019 before Police Station Chirmiri against respondents No.7 to 9 alleging that they have taken ₹ 3,50,000/- for getting employment for his son which they have failed to provide and thereby committed the offences punishable under Sections 420, 467, 468 and 471 read with Section 34 of the IPC which was ultimately registered by the said police station. Application under Section 439 of the Code of Criminal Procedure, 1973 filed by respondents No.8 & 9, both being the sons of respondent No.7, was rejected by the learned Additional Sessions Judge on 1-5-2019, whereas their father respondent No.7 was extended the privilege of regular bail by order dated 16-5-2019. Thereafter, the petitioner herein filed an application under Section 439(2) of the Code for cancellation of bail granted to respondent No.7 before the Court of Session which was ultimately transferred to the Additional Sessions Judge (FTC) presided over by respondent No.6 herein and ultimately, the application for cancellation of

bail was rejected by order dated 5-8-2019 (Annexure P-1). Likewise, respondents No.8 & 9 after rejection of their application, filed application under Section 167(2) of the Code claiming the privilege of default bail which was rejected by the learned Magistrate, but ultimately, in the revision preferred by respondents No.8 & 9, the Court presided over by respondent No.6 herein granted bail to them under Section 167(2) of the Code finding that charge-sheet could not be preferred within the stipulated time. Thereafter, the instant writ petition has been filed claiming setting aside of order dated 5-8-2019, whereby the application under Section 439(2) of the Code filed by the petitioner herein for cancellation of bail granted to respondent No.7 was rejected. Further challenge in the instant writ petition is to the order dated 6-8-2019 by which respondents No.8 & 9 were granted bail invoking Section 167(2) of the Code. Other ancillary reliefs of CBI enquiry, action against respondent No.6 and other reliefs have been sought apart from the relief that some observations against the petitioner be expunged.

3. Mr. Jai Prakash Shukla, learned counsel appearing for the petitioner, submits that the application under Section 439(2) of the Code filed by the petitioner for cancellation of bail granted to

respondent No.7 ought to have been allowed by the learned Additional Sessions Judge, as after grant of bail, respondents No.8 & 9 have threatened the petitioner for the reason of lodging report against them. Similarly, default bail could not have been granted to respondents No.8 & 9 as it is contrary to the facts and law available on record and as such, action against respondent No.6 in enlarging them on bail be also directed and the observations made against the petitioner in the order granting bail be also expunged / set aside.

4. Mr. Prafull N. Bharat, learned counsel appearing for respondent No.2, would submit that consolidated writ petition filed claiming different reliefs is impermissible in law. He further submits that against the order rejecting application under Section 439(2) of the CrPC, the petitioner has remedy under Section 439(2) of the CrPC, as such, the writ petition as framed and filed is not maintainable. Even otherwise, against the order granting default bail to respondents No.8 & 9, the writ petition is not maintainable. On merits of the matter, he would submit that the petitioner has clearly stated in his statement before the Court that he would not have filed application under Section 439(2) of the Code if the Court had not commented against him or directed the accused

persons for refund of ₹ 3,50,000/- to him. He would also submit that other reliefs as prayed for are not made out.

5. I have heard learned counsel for the parties, considered the rival submissions made herein-above and also went through the record with utmost circumspection.

6. True it is that under Section 439(2) of the Code the Court of Session as well as High Court, both have concurrent jurisdiction to direct that any person who has been released on bail be arrested and commit him to custody. Therefore, once application under Section 439(2) of the Code has been rejected by the Court of Session, the remedy available to the petitioner is to file application under Section 439(2) of the Code before this Court which he has not availed, as such, the statutory remedy available has not been availed of by the petitioner and directly writ petition has been preferred. Similarly, in exercise of revisional power, the learned Additional Sessions Judge finding respondents No.8 & 9 entitled to be released on default bail, admitted them to the privilege of bail in exercise of power conferred under Section 167(2) of the Code which could have been also challenged by way of petition under Section 482 of the Code and which the petitioner

for the reasons well known to him has not availed of. Respondent No.6 learned Additional Sessions Judge (FTC) rejected the bail application of respondents No.8 & 9 on 1-5-2019, however, considering the facts and circumstances of the case, admitted respondent No.7 on 16-5-2019 to the privilege of regular bail under Section 439 of the Code against which the petitioner filed application under Section 439(2) of the Code on 23-5-2019. The main allegation in that application was that after release of respondent No.7, the accused persons started threatening the family members of the petitioner and abused and pressurised the petitioner to withdraw the case and also threatened to kidnap the family members of the petitioner.

7. At this stage, it would be appropriate to notice the scope of Section 439(2) of the Code which states as under: -

> "**439. Special powers of High Court or Court of Session regarding bail.**—(1) xxx xxx xxx
>
> (2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody. "

8. The short question for consideration is, whether the learned Additional Sessions Judge (FTC) is justified in rejecting the application under Section 439(2) of the Code finding no ground for

cancellation of bail under Section 439(2) of the Code?

9. It is quite well settled that the parameter for grant of bail and cancellation of bail are entirely different. Bail granted under Section 439(1) of the Code can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, and (vii) attempts to place himself beyond the reach of his surety etc.. It is also well settled that even if two views are possible, once the bail has been granted, it should not be cancelled. (See **Jayendra Saraswathi Swamigal v. State of T.N.**[1] and **Nityanand Rai v. State of Bihar**[2].)

10. The Constitution Bench of the Supreme Court has considered the scope of power of the High Court under Section 439(2) of the Code in the matter of **Gurcharan Singh and others v. State (Delhi**

1 (2005) 2 SCC 13
2 (2005) 4 SCC 178

Administration)[3] and catalogued the principles governing the powers of the Courts granting and cancelling bail in paragraph 16 of the report which reads as under:-

> "16. Section 439 of the new Code confers special powers on High Court or Court of Session regarding bail. This was also the position under Section 498, Cr.P.C. of the old Code. That is to say, even if a Magistrate refuses to grant bail to an accused person, the High Court or the Court of Session may order for grant of bail in appropriate cases. Similarly under Section 439(2) of the new Code, the High Court or the Court of Session may direct any person who has been released on bail to be arrested and committed to custody. In the old Code, Section 498(2) was worded in somewhat different language when it said that a High Court or Court of Session may cause any person who has been admitted to bail under sub-section (1) to be arrested and may commit him to custody. In other words, under Section 498(2) of the old Code, a person who has been admitted to bail by the High Court could be committed to custody only by the High Court. Similarly, if a person was admitted to bail by a Court of Session, it was only the Court of Session that could commit him to custody. This restriction upon the power of entertainment of an application for committing a person, already admitted to bail, to custody, is lifted in the new Code under Section 439(2). Under Section 439(2) of the new Code High Court may commit a person released on bail under Chapter XXXIII by any Court including the Court of Session to custody, if it thinks appropriate to do so. It must however be made clear that a Court of Session cannot cancel a bail which has already been granted by the High Court unless new

3 (1978) 1 SCC 118

> circumstances arise during the progress of the trial after an accused person has been admitted to bail by the High Court. If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State, and necessarily, therefore to that Court. The State may as well approach the High Court being the superior Court under Section 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge grating bail and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-à-vis the High Court."

11. Similarly, in the matter of **Puran v. Rambilas and another**[4], their Lordships of the Supreme Court have held that the concept of setting aside, unjustified, illegal or perverse order is absolutely different from cancelling an order of bail on the ground that accused has misconducted himself or because of some supervening circumstances warranting such cancellation.

12. Quite recently, their Lordships of the Supreme Court in the matter of **Abdul Basit alias Raju and others v. Mohd. Abdul Kadir Chaudhary and another**[5] considered all its earlier judgments on the issue

4 (2001) 6 SCC 338
5 (2014) 10 SCC 754

and pointed out distinction between review/recall of order granting bail from cancellation of bail order and have held that the Court granting bail cannot review its order on the ground of it being illegal, unjustified or perverse in view of express bar contained in Section 362 of the Code and held in paragraphs 20, 21, 26 and 27 of the report as under: -

> "20. In the instant case, the respondents herein had filed the criminal miscellaneous petition before the High Court seeking cancellation of bail on grounds that the bail was obtained by the petitioners herein by gross misrepresentation of facts, misleading the court and indulging in fraud. Thus, the petition challenged the legality of the grant of bail and required the bail order to be set aside on ground of it being perverse in law. Such determination would entail eventual cancellation of bail. The circumstances brought on record did not reflect any situation where the bail was misused by the petitioner-accused. Therefore, the High Court could not have entertained the said petition and cancelled the bail on grounds of it being perverse in law.
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> 21. It is an accepted principle of law that when a matter has been finally disposed of by a court, the court is, in the absence of a direct statutory provision, functus officio and cannot entertain a fresh prayer for relief in the matter unless and until the previous order of final disposal has been set aside or modified to that extent. It is also settled law that the judgment and order in the absence of any express provision in the Code for the same. Section 362 of the Code operates as a bar to any alteration or review of the cases

disposed of by the court. The singular exception to the said statutory bar is correction of clerical or arithmetical error by the court.

26. In the instant case, the order for bail in the bail application preferred by the accused-petitioners herein finally disposes of the issue in consideration and grants relief of bail to the applicants therein. Since, no express provision for review of order granting bail exists under the Code, the High Court becomes functus officio and Section 362 of the Code applies herein barring the review of judgment and order of the Court granting bail to the petitioner-accused. Even though the cancellation of bail rides on the satisfaction and discretion of the court under Section 439(2) of the Code, it does not vest the power of review in the court which granted bail. Even in the light of fact of misrepresentation by the petitioner-accused during the grant of bail, the High Court could not have entertained the respondent/informant's prayer by setting in review of its judgment by entertaining miscellaneous petition.

27. Herein, the High Court has assigned an erroneous interpretation to the well settled position of law, assumed expanded jurisdiction into itself and passed an order in contravention of Section 362 of the Code cancelling the bail granted to the petitioners herein. Therefore, in our considered opinion, the High Court is not justified in reviewing its earlier order of grant of bail and thus, the impugned judgment and order requires to be set aside."

13. In the matter of **Mehboob Dawood Shaikh v. State of Maharashtra**[6], their Lordships of the Supreme Court clearly held that rejection of bail stands on one

6 (2004) 2 SCC 362

footing , but cancellation of bail is a harsh order because it takes away the liberty of an individual granted and is not to be lightly resorted to. It was further held that when a person to whom bail has been granted either tries to interfere with the course of justice or attempts to tamper with evidence or witnesses or threatens witnesses or indulges in similar activities which would hamper smooth investigation or trial, bail granted can be cancelled. Their Lordships also held that mere assertion of an alleged threat to witnesses should not be utilized as a ground for cancellation of bail, routinely. Otherwise, there is ample scope for making such allegation to nullify the bail granted. The Court before which such allegations are made should in each case carefully weigh the acceptability of the allegations and pass orders as circumstances warrant in law. Such matters should be dealt with expeditiously so that actual interference with the ordinary and normal course of justice is nipped in the bud and an irretrievable stage is not reached.

14. Reverting to the facts of the present case in the light of the aforesaid principle of law laid down in the aforesaid judgments of the Supreme Court (supra), it would be appropriate to notice para 5 of the application filed by the petitioner herein /

complainant before the Court under Section 439(2) of the Code in which it has been stated as under:-

> 5/– यह कि पूर्व में मुख्य आरोपी, प्रार्थी को यह बताते रहा है कि उसका पहुंच एवं पहचान वरीय न्यायिक अधिकारियों एवं पुलिस अधिकारियों से है, जिसके बल पर वह आसानी से जमानत पर रिहा हो जायेगा एवं प्रकरण भी जल्द समात करवाने का सामर्थ रखता है। प्रारंभ में मुख्य आरोपी का वह कथन प्रार्थी को अविश्वसनीय एवं हास्यास्पद प्रतीत होता था, परंतु मुख आरोपी को जमानत पर रिहा किए जाने का आदेख खारिज हो जाने के बाद उसे आरोपी द्वारा पूर्व में कहे गये बातों पर विश्वास होने लगा एवं प्रार्थी के मन में न्यायपालिका के प्रति अविश्वास का भाव सामने प्रकट होने लगा।
>
> मुख्य आरोपी जमानत पर रिहा होने के पश्चात् पुनः प्रार्थी को डरा धमका कर, बलपूर्वक प्रकरण वापस लेने का दबाव बना रहा है। आये दिन मुख्य आरोपी स्वयं एवं स्वपोषित गुण्डों को प्रार्थी के घर भेजकर एवं प्रार्थी को चलते राह तथा कार्यस्थल पर भी रूककर मार पीट करना, गाली गलौज करना, घर के महिलाओं एवं बच्चों को डराना धमकाना, गाली गलौज करना एवं प्रार्थी सहित उसके परिवार के समस्त लोगों को जान से मारने सहित अपहरण करने की धमकी देकर प्रकरण को वापस लेने का दबाव बनाया जा रहा है। इस संबंध में प्रार्थी ने आरोपी के रिहा होने के बाद उसके द्वारा कृत्य अपराधों के लिए एक वृहद शिकायत पुलिस के वरिय अधिकारियों सहित पुलिस अधीक्षक, बैकुन्ठपुर, जिला कोरिया को दिनांक 20–5–2019, को प्रस्तुत किया है।

15. Similarly, in the statement before the Court recorded on 23rd July, 2019, it has been stated by the petitioner herein / complainant in para 11 as under:-

> 11– यह कहना सही है कि प्रस्तुत आवेदन पेश करने का मेरा मकसद आरोपी की जमानत निरस्त कराना है। स्वतः कहा कि आरोपी की जमानत निरस्त कराने के अलावा माननीय न्यायालय के मेरे विरूद्ध कार्यवाही करने की जो टिप्पणी हुई है उसको भी निरस्त कराने के लिए आवेदन प्रस्तुत किया हूं। पुनः स्वतः कहा कि यदि मेरे विरूद्ध टिप्पणी नहीं हुई होती तो मैं, यह आवेदन नहीं प्रस्तुत किया होता। उक्त टिप्पणी के अलावा मुझे न्यायालय से यह तकलीफ है कि मुझे मेरी ठगाी की राशि 3,50,000/– रू. नहीं दिलाई गयी है, जो कि मुझे दिलाई जावे।

16. In view of the aforesaid statement made before the

Court and taking into consideration the other material on record, the learned Additional Sessions Judge (FTC) has rejected the application under Section 439(2) of the Code. It is quite vivid that the petitioner has clearly made statement that if the amount could have been returned to him, he could not have filed application and further, some comments have been made against him, otherwise he could not have made application under Section 439(2) of the Code. Even otherwise, no document was filed before the Court of Session to support his statement that on such threat, intimidation and pressure exerted on the petitioner, he has filed application before the concerned police station / higher official which goes to show that the learned Additional Sessions Judge has rightly relied upon para 11 of his statement and rightly held that no case for cancellation of bail is made out. As held by the Supreme Court in **Mehboob Dawood Shaikh** (supra), cancellation of bail is a harsh order because it takes away the liberty of an individual granted and is not to be lightly resorted to, particularly when the petitioner has failed to make out a case and filed application only as a means to get his alleged money returned from the accused persons. Even otherwise, it would amount to review / recall of the bail order which would be in

violation of the provision contained in Section 362 of the Code which bars the jurisdiction of the Court except to correct a clerical or arithmetical error.

17. Respondents No.8 & 9 were charged for the offences punishable under Sections 420, 467, 468 and 471 read with Section 34 of the IPC against which charge-sheet could not be preferred within 60 days and consequently, their application for default bail was rejected by the Judicial Magistrate, however, in revision, ultimately, they have been granted bail by the Court presided over by respondent No.6 herein relying upon the decision of the Supreme Court in the matter of **Rajeev Chaudhary v. State (NCT) of Delhi**[7] and the decisions of this Court in the matters of **Lalmen Gupta v. State of Chhattisgarh**[8] and **Shalini Verma and others v. State of Chhattisgarh**[9] holding that charge-sheet has not been filed within the period of 60 days, therefore, they will be entitled for the privilege of default bail.

18. It is well settled legal position that an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the

7 (2001) 5 SCC 34
8 Cr.M.P.No.682/2010, decided on 3-9-2010
9 Cr.M.P.No.2551/2018, decided on 13-3-2019

investigation within the period prescribed under the provision contained in sub-section (2) of Section 167 of the Code, if investigation is not completed within the period of 60 days or 90 days and charge-sheet is not filed within the above said period. The Supreme Court in a recent decision in the matter of **Achpal alias Ramswaroop and another v. State of Rajasthan**[10] reviewed the entire cases laws on the subject and observed in paragraphs 11 and 12 as under: -

> "11. The law on the point as to the rights of an accused who is in custody pending investigation and where the investigation is not completed within the period prescribed under Section 167(2) of the Code, is crystallised in the judgment of this Court in *Uday Mohanlal Acharya v. State of Maharashtra*[11]. This case took into account the decision of this Court in *Hitendra Vishnu Thakur v. State of Maharashtra*[12], *Sanjay Dutt v. State*[13] and *Bipin Shantilal Panchal v. State of Gujarat*[14]. Pattanaik, J. (as the learned Chief Justice then was) speaking for the majority recorded conclusions in para 13 of his judgment. For the present purposes, we may extract Conclusions 3 and 4 as under: {*Uday Mohanlal Acharya* case (supra)}
>
> > "13. … 3. On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of

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10 (2019) 14 SCC 599
11 (2001) 5 SCC 453
12 (1994) 4 SCC 602
13 (1994) 5 SCC 410
14 (1996) 1 SCC 718

> the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate.
>
> 4. When an application for bail is filed by an accused for enforcement of his indefeasible right alleged to have been accrued in his favour on account of default on the part of the investigating agency in completion of the investigation within the specified period, the Magistrate/court must dispose of it forthwith, on being satisfied that in fact the accused has been in custody for the period of 90 days or 60 days, as specified and no charge-sheet has been filed by the investigating agency. Such prompt action on the part of the Magistrate/court will not enable the prosecution to frustrate the object of the Act and the legislative mandate of an accused being released on bail on account of the default on the part of the investigating agency in completing the investigation within the period stipulated."

12. The principles laid down in *Uday Mohanlal Acharya* (supra) have been consistently followed by this Court, namely, in *State of W.B. v. Dinesh Dalmia*[15]; Sanjay Kumar Kedia v. Narcotics Control Bureau[16]; *Union of India v. Nirala Yadav*[17] and in *Rambeer Shokeen v. State (NCT of Delhi)*[18]. It must therefore be taken to be well settled that in terms of 3rd conclusion as recorded in Uday Mohanlal Acharya (supra), on the expiry of the period stipulated, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of

15 (2007) 5 SCC 773
16 (2009) 17 SCC 631
17 (2014) 9 SCC 457
18 (2018) 4 SCC 405

> the investigation within the period stipulated and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate."

19. Their Lordships of the Supreme Court in very recent pronouncement in the matter of **Bikramjit Singh v. State of Punjab**[19], decided on 12th October, 2020, reviewing its earlier judgment *qua* the right of an accused person to be released on defect bail held as under:-

> "20. A conspectus of the aforesaid decisions would show that so long as an application for grant of default bail is made on expiry of the period of 90 days (which application need not even be in writing) before a charge sheet is filed, the right to default bail becomes complete. It is of no moment that the Criminal Court in question either does not dispose of such application before the charge sheet is filed or disposes of such application wrongly before such charge sheet is filed. So long as an application has been made for default bail on expiry of the stated period before time is further extended to the maximum period of 180 days, default bail, being an indefeasible right of the accused under the first proviso to Section 167(2), kicks in and must be granted. "

In the latter part of judgment, their Lordships pertinently observed as under:-

> "We must not forget that we are dealing with the personal liberty of an accused under a statute which imposes drastic punishments. The right to default bail, as has been correctly held by the judgments of this Court, are not mere statutory rights under the first proviso to Section 167(2) of the Code, but is part of the procedure

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> established by law under Article 21 of the Constitution of India, which is, therefore, a fundamental right granted to an accused person to be released on bail once the conditions of the first proviso to Section 167(2) are fulfilled."

20. Reverting to the facts of the present case finally, it is quite vivid that for offences punishable under Sections 420, 467, 468 and 471 read with Section 34 of the IPC, charge-sheet ought to have been preferred within 60 days, which admittedly has not been filed in the present case, therefore, indefeasible right has accrued in favour of respondents No.8 and 9 for being released on bail on account of said default, as such, it was rightly granted by the learned Additional Sessions Judge which could not have been taken exception to by the petitioner that too by way of writ petition. I do not find any illegality in the said order granting default bail to respondents No.8 and 9.

21. The petitioner has also prayed that action be taken against respondent No.6 for passing such an illegal order. This Court has already examined the validity of the order passed under Section 439(2) of the Code and the order granting default bail to the accused persons and did not find any fault with the said orders and it has affirmed both the orders. The question for consideration would be, whether action can be taken against a judicial

officer for passing order in discharge of his official duty?

22. In this context, Section 1 of the Judicial Officers' Protection Act, 1850 deserves to be noticed, which reads as under: -

> "**I. Non-liability to suit of officers acting judicially. for official acts done in good faith, and of officers executing warrants and orders.** — No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction:
>
> Provided that he at the time in good faith, believed himself to have jurisdiction to do or order the act complained of; and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same".

23. Similarly, sub-section (1) of Section 3 of the Judges (Protection) Act, 1985 provides as under: -

> "**3. Additional protection to Judges.** — (1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-section (2), no Court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or

> spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function."

24. A careful perusal of the aforesaid provisions would show that sub-section (1) of Section 3 of the Judges (Protection) Act, 1985 clearly provides that no Court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.

25. The Supreme Court in the matter of **Anowar Hussain v. Ajoy Kumar Mukherjee and others**[20], in the context of the provisions of the Judicial Officers' Protection Act, 1850, has clearly held that if the act done or ordered to be done in the discharge of judicial duties is within his jurisdiction, the protection is absolute and no enquiry will be entertained whether the act done or ordered was erroneously, irregularly or even illegally, or was done or ordered without believing in good faith, that he had jurisdiction to do or order the act complained of. It has been observed as under: -

> "(8) … The statute is clearly intended to grant protection to Judicial Officers against suits in respect of acts done or ordered to be done by them in discharge of

20 AIR 1965 SC 1651

> their duties as such officers. The statute, it must be noticed, protects a Judicial Officer only when he is acting in his judicial capacity and not in any other capacity. But within the limits of its operation it grants large protection to Judges and Magistrates acting in the discharge of their judicial duties. If the act done or ordered to be done in the discharge of judicial duties is within his jurisdiction, the protection is absolute and no enquiry will be entertained whether the act done or ordered was erroneously, irregularly or even illegally, or was done or ordered without believing in good faith, that he had jurisdiction to do or order the act complained of. If the act done or ordered is not within the limits of his jurisdiction, the Judicial Officer acting in the discharge of his judicial duties is still protected, if at the time of doing or ordering the act complained of, he in good faith believed himself to have jurisdiction to do or order the act. The expression "jurisdiction" does not mean the power to do or order the act impugned, but generally the authority of the Judicial Officer to act in the matter: Tayen v. Ram Lal, ILR 12 All 115."

26. Very recently, the Gauhati High Court in the matter of **Rahendra Baglari v. The Sub-Divisional Judicial Magistrate (M) and three others**[21] has clearly held that protection available to a Judge by virtue of Section 1 of the Judicial Officers' Protection Act, 1850 is in respect of any action taken in good faith; whereas the protection available under Section 3(1) of the Judges (Protection) Act, 1985 is absolute and is available not only to a sitting

21 W.P.(C)No.3057/2020, decided on 15-9-2020

Judge but also to an Ex-Judge in respect of the actions taken or words spoken by him while discharging his official or judicial functions. It has been observed as under: -

> "9. A conjoint reading and understanding of the Act of 1850 (supra) and the Act of 1985 (supra) make it clear that protection available to a Judge under Judicial Officers' Protection Act, 1850 is in respect of any action taken in good faith; whereas the protection available under the Judges (Protection) Act, 1985 is absolute and is available not only to a sitting Judge but also to an Ex-Judge in respect of the actions taken or words spoken by him while discharging his official or judicial functions.
>
> If in passing every wrong or illegal judicial order, the concerned Judge is sued before the higher judicial forum, it shall result in demoralising the judicial officers, particularly, at the adjudicating level, other than the public losing faith in the judiciary. In case a purported illegal order is passed on wrong facts, law always provides for filing of appeal, revision or writ petition against the **ORDER**, however, not by impleading the Judge to seek his accountability. It is for this purpose that the Judges have been given protection by legislations such as Act of 1850 (supra), and Act of 1985 (supra)."

27. At this stage, it would be appropriate to notice the judgment of the Supreme Court in the matter of **Krishna Prasad Verma (dead) through legal representatives v. State of Bihar and others**[22] in which their Lordships of the Supreme Court have

22 (2019) 10 SCC 640

held that action should not be taken against judicial officers only because wrong orders are passed, taking into consideration the earlier decision of the Supreme Court in the matter of **Ishwar Chand Jain v. High Court of P&H**[23]. It was observed in paragraphs 1 to 4 of the report as under: -

> "In a country, which follows the Rule of Law, independence of the judiciary is sacrosanct. There can be no Rule of Law, there can be no democracy unless there is a strong, fearless and independent judiciary. This independence and fearlessness is not only expected at the level of the Superior Courts but also from the District Judiciary.
>
> 2. Most litigants only come in contact with the District Judiciary. They cannot afford to come to the High Court or the Supreme Court. For them the last word is the word of the Magistrate or at best the Sessions Judge. Therefore, it is equally important, if not more important, that the judiciary at the District level and at the Taluka level is absolutely honest, fearless and free from any pressure and is able to decide cases only on the basis of the facts on file, uninfluenced by any pressure from any quarters whatsoever.
>
> 3. Article 235 of the Constitution of India vests control of the subordinate courts upon the High Courts. The High Courts exercise disciplinary powers over the subordinate courts. In a series of judgments, this Court has held that the High Courts are also the protectors and guardians of the Judges falling within their administrative control. Time and time again, this Court has laid down the

23 (1988) 3 SCC 370

> criteria on which actions should be taken against judicial officers. Repeatedly, this Court has cautioned the High Courts that action should not be taken against judicial officers only because wrong orders are passed. To err is human and not one of us, who has held judicial office, can claim that we have never passed a wrong order.
>
> 4. No doubt, there has to be zero tolerance for corruption and if there are allegations of corruption, misconduct or of acts unbecoming of a judicial officer, these must be dealt with strictly. However, if wrong orders are passed that should not lead to disciplinary action unless there is evidence that the wrong orders have been passed for extraneous reasons and not because of the reasons on the file."

28. Reverting to the facts of the case in light of the above-stated observations of their Lordships of the Supreme Court in above-cited judgment {**Krishna Prasad Verma** (supra)}, since the order passed by the Court presided over by respondent No.6 is strictly in accordance with law, action sought to be taken against respondent No.6 is absolutely uncalled for and no action can be directed to be taken for passing a judicial order, on the basis of records of the case. The writ petition deserves to be and is accordingly dismissed *in limine* without notice to the other side, as the petitioner is not entitled for any relief. The judgments relied upon by learned counsel for the petitioner are clearly inapplicable to the facts of the present case in

view of the finding recorded herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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