

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.45566 of 2015

Arising Out of PS. Case No.- Year-1111 Thana- District-

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Lalit Kumar Singh son of late Sone Lal Singh, resident of village-
Bahadurpur, P.S. Hathauri, District Samastipur. At present services Deputy
Collector, Jehanabad, Bihar I/c Jail Superintendent, Jehanabad.

... .. Petitioner/s

Versus

1. The State Of Bihar Through The District Magistrate Jehanabad Bihar.
2. The District Magistrate, Jehanabad, Bihar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Rajesh Kumar Singh, Senior Advocate Mr. Ranvijay Narain Singh, Advocate Mr. Dharmendra Kumar Singh, Advocate
For the Opposite Party/s :		Mr.Dr. M.K.Gautam, APP

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

C.A.VJUDGMENT

Date : -22-03-2023

Heard Mr. Rajesh Kumar Singh, learned Senior
Counsel for the petitioner and Mr. Dr. M.K. Gautam, learned
APP for the State.

2. This application has been preferred for
quashing of the order/judgement dated 22.05.2015 in Cr. Misc.
No. 4586 of 2014 by which the Patna High Court while
granting bail to one Basant Yadav @ Pappu @ Pappu Yadav in
connection with Karpi P.S. Case No. 68 of 1996 had made
certain adverse remarks against the petitioner.

3. Learned Senior Counsel for the petitioner
submits that one Basant Yadav @ Pappu @ Pappu Yadav had



filed a criminal miscellaneous petition bearing Cr. Misc. No. 4586 of 2015 before this Hon'ble High Court for grant of bail under sections 439 and 440 of the Code of Criminal Procedure in connection with Karpi P.S. Case No. 68 of 1996 for the offence registered under Section 302, 307, 316, 342 and 323/34 of the Indian Penal Code read with Section 27 of the Arms Act.

4. He further submits that accused, Basant Yadav was an absconder since 1996 and was arrested and produced before the learned Sub Divisional Judicial Magistrate on 05.08.2013 from where he was remanded to judicial custody in Jehanabad Jail on the same day. He further submits that on 07.10.2013, the then Jail Superintendent, Jehanabad received a requisition from learned Judicial Magistrate 1st Class, Daudnagar for production of said Basant Yadav in Haspure P.S. Case No. 83 of 2006 under Section 364A and 395/34 of the Indian Penal Code.

5. The further contention of the petitioner is that the then Jail Superintendent, Jehanabad informed Learned S.D.J.M. Jehanabad regarding requisition dated 20.9.2013 which was received on 7.10.2013 for production of Basant Yadav in Haspura P.S. Case before the learned Judicial Magistrate Ist. Class, Daudnagar on 23.9.2013. He further



submits that the Learned S.D.J.M. Jehanabad directed the then Jail Superintendent to produce the accused Basant Yadav before Daudnagar Court with the condition that the said accused be brought back after production vide order dated 22.10.2013.

6. He further submits that the accused Basant Yadav as per the direction of the learned Court was produced before Daudnagar Court vide memo no. 2027 dated 25.10.2013. However the accused was remanded to Judicial Custody by Learned Judicial Magistrate Ist. Class till 07.11.2013.

7. He further submits that in the meantime the present petitioner who was a Senior Deputy Collector joined in the month of June 2014 on the Additional Charge of Jail Superintendent, Jehanabad where for the first time requisition slip dated 27.6.2014 learned S.D.J.M. Jehanabad was received in the office of petitioner with a direction to produce accused Basant Yadav in Court on 3.7.2014.

8. He further submits that the petitioner who was In Charge of Jail Superintendent, Jehanabad sent a request letter to Jail Superintendent, Daudnagar mentioning therein that the accused Basant Yadav (who was in judicial custody since 25.10.2013 in Daudnagar Jail) has to be produced in the Court of Learned S.D.J.M. Jehanabad on 3-7.2014. A copy of the



request letter no. 1393 dated 1.7.2014 was also endorsed to the learned S.D.J.M., Jehanabad for kind information and necessary action.

9. He further submits that the learned S.D.J.M., Jehanabad sent requisition vide letter no. 1815 dated 7.9.2014 and 421 dated 19.3.2015 for production of accused Basant Yadav in Court on 8.9.2014 and further on 26.3.2015. On both the occasions, the later on petitioner wrote letters to Jail Superintendent, Daudnagar requesting him to produce the said accused before Jehanabad Court and at the same time this information was also given to the learned S.D.J.M., Jehanabad.

10. He further submits that in spite of regular information as is apparent from aforesaid Annexure, a show cause was sought for by the learned S.D.J.M., Jehanabad vide letter no. 91/15 dated 4.4.2015 from the petitioner regarding non production of the accused Basant Yadav on 4.4.2015.

11. He further submits that the petitioner on 6.5.2015 received a fax information from the Learned Assistant Registrar Patna High Court informing him to be physically present before the Hon'ble Court on 18.5.2015 in connection with Karpi P.S. Case No. 68/1996.

12. He further submits that the prior to the



petitioner appearing in person a report was sent by the learned S.D.J.M. Jehanabad vide letter no. 95/15 dated 7.4.2015 to this Hon'ble Court narrating entire development in the matter and accepting that the petitioner has responded to every intimation and information sought from him and the accused of Karpi P.S. case no. 68/96 is under Judicial custody in Daudnagar Jail.

13. He further submits that in the mean time, the petitioner, pursuant to the order of Patna High Court, appeared on 18.5.2015 before the Hon'ble Court in compliance of the order dated 6.5.2015 and filed his show cause bringing all the facts on the record with relevant annexures. The matter was taken up on 22.5.2015 and Hon'ble Court thereafter was pleased to pass various remarks against the petitioner which shall be prejudicial to his career.

14. The learned Senior Counsel submits that at no point of time, there had been any laches on his part in corresponding with the Court of the learned S.D.J.M. Jehanabad, the court of the learned Judicial Magistrate, Daudnagar as also the Jail Superintendent, Daudnagar who was the custodian of the accused on remand from the court of Shri K.C. Mishra, the learned Judicial Magistrate, Ist class, Daudnagar.

15. It has been submitted that the petitioner had



no authority to physically and personally get the accused brought from the Daudnagar Jail as he was sent on a remand direction from the learned Court, Jehanabad. The petitioner also states and submits that there has been no laches on his part in communicating with the authorities who were legally responsible to produce the accused at the Jehanabad court in compliance of the court's order.

16. The further submission is that the petitioner had been corresponding regularly without fail to procure the attendance of the accused in Karpi P.S. case no. 68/1996.

17. Learned Senior Counsel submits that considering the aforesaid facts, the remarks against the petitioner are sweeping and are not justified. There had been no willful default on part of the petitioner in not procuring the presence of accused Basant Yadav.

18. He further submits that the petitioner being Jail Superintendent in addition to his holding the post of Senior Deputy Collector was discharging his duties to the best of his knowledge and ability. Hence the remarks shall be excessive resulting in grave injustice and irreparable loss to the petitioner who had put in only four years of Service

19. The learned Senior Counsel further submits



that this Court has the power to expunge the remarks and has cited **State of Uttar Pradesh Vs. Mohammad Naim** reported in **AIR 1964 SC 703** with reference to paragraph 9 which read as follows:

(9) *The second point for consideration is this. has the High Court inherent power to expunge remarks made by itself or by a lower Court or otherwise to secure the ends of justice? There was at one time some conflict of judicial opinion on this question. The position as to case-law now seems to be that except for a some- what restricted view taken by the Bombay High Court, the other High Courts have taken the view that though the jurisdiction is of an exceptional nature and is to be exercised in most exceptional cases only, it is undoubtedly open to the High Court to expunge remarks from a judgment in order to secure the ends of justice and prevent abuse of the process of the court (see Emperor v. Mohd. Hassan, AIR 1943 Lab 298; State v. Chhotey Lal, 1955 All LJ 240; Lalit Kumar v. S. S. Bose. AIR 1957 All 398; S. Lal Singh v. State. AIR 1959 Punj 211; Ram sagar Singh v. Chandrika Singh. AIR 1961 Pat 364 and In re Ramaswami, AIR 1958 Mad 305). The view taken in the Bombay High Court is that the High Court has no jurisdiction to ex punge passages from the judgment of an inferior court which has not been*



brought before defeat it in regular appeal or revision; but an application under S. 561-A Cr. P. C. is maintainable and in a proper case the High Court has inherent jurisdiction, even though no appeal or revision is preferred to it, to correct judicially the observations made by pointing out that they were not justified, or were without foundation, or were wholly wrong or improper (see State Nilkanth Shripad Bhave, ILR (1954) Bom 148 (AIR 1954 Bom 65)). In State of U. P. v. J. N. Begga, Cri A. No. 122 of 1959 D/- 16-1- 1961 (SC) this court made an order expunging certain remarks made against the State Government by a learned Judge of the High Court of brought to this Court from the appellate judgment and order of the Allahabad High Court. In State of U. P. v. Ibrar Hussain, Cri. Appeal Nos. 148 of 1957 and 4 of 1958, D/- 28-4-1959 (SC), this court observed that it was not necessary to make certain remarks which the High Court made in its judgment. Here again the observation was made in an appeal from the judgment and order of the High Court. We think that the view taken in the High Courts other than the High Court of Bombay is correct and the High can in the exercise of its inherent jurisdiction expunge remarks made by it or by a lower court if it be necessary to do so to prevent abuse of the process of the court or otherwise to secure the ends of justice; the jurisdiction is however of an exceptional nature and has to be exercised in



exceptional cases only. In fairness to learned counsel for the appellant we may state here that he has submitted before us that the State Government will be satisfied if we either expunge the remarks or hold them to be wholly unwarranted on the facts of the case. He has submitted that the real purpose of the appeal is to remove the stigma which al has been put on the police force of the entire State by those remarks the truth of which it had no opportunity to challenge.

20. The next case cited by the learned Senior Counsel is that of **Popular Muthiah Vs. State represented by Inspector of Police** reported in **(2006) 7 SCC 296** with reference to paragraph 28, 29 and 30 which read as follows:

28. In certain situations, the court exercises a wider jurisdiction e.g. it may pass adverse remarks against an investigator or a prosecutor or a judicial officer, although they are not before it. Expunction of such remarks may also be directed by the High Court at a later stage even suo motu or at the instance of the person aggrieved

29. The High Court while, thus, exercising its revisional or appellate power, may exercise its inherent powers. Inherent power of the High Court can be exercised, it is trite, both in relation to substantive as also procedural matters.



30. In respect of the incidental or supplemental power, evidently, the High Court can exercise its inherent jurisdiction irrespective of the nature of the proceedings. It is not trammelled by procedural restrictions in that:

(i) Power can be exercised suo motu in the interest of justice. If such a power is not conceded, it may even lead to injustice to an accused.

(ii) Such a power can be exercised concurrently with the appellate or revisional jurisdiction and no formal application is required to be filed therefor.

(iii) It is however, beyond any doubt that the power under section 482 of the Code of Criminal Procedure is not unlimited. It can inter alia be exercised where the Code is silent, where the power of the court is not treated as exhaustive, or there is a specific provision in the Code; or the statute does not fall within the purview of the Code because it involves application of a special law. It acts ex debito justitiae. It can, thus, do real and substantial justice for which alone it exists.

31. This Court in Dinesh Dutt Joshi v. State of Rajasthan² while dealing with the inherent powers of the High Court held: (SCC p. 573, para 6)

"The principle embodied in the section is based upon the maxim: quando lex aliquid alicui concedit, concedere videtur et id sine



quo res ipsae esse non potest i.e. when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable. The section does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the section. As lacunae are sometimes found in procedural law, the section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this section are however required to be reserved, as far as possible, for extraordinary cases."

21. Learned Senior Counsel concludes by submitting that despite his taking up the matter diligently with concerned officers/Court, there may have been some lacunae due to the same being his first assignment as Incharge Jail Superintendent, sympathetic view needs to be taken in the matter and an appropriate order be passed failing which his career shall be doomed.

22. This Court has gone through the remarks that are part of the order passed in Cr. Misc. No. 4586 of 2014 (Basant Yadav @ Pappu @ Pappu Yadav Vs. The State Of Bihar).

23. The extract of the order of Patna High Court



is/are as follows:

“Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor.

The Jail Superintendent, Jehanabad is physically present. At an earlier occasion show-cause has been filed on his behalf in pursuance of court's order dated 06.05.2015. Gone through the show-cause. From para-3 of the show-cause it is evident that petitioner was transferred to Sub-jail, Daudnagar on 25.10.2013. From para-4 of the show-cause it is evident that since 25.10.2013 neither any correspondence has been made by the Jail Superintendent, Jehanabad to procure attendance of the petitioner nor any effort has been taken on this score and that being position, the case remained pending for years together for the presence of petitioner. While hearing instant criminal miscellaneous, a direction was made to have the case committed at an earliest after procurement of attendance of accused petitioner, then thereafter the SDJM, Jehanabad requested whereupon the Jail Superintendent, Jehanabad awoken from slumber. Even then attendance of accused was not procured at the other end only paraphernalia has been completed by way of making correspondence. Lastly, vide order dated 06.05.2015 when the Jail Superintendent has been directed to be physically present along with show-



cause then thereafter, appearance of the accused-petitioner has been procured. Thus, it is manifest that Jail Superintendent, Jehanabad was careless, negligent during discharge of his duty. At the present moment, the learned counsel for the petitioner submits that case has been committed. Even during course of interlocutory event, the Jail Superintendent has tried to justify his conduct by saying that he had joined in the month of May, 2014 and further, he has got no knowledge with regard to having petitioner away from Jehanabad Jail, though as Jail Superintendent, he was required to be. Furthermore, asserted that he is Deputy Collector, hence he is not expected to be efficacious to deal with the situation.

From the conduct of the Jail Superintendent, it is apparent that he happens to be indolent, negligent in his duty as well as, it appears that whole episode happens to be collusive one. On account thereof, the District Magistrate, Jehanabad is directed to replace Lalit Kumar Singh, the present Jail Superintendent from working furthermore as Jail Superintendent, Jehanabad. The District Magistrate, after complying the order, will inform the court. Furthermore, taking into account the conduct of the Jail Superintendent by which he had intentionally as well as negligently allowed the court proceeding to linger such long period, is deprecated as well as is found guilty therefor. On



account thereof, show-cause filed on his behalf is rejected. For such intentional / negligent conduct, it is ordered that the same be incorporated in his service book as well as he should not be assigned any responsible post in future.

Petitioner on account of his absence has allowed the proceeding to be pending since 1996. However, is found under custody since 25.07.2013.

*In the aforesaid facts and circumstances of the case, petitioner **Basant Yadav @ Pappu @ Pappu Yadav** is directed to be released on bail on furnishing bail bond of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each, to the satisfaction of learned **Chief Judicial Magistrate, Jehanabad** in connection with **Karpi P.S. Case No.68 of 1996**, but the order should be made operative after framing of charge.*

Let a copy of the order be served upon District Magistrate, Jehanabad as well as upon learned Additional Public Prosecutor for effective compliance.”

24. From the said observation, it is clear that the Hon'ble Judge was peeved due to non-production of the accused before the concerned Court as commitment of this case was pending and was not satisfied with the correspondence mode



that the petitioner had undertaken and which he tried to justify the same before the Hon'ble Judge.

25. Further, the order was passed in the year 2015. The petitioner, if aggrieved by the said order of the Hon'ble Judge which according to him is/was prejudicial to his career could have promptly preferred a petition before the same Hon'ble Judge for expunging the remarks. Instead, a petition under Section 482 of the Cr.P.C. was preferred, did not took any steps and allowed the matter to remain pending for next eight years which has finally come on board in 2023. The petitioner cannot shrug off his laxity once again for which he was taken to task by the Hon'ble Judge.

26. So far as the case of **State of Uttar Pradesh Vs. Mohammad Naim** (supra) is concerned, it has been observed by the Hon'ble Apex Court that the jurisdiction is of exceptional nature and is to be exercised in most exceptional cases only.

27. Again, so far as the case of **Popular Muthiah Vs. State represented by Inspector of Police** (supra) cited by the learned counsel for the petitioner is concerned, the Hon'ble Apex Court observed that the use of extra ordinary powers conferred upon the High Court under this section are however



required to be reserved, as far as possible for extra ordinary cases.

28. Taking into account the compelling circumstances that prompted the Hon'ble Judge (since retired) to pass the remarks, in the considered view of this Court, this case does not come under the category of exceptional/extraordinary case warranting expunge of remarks.

29 . However, this Court has taken note of the submissions of the learned Senior Counsel that the petitioner had put in only four years of service when he was given the additional charge of the Jail Superintendent, Jehanabad, it was his first assignment on the said post and although to his knowledge and best of ability, he had taken all the steps, there may be some missing points which could have been done by him in better way and the matter could have been handled in a proper manner but may have been happened due to limited service experience causing anguish to the Hon'ble Judge which he reiterates was unintentional.

30. The petitioner at the time the order in question was passed in 2015 was only 39 years of age and thus had two decades of service left then, the said order will have far reaching effect on his entire service career and taking into account the



submissions put forward by the learned Senior Counsel, as stated above, in the considered view of the Court and in the interest of justice, it would be proper that the remarks dated 22.05.2015 in Cr. Misc. No. 4586 of 2015 (Basant Yadav @ Pappu @ Pappu Yadav Vs. The State of Bihar) is made limited to the passing of this order i.e. 22.03.2023.

31. This Court thus restricts the effectiveness of the said order dated 22.05.2015 in Cr. Misc. No. 4586 of 2015 to the passing of the present order which will be deemed to have come to an end on 22.03.2023.

32. With the aforesaid observations, the petition stands disposed of.

(Rajiv Roy, J)

Jagdish/Neha-

AFR/NAFR	NAFR
CAV DATE	15.03.2023
Uploading Date	22.03.2023
Transmission Date	

