

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1409 of 2019

In
Civil Writ Jurisdiction Case No.20703 of 2018

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Sumeshwar Singh S/o Muneshwar Singh of Ward No. 2, Digha, Rohtas,
Amai, Hasanbazar, Bhojpur, P.s.- Vikramganj, Distt.- Bhojpur

... .. Appellant/s

Versus

1. The State of Bihar
2. The Director General of Police Govt. of Bihar, Patna
3. The Inspector General of Police Tirhut Zone Division, Muzaffarpur
4. The Deputy Inspector General of Police Tirhut Zone, Muzaffarpur
5. The Senior Superintendent of Police Muzaffarpur

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Awadhesh Kumar Mishra, Advocate Mr. Ajay Kumar, Advocate Mr. Ujjwal Kumar, Advocate Ms. Rani Choudhary, Advocate
For the Respondent/s	:	Mr. Suman Kumar Jha, AC to AAG 3

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 05-04-2023

Heard Mr. Awadhesh Kumar Mishra, learned
Advocate for the appellant and Mr. Suman Kumar Jha for
the State.

The appellant, a Constable, was made accused in
a criminal case of kidnapping *vide* Ahiyapur P.S. Case No.
431 of 2017, registered for offences under Sections 363,
387 read with Section 34 of the Indian Penal Code.



In fact, the Ahiyapur police station had got a whiff of kidnapping of one Shashi Ranjan Kumar, pursuant to which a raid was conducted and aforesaid Sahshi Ranjan Kumar was recovered from the custody of one Akhtar another Constable and an office bearer of Police Men's Association along with the appellant, both of whom were in police dress.

A FIR was registered as noted above and the appellant was taken into custody. The case after investigation was found to be true and the matter is pending before the trial court. Shortly thereafter, the appellant was put on suspension and a departmental proceeding was initiated with the charge as noted above.

The inquiry officer found that the appellant along with one Akhtar had taken away Sahshi Ranjan Kumar to a four-lane highway, far away from where the victim had gone and both of the policemen were demanding Rs. 5 lakhs from Sahshi Ranjan Kumar or else get framed and implicated in a case of theft of ATM. While this was being



done, the Ahiyapur police arrived and recovered Sahshi Ranjan Kumar.

We have emphasized these set of facts only for the reason that the appellant was caught in *flagrante delicto*.

Be that as it may, the disciplinary authority accepted the report of the inquiry officer and dismissed the appellant after giving him an opportunity of showing his cause against the findings and in contemplation of the decision to subject him to a punishment of dismissal.

The appeal preferred by the appellant was also dismissed by the DIG of the concerned range. The Memorial before the Director General of Police is still pending consideration.

The learned Single Judge, after having gone through the entire records found that there were no lapses in the departmental inquiry. Apart from the inquiry officer, a presenting officer also was appointed and only after the



charges were proved in the proceeding that the appellant has been subjected to such punishment.

While analyzing the dismissal order and the inquiry report, the learned Single Judge took note of the dictum of the Supreme Court in *State of A.P. Vs. Shree Rama Rao* (AIR 1963 SC 1723), *State of A.P. Vs. P.V. Chitra Venkata Rao* reported in (1975) 2 SCC 557, *S. Sreesanth Vs. BCCI* reported in (2019) 4 SCC 660 and in case of *Municipal Council, Nimach Vs. B. Mahadeo and others* (2019) SCC online SC 1215 as also *R.R. Parekh Vs. High Court of Gujrat* (2016) 14 SCC 1.

The learned Single Judge has also discussed about the general paradigms under which there could be a judicial scrutiny of a departmental proceeding. It has rightly been observed by the learned Single Judge that the duty of the court is to confine itself to the question of legality, especially whether the decision making authority had exceeded its powers or committed an error of law or breach of rules of natural justice or had reached a decision



which no reasonable tribunal would have reached or has abused its powers.

The learned Single Judge did not find any reason to interfere with the orders passed by the Sr. S.P. and the DIG, whereby the appellant was dismissed and the dismissal order was upheld in appeal.

Mr. Mishra while assailing the judgment impugned has submitted that the learned Single Judge did not take into account that along with the charge, no list of witnesses was provided, which is a breach of Section 17(3) of the *Bihar Government Servants (Classification, Control & Appeal) Rules, 2005* and no independent person was examined. He further submits that from the inquiry report itself, it would be evident that even though the presenting officer was appointed by the department but he never assisted the appellant in the proceedings.

Lastly, it has been submitted that the allegations in the FIR, referred to above, and the charges framed against him are absolutely identical and therefore, such



punishment should not have been awarded to him and the disciplinary authority ought to have awaited the verdict of the criminal court.

All the above noted arguments are not acceptable for the reason that there is only one person who was confined by the appellant and another, at a lonely place near a four-lane highway, who has appeared in the proceeding and has given statement that he was first caught hold of by one Akhtar and was asked to accompany him to another place; where on the telephonic call of Akhtar, the appellant appeared in dress and held back aforesaid Shashi Ranjan Kumar. Shashi Ranjan Kumar was being pressurized to part with Rs. 5 lakhs of money or face criminal prosecution.

As noted above, the victim was recovered from the custody of Akhtar and the appellant in the raid conducted by the Ahiyapur police station.

No malafides have been alleged against the officer registering the FIR against the appellant.



We find from the records that a policeman who is entrusted with the task of providing safety to the citizenry himself become a predator and the victim could be saved only by the timely appearance of the local police personnel as if by act of *deus ex machina*.

We find no reasons to interfere with the order passed by the learned Single Judge especially in the facts of this case.

The appeal is dismissed.

(Ashutosh Kumar, J)

(Harish Kumar, J)

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