

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2024 of 2023

Arising Out of PS. Case No.-237 Year-2019 Thana- KISHANPUR District- Supaul

1. Kaushal Kumar, Son of Sri Jai Prakash R/o Kali Sthan, P.S. - Chowk Sampatchak, Distt. - Patna at present posted as District Magistrate, Supaul.
2. Shaishav Yadav, Son of Shashibhar Prasad Yadav, R/o 11/MB, Khaitan Lane, West Boring Canal Road, Phulwari, Distt. - Patna presently posted as the Superintendent of Police at Supaul.

... .. Petitioners

Versus

1. The High Court of Judicature at Patna through its Registrar General, Patna High Court, Patna.
2. The District and Sessions Judge, Supaul, through its Registrar at Supaul.
3. The State of Bihar through Director Prosecution, Bihar Patna.
4. The Additional Chief Secretary, Department of Home, Government of Bihar, Patna.
5. The Director General of Police, Bihar, Patna.

... .. Respondents

with

Criminal Writ Jurisdiction Case No. 2022 of 2023

Arising Out of PS. Case No.- Year-0 Thana- District- Supaul

Kaushal Kumar, Son of Sri Jai Prakash, R/o Kali Sthan, P.S. - Chowk Sampatchak, Distt. - Patna at present posted as District Magistrate, Supaul.

... .. Petitioner

Versus

1. The High Court of Judicature at Patna through its Registrar General, Patna High Court, Patna.
2. The District and Sessions Judge, Supaul, through its Registrar at Supaul.
3. The State of Bihar through Director Prosecution, Bihar Patna.
4. The Additional Chief Secretary, Department of Home, Government of Bihar, Patna.
5. The Director General of Police, Bihar, Patna.

... .. Respondents

with

Criminal Writ Jurisdiction Case No. 2023 of 2023

Arising Out of PS. Case No.- Year-0 Thana- District- Supaul

Kaushal Kumar, S/o- Shri Jai Prakash, R/o- Kali Sthan, P.S.- Chowk Sampatchak, District - Patna at present Posted as District Magistrate, Supaul.

... .. Petitioner

Versus

1. The High Court of Judicature at Patna through its Registrar General, Patna High Court, Patna.
2. The District and Sessions Judge, Supaul, through its Registrar at Supaul.
3. The State of Bihar through Director Prosecution, Bihar Patna.
4. The Additional Chief Secretary, Department of Home, Government of Bihar, Patna.
5. The Director General of Police, Bihar, Patna.

... .. Respondents

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with

Criminal Writ Jurisdiction Case No. 2025 of 2023

Arising Out of PS. Case No.- Year-0 Thana- District- Supaul

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1. Kaushal Kumar, S/O Sri Jai Prakash, R/O Kali Sthan, P.S. Chowk Sampatchak, District-Patna at present posted as District Magistrate, Supaul.
2. Shaishav Yadav, S/O Shashibhar Prasad Yadav, R/O-11/MB, Khaitan Lane, West Boring Canal Road, Phulwari, District-Patna presently posted as the Superintendent of Police at Supaul.

... .. Petitioners

Versus

1. The High Court of Judicature at Patna through its Registrar General, Patna High Court, Patna.
2. The District and Sessions Judge, Supaul, through its Registrar at Supaul.
3. The State of Bihar through Director Prosecution, Bihar.
4. The Additional Chief Secretary, Department of Home, Government of Bihar, Patna.
5. The Director General of Police, Bihar, Patna.

... .. Respondents

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Appearance :

(In Criminal Writ Jurisdiction Case No. 2024 of 2023)

For the Petitioners : Mr. Nadim Seraj, Advocate
Mr. Shailesh Kumar, Advocate

For the Resp 1 & 2 : Mr. Piyush Lall, Advocate

(In Criminal Writ Jurisdiction Case No. 2022 of 2023)

For the Petitioner : Mr. Nadim Seraj, Advocate
Mr. Shailesh Kumar, Advocate

For the State : Mr. S. Raza Ahmad, AAG-5
Mr. Alok Ranjan, AC to AAG-5

For the Resp 1 & 2 : Mr. Piyush Lall, Advocate

(In Criminal Writ Jurisdiction Case No. 2023 of 2023)

For the Petitioner : Mr. Nadim Seraj, Advocate
Mr. Shailesh Kumar, Advocate

For the State : Mr. Anjani Kuamr, AAG-4
Mr. Shailendra Kumar Singh, AC to AAG-4
Mr. Utkarsh Bhushan, Advocate

For the Resp 1 & 2 : Mr. Piyush Lall, Advocate

(In Criminal Writ Jurisdiction Case No. 2025 of 2023)

For the Petitioners : Mr. Nadim Seraj, Advocate
Mr. Shailesh Kumar, Advocate
For the State : Mr. Anil Kumar Verma, AC to AAG-9
For the Resp 1 & 2 : Mr. Piyush Lall, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 20-12-2023 On the request of learned counsel for the parties, these four writ applications have been taken up together for consideration.

2. At the outset, Mr. Nadim Seraj, learned counsel for the petitioners requests this Court to allow him to delete the name of the learned Presiding Officer of the Court from the array of parties.

3. He is permitted to do so.

4. Let the name of the Presiding Officer be deleted from the list of respondents.

5. Learned counsel for the petitioners in Cr.WJC No. 2024 of 2023 and Cr.WJC No. 2025 of 2023 undertakes to remove the defects in course of the day.

6. In these four writ applications, the grievance of the petitioners is that the learned Additional Sessions Judge-VII, Supaul has exceeded his jurisdiction and authority conferred upon him by law in imposing a cost on the District Magistrate and the Superintendent of Police, Supaul. Further, it is the grievance of the petitioners that the learned Additional Sessions

Judge has made several uncalled for, unwarranted and undesirable observations against the efficiency and competence of the petitioners who are rendering their services as District Magistrate and Superintendent of Police respectively. It is submitted that not only the cost has been imposed by the learned court but even observations have been made without giving any opportunity of hearing to the petitioners, therefore, the order suffers from violation of principles of natural justice.

7. Mr. Anjani Kumar, learned AAG-4 appears for the State. Mr. Piyush Lall, learned counsel represents the High Court of Judicature at Patna and the District and Sessions Judge, Supaul who are respondent nos. 1 and 2.

8. Learned AAG-4 for the State has assisted this Court even as at this stage no counter affidavit has been invited from the State. It is submitted that so far as the direction to impose cost upon the two Officers of the district and then observations against their efficiency and competence are concerned, the learned court has definitely exceeded its jurisdiction and has gone on making such observations which are likely to adversely affect the petitioners. These observations are not only beyond the jurisdiction of the court but have also been made without giving any opportunity of hearing to the petitioners, therefore,

those observations are liable to be set aside and expunged.

9. Mr. Piyush Lall, learned counsel for the respondent nos. 1 and 2 would submit that so far as the observations part are concerned, he would request this Court to take an appropriate view of the matter in accordance with law, however, the issues arising out of non-execution of summons, warrants and *dasti* summons by the concerned police station may be considered in a wider perspective and in the interest of the administration of justice.

Consideration

10. This Court has heard learned counsel for the parties and perused the records. For brevity sake, the Court would take the facts of the first case being Cr.WJC No. 2024 of 2023 (Kausal Kumar and Anr. versus The High Court of Judicature at Patna and Others). It appears on perusal of the impugned order dated 09.10.2023 passed by learned Additional Sessions Judge-VII, Supaul that the said trial was required to be concluded in the light of the order dated 10.08.2022 passed by this Court. It is stated that vide order dated 10.08.2022 in Cr. Misc. No. 27146 of 2022, this Court had directed the District Magistrate and the Superintendent of Police, Supaul to ensure that the prosecution witnesses are produced on the date fixed in

the court below so that the trial would be concluded within the stipulated period. It appears on perusal of the said order of the Hon'ble Court that the order was passed while rejecting the prayer for bail of the petitioner in his third attempt and the Court was informed that five prosecution witnesses have already been examined and the trial is likely to be concluded within a period of six months.

11. The learned court below was also directed to take all necessary steps to conclude the trial preferably within a period of six months from the date of receipt/production of a copy of the order.

12. It appears that the trial was taken up on 09.10.2023 but on the said date, no witness was present. This has been taken seriously by the learned trial court. In his order, the learned court has referred Rule 34 of the Bihar Criminal Court Rules of Patna High Court wherein the DM and local police i.e. S.P., Supaul who is the head of local police are responsible to ensure the attendance of the witnesses on the date fixed in the case. The court found that having disobeyed the order of the Hon'ble Court, the DM and the SP, Supaul would be liable for contempt of the court. To that extent, this Court finds no difficulty in accepting the opinion of the learned trial

court but what has been done thereafter would not sustain the test of law.

13. The learned trial court has proceeded to impose a cost of Rs.24,000/- each on both DM and SP, Supaul and ordered to realise the same from their salary and deposit the same in the Prime Minister Relief Fund within 15 days from the date of receipt of the order. The learned Presiding Officer further proceeded to make uncalled for observations behind the back of the Officers by calling them highly inefficient, incompetent and lethargic in compliance of the court's order.

14. To this Court, it appears that the learned trial court has exceeded its jurisdiction and made adverse comments in complete violation of the principles of natural justice. Such observations could not have been made by the learned Presiding Officer of the court on his own perception as these observations are having serious civil consequences. If the learned Presiding Officer was of the view that it is a case of contempt of the order of this Court, he was required to refer the matter to this Court but in no case, he was empowered to make such observations based on his own perception as these have got serious civil consequences.

15. So far as the imposition of cost is concerned, this

Court is of the opinion that this issue is required to be considered in an appropriate proceeding and no blanket order may be passed at this stage as to whether or not cost may be imposed upon the State where the State fails to produce the witness and is found wasting the time of the court.

16. This Court is, however, inclined to hold that the learned trial court was not justified in directing imposition of cost and recovery of the same from the salary of the two Officers in the present case. This Court has already noticed that the order was passed behind their back and without giving them any opportunity of hearing. For the reasons aforesaid, to that extent the impugned order(s) in all these writ applications are bad in law and are liable to be set aside. The impugned orders imposing cost and realisation of the same from the petitioners are accordingly set aside. The observations made by the learned trial court against the petitioners are hereby expunged.

Direction for compliance

17. Having said so, this Court is conscious of the fact that in at least two cases despite the order of this Court, the witnesses were not produced in course of trial and in two other cases, the learned trial court's order to produce the witnesses were not complied with. This Court cannot remain oblivious of the prevailing conditions in all the judgements of the State of Bihar

where huge number of summons/warrants bailable as well as non-bailable against the accused and the prosecution witnesses are lying unexecuted. In several cases, it has been noticed like the two cases in hand that this Court has been rejecting the prayer for bail of the accused in his second or third attempt with a clear direction to the Superintendent of Police of the concerned district to produce the witnesses but the orders of the Court are not being complied with even after communication of the order to the concerned Superintendent of Police. This has resulted in delayed trial and giving an opportunity to the accused of serious and heinous offences to move for bail on the ground that they are in incarceration for a long period without completion of trial.

18. Learned counsel for the petitioners as well as the State do not dispute that this is a wider issue and it is required to be addressed at the highest echelon by the Department of Home, the Director, Prosecution and the Director General of Police, Bihar.

19. This Court having noticed the above situation is of the considered opinion that it is high time for these authorities to sit together and take an appropriate decision in tandem with each other to ensure that the summons/warrants against the accused and the witnesses lying unexecuted in different police stations of the State of Bihar are duly executed within a stipulated period and in

the trial court, the prosecution witnesses are produced on the date(s) fixed in the matter(s), particularly, in the cases involving serious and heinous kind of offences. They are required to fix the responsibility/accountability of non-compliance with the direction of the Court on such officers who are responsible for execution of the warrants and production of the witnesses on the dates fixed in the matter.

20. The Additional Chief Secretary, Department of Home, the Director, Prosecution and the Director General of Police, Bihar shall convene and hold a meeting to discuss this issue within four weeks from today and they would come out with an appropriate measure by way of a direction/order to the concerned officers giving them guidelines as to how and within how much time they would be liable to execute the warrants and take steps for production of witnesses in course of trial, failing which the consequences as may be decided by them will follow.

21. Let such orders be notified within eight weeks from today. A copy of this order shall be communicated to the Additional Chief Secretary, Department of Home, the Director, Prosecution and the Director General of Police, Bihar.

22. In order to ensure that the order is duly communicated to all concerned, let the Department of Home, Government of Bihar through its Additional Secretary be added as

party respondent no. 4 in all these writ applications. Mr. Anjani Kumar, learned AAG-4 who is representing the State accepts notice on his behalf.

23. Before this Court would part with this order, this Court must record that the first part of the order of the learned trial court saying that it is a case of contempt cannot be said to be wrong and this Court would have taken a serious view of the matter at its end by ordering registration of suo moto contempt proceeding for the disobedience shown to the order of this Court by not producing the witnesses but at this stage, this Court is giving an opportunity to the Superintendent of Police, Supaul to comply with the order of this Court as well as the order of the learned trial court to produce the prosecution witnesses on the date fixed in the matter by the learned trial court, failing which the learned trial court shall report the matter to this Court for an appropriate order. If any such report is submitted by the learned trial court, the same will be placed before this Court.

24. These writ applications stand disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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