

## Jugal Kishore Prasad Vs State of Bihar

**Court:** Patna High Court

**Date of Decision:** April 4, 1986

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 251, 252

**Citation:** (1986) 34 BLJR 709

**Hon'ble Judges:** Anand Prasad Sinha, J

**Bench:** Single Bench

**Final Decision:** Allowed

### Judgement

Anand Prasad Sinha, J.

This application is for setting aside that portion of the order of the Appellate Court by which the case has been

remanded back for fresh trial in accordance with law.

2. It appears that a prosecution report had been sent to the police station indicated in Annexure "1" by the Superintendent University Examination,

stating therein that the petitioner and a few have been caught while using unfair means in presence of the District Magistrate and has been expelled

from the examination. Accordingly, they should be fined Rs. 2,000/-, as per instruction of District Magistrate. It appears that the roll numbers of

certain students have been mentioned. Thereafter, the charge sheet has been submitted and the operative portion of the charge-sheet is as follows:

...The above noted students who were examinees and caught red handed at A.P.S.M. College Centre, while indulging in unfair means by the

Centre Superintendent. In enquired into the matter and found the charges correct against them. The examinees have committed an offence u/s 3/4

of Bihar Conduct of Examinations Ordinance, 1980, and therefore he may be punished accordingly after trial.

3. Consequent to that the petitioner along with others had been put on trial and they have been convicted and sentenced to pay a fine of Rs.

2,000/-each in default to suffer simple imprisonment for five months. Further it appears that the substance of acquisition was explained to the

accused in Hindi u/s 251, Cr. PC and they pleaded guilty. Their statements were recorded u/s 252, Cr. PC The above accused persons i.e.,

serials 1 to 11, thus were convicted u/s 10 of the said Ordinance and each of them sentenced to pay a fine of Rs. 2,000/- in default to suffer

imprisonment for five months.

4. Now the question would arise that how far the petitioner is entitled to challenge the order of conviction when that has been passed when the

accused persons had pleaded guilty. Another question would be as to how far they have been subjected to fair trial.

5. On a perusal to the entire affairs, as indicated above, I have no hesitation in saying that there is complete absence of the element of fair trial and

the trial conducted in this case can be equated with arbitrariness and whim of a few individuals. Although the learned Counsel appearing on behalf

of the petitioners have raised several points that the act of unfair means has not been illustrated and, therefore, the allegations are vague and further

that absolutely there is no indication that in what manner unfair means had been adopted. Further it is stated that Section 3 of the Ordinance is for

the person who indulges into unfair means and Section 4 is for the person who aims and help in such unfair means, Therefore, the argument is that

absolutely, there is non-application of mind because the same person cannot be said to be guilty for the conduct indicated in Section 3 and Section

4 of the Ordinance.

6. However, the entire affairs of trial is so unfortunate that, I am not inclined to consider any other point, as it appears that there is a mockery of

trial in the instant case. Absolutely, the District Magistrate had no jurisdiction whatsoever to inflict punishment. It is unfortunate that the Sub-

Inspector had also adopted the dictates of the District Magistrate and without trial, he has expressed an opinion that the petitioner be convicted.

Another illustration is indicated by the letter of the Centre Superintendent who has himself suggested the mode of punishment to the Sub-Inspector

of Police or the learned Magistrate also himself has ignored all the settled principles of a criminal trial and he has imposed a sentence which had

been commanded by the District Magistrate.

7. In that view of the matter, I am thoroughly convinced that the petitioner has been proceeded against without any principle of fair trial and he had

also been made a victim of conviction and sentence on the recommendations of the Centre Superintendent who had adopted the opinion of the

District Magistrate.

8. Under these circumstances, that portion of the order of the Appellate Court by which the case has been remanded back is set aside and the

portion of the order by which the petitioner has been acquitted is maintained.

9. Accordingly, the application is allowed, as observed above.