# Manir Ahmad Vs The State of Bihar and Others

## C.W.J.C. No. 2872 of 2002

**Court:** Patna High Court

**Date of Decision:** May 6, 2002

**Citation:** (2002) 3 PLJR 384

**Hon'ble Judges:** R.S. Garg, J

**Bench:** Single Bench

**Advocate:** Alok Kumar Agrawal, for the Appellant; Rajeshwar Prasad for the State and Mr. J.P. Shukla for the Respondent-D.F.O., for the Respondent

## Judgement

@JUDGMENTTAG-ORDER

R.S. Garg, J.
Heard learned counsel for the parties. The Divisional Forest Officer is also present in person. He has submitted his

explanation to the notice issued to him under the proceedings dated 14.5.2002 that why he be not punished under the provisions of Contempt of

Courts Act. The facts necessary for disposal of the issue are that on an earlier occasion the petitioner had come to this Court submitting that the

Circular dated 10.7.2001 was quashed by this Court despite that the Respondent-D.F.O. misinterpreting the Circular and observing that present

was a case of intra-State transportation of Sawn Shisam wood directed initiation of the proceedings for confiscation of the truck and the Shisam

wood/timber. It is worth noting that after the orders of the High Court in earlier matters, the Circular dated 10.7.2001 was withdrawn by the State

Government. The order impugned is Annexure-12. On 7.2.2002 the Divisional Forest Officer recorded that present was a case of intra-State

removal/transit/transportation of timber and as the vehicle was not having the proper permit for transportation of the timber, the same amounted to

a forest offence. This Court found in the order dated 7.2.2002 (Annexure-12) that the D.F.O. himself had recorded that-

The brief description of the case is as that as per the challan, Hoda Timber Merchant & Commission Agent represented by Manir Ahmad loaded

Sawn Shisam wood on truck bearing registration no. HR-69/8271 on 22.11.2001. The destination recorded on this challan is Tara Nagar, Churu

(Rajasthan). The truck had probably met with an accident. On 27.11.2001 in course of patrolling the Range Officer of Forests, Lalganj found this

truck in a partially damaged condition.

2. From this narration of the fact it would clearly appear that the truck was booked for Churu (Rajasthan) and the wood was in transit in a inter-

State transportation. The Circular dated 10.7.2001 tried to impose restriction on the Sawn Shisam wood in case of inter-State transportation.

3. This Court quashed the said order long months back observing that in absence of the Rules governing and controlling the inter-State

transportation of the Sawn Shisam wood the State authority/ Forest authorities had no jurisdiction or authority under the law to issue such a

circular. Once the order was passed by this Court and it was known to everybody specially to the present Officer because in accordance with the

orders passed by this Court in C.W.J.C. No. 16218 of 2001 he has passed the present order. If the Officer knew about the earlier judgment in

the matter of the present Petitioner then there was no scope for him to hold that the truck was booked for destination in the State itself and not for

Rajasthan.

4. On 25.4.2002 the matter was taken up for consideration. The Divisional Forest Officer was directed to remain in attendance.

5. On 2.5.2002 the learned Government Counsel and the Forest Officer remained in attendance. On that date the learned counsel for the State

submitted that after the Circular letter dated 10.7.2001 was quashed by this Court there was no necessity of any permit for inter-State transport of

Sawn Shisam wood from the territories of the State of Bihar to any other State but the Divisional Forest Officer, Mr. Uma Kant Jha stated before

the Court that the earlier judgment of this Court required opinion of the State Government. He further stated before the Court that from the place

of origin to the last boundary of the State of Bihar even in case of inter-State sale a transport permit would be required because the present would

not be a case of inter-State transport but would be a case of trans-shipment. He prayed for time to file the counter.

6. These facts are recorded in the proceedings dated 2.5.2002. From the statements made by the D.F.O. in the open Court it would clearly

appear that he was obsessed with his authority and obstinate in his view. Despite submission of the State Counsel that no permit was required he

asserted before the Court that from the place of start to the last boundary of the State a permit for inter-transport would also be required. This

Court was shocked and surprised by the conduct exhibited by Mr. Uma Kant Jha but in spite of taking him to task on that very day itself, this

Court directed that on petitioner''s furnishing a personal bond in a sum of Rs. Two Lacs with a security bond in the like amount the property under

seizure shall immediately be released. Though I have not recorded the conduct of the D.F.O. which he exhibited on this order but being

apprehensive of a foul play at his hand I further directed that on submission of the surety bond and personal bond, if the property in dispute is not

released by the D.F.O., who was present in the Court, this Court may draw contempt proceedings against him. I think the proceedings recorded

by this Court on 2.5.2002 should have worked as eye-opener and remind the D.F.O. that he is an authority subordinate to the High Court and he

is answerable to the Courts of Law. I expected the D.F.O. to act in accordance with law and observe the conditions stated in the order passed by

this Court.

7. The apprehensions which were in my mind fructified on the next date of hearing i.e. 14.5.2002. It was reported to me that despite submission of

the personal bond and security bond on 11.5.2002 the concerned D.F.O. did not release the truck and the other articles. The proceedings dated

14.5.2002 would show that in what manner this D.F.O. undermining the authority of this Court acted just contrary to law. On 14.5.2002 in long

proceedings of five pages I have observed that he did not immediately pass an order for releasing the truck, he returned the bonds to the petitioner

for being attested by two witnesses and getting the license no. of the Advocate on the said bonds. I have also recorded that after the bonds were

again submitted, this D.F.O. did not direct release of the properties but referred the matter to the Forest Ranger with a further direction that

opinion of the Government Pleader be sought and if the said State Government Pleader says that the bonds are in accordance with law then the

bonds be accepted and after verifying the identification of the person the properties be released.

8. I have also observed and found that this Court required the D.F.O. to accept the bonds and release the property but he has simply transferred

his authority and jurisdiction to the Government Pleader and asked the Forest Ranger to release the properties after getting the identification

verified. Upto 14th May, 2002 the orders passed by this Court were not observed. This Court required the D.F.O., who was present in the

Court, to show that why he did not pass such necessary orders releasing the truck but on the said date of hearing i.e. 14.5.2002 had simply

informed the Court that he was not aware as to whether the truck was released or not. He did not say even a single word as to why the bonds

were returned back. In presence of the learned Government Counsel I enquired from the D.F.O. that under what authority of law he required

attestation by two witnesses. To this in presence of the Government Counsel, the D.F.O. informed the Court that in accordance with the prevalent

practice he has done that. This Court recorded the fact in the said proceedings in the following words:-

The D.F.O. through the State Counsel says that relying upon the prevailing practice that a bond is to be countersigned by two independent

witnesses, he required the petitioner to resubmit the said bonds.

9. This Court being aggrieved by the conduct and the manner in which the D.F.O. acted thought fit to draw contempt proceedings. In his presence

the proceedings were recorded. Learned counsel for the State though requested the Court to excuse and exempt him but being aggrieved by the

conduct of this D.F.O. and the manner in which he was trying to circumvent and over-reach the orders passed by this Court, this Court required

him to file the counter.

10. The personal counter filed by the D.F.O. is now available on the record.

11. Sri J. P. Shukla, learned Senior Counsel repeatedly submitted before this Court that the D.F.O. could not understand the import of the orders

of this Court and being misinformed about the provisions of law and placing reliance upon certain provisions of law, he required the petitioner to

get the bond attested. Placing reliance upon the Bihar Forest Rules {Chapter X), Rule 10.16 (iii) Sri Shukla submitted that according to sub-rule

(iii) of Rule 10.16, cases should also not be stated when the Forest Guard has not been able to seize the Forest produce, unless at least two

independent witnesses to support the Forest Guard are forthcoming. According to him this provision persuaded the D.FO. to return the bond for

getting it attested or witnessed by two witnesses. Sri Shukla submits that as the witnesses were not available the D.F.O. thought that opinion of the

Government Pleader must be taken.

12. He also submitted that the D.F.O. placing reliance upon Item No. 57 of Schedule 1A as available in the Court Fees and Stamp Duty Chart to

get the bond executed on a particular denomination of the court fee/stamp duty. This Court personally enquired from the D.F.O. about the

contents of the above referred two provisions. In presence of Mr. J. P. Shukla, the D.F.O. said that he might have read those provisions but he

cannot say what are those provisions. He was unable to say before the Court that what are the contents of those provisions.

13. One can understand a mistake on the part of somebody while he misinterprets bona fide the provisions of law. For interpreting a provision of

law or its misapplication, one is required to know the law. One who does not know law cannot say that he misapplied the law or misinterpreted the

law. If the D.F.O. did not know that what are the contents of Clause (iii) of Rule 10.16 of the Bihar Forest Rules (Chapter X), the explanation

forth coming from his side is false to his own knowledge and would aggravate the contempt. If the D.F.O. does not know that what are the

provisions in relation to the bonds or the stamp duty payable on a bond then he cannot say before a Court of Law that under some mistaken belief

he applied the said law. I will again repeat that if one does not know law, he cannot say that he misapplied law or misinterpreted the same. The

defences coming forward from the side of the D.F.O. are palpably false, manufactured and concocted.

14. The conduct which was exhibited by this D.F.O. in the Court has been observed and recorded in the earlier proceedings. The conduct

exhibited by him in his show cause has also been recorded by this Court in the above referred discussions. He does not have any regard for the

authority of the Court. Being a Forest Officer he feels that the Forest Rules or Jungle Law can be applied by him at every place. If he does not

know law then he could not take shelter under the saying that he misapplied law. He cannot say before the Court that he had misapplied the law or

was unable to understand the true effect of the orders passed by this Court. This Court had clearly required him to release the seized property on

submission of the personal bonds and security bond. The bonds were received by him on 11th May, 2002. He probably thought that he can still

delay release of the properties by adopting novel and novice methods. His conduct is not callous but the manner in which he has acted and

behaved shows his criminal intentions for ignoring the orders passed by this Court.

15. I have no hesitation in observing that the D.F.O., Mr. Uma Kant Jha has committed gross contempt of the lawful authority of this Court and

has purposefully disobeyed the orders passed by this Court. I will further record that not only he had misinterpreted the orders passed by this

Court but tried to raise false defences in his show cause by saying that he misapplied the law while in fact he did not know the provisions of law.

16. On the question of sentence I require Mr. Shukla to make his submissions. He may appear at 2.15 P.M. The matter be taken up for

consideration at 2.15 P.M. At 2-15 P.M.

17. The hearing is commenced. Learned counsel for the D.F.O. submits that present is a case where the apology must be accepted because the

contemnor has shown good reasons for passing wrong orders. In the alternative he submits that looking to the career of the contemnor some

symbolic sentence may be awarded to him and present is not a case where the jail sentence is required to be awarded.

18. Learned counsel for the contemnor further submitted that to err is human and the Court while deciding the matter exercises the divine powers

and exemption on a plea of repentance must be allowed.

19. I have heard learned counsel and have considered the submissions raised by him.

20. In the preceding paragraphs I have already found that there was no justification on the part of the D.F.O. to pass any order contrary to the

orders of this Court. The records would show that obsessed with the authority the D.F.O. was not ready and willing to release the seized articles

and was trying to create all possible hindrances and hurdles in the execution of the orders passed by this Court. This Court asked him to release

the vehicle after accepting the bonds but the D.F.O. showed scant, nay, no regards to the authority of this Court. He returned the bonds and after

submission of the bonds instead of passing orders in accordance with the terms of the orders of this Court referred the matter to the Forest

Ranger. I could understand certain bona fides on his part if he had required the Forest Ranger to release the vehicle immediately but to show his

obsession he asked the Forest Ranger that a verification into the validity of the bonds be sought from the Government Pleader. He required the

Forest Ranger that after the bonds are verified and found acceptable only then and after verification in the identification of the petitioner the

property be released. From this conduct of the D.F.O. it would clearly appear that at every step he had violated the orders passed by this Court.

He has raised false and frivolous pleadings in this Court in his counter affidavit. He is placing his reliance upon certain provisions to project a bona

fide defence while, in fact, he has not read those provisions. If the apology is founded on legal, valid and justifiable foundation certainly caution can

be made but if there is no foundation to that apology then certainly the apology would fall down.

21. I refuse to accept the apology tendered by the D.F.O.

22. On the question of sentence learned counsel for the contemnor submitted that the present is a case where from the facts it would clearly appear

that the order passed by this Court has already been complied with therefore, some symbolic sentence be only awarded.

23. The matter came for consideration before this Court on 14.5.2002. In presence of the Government Counsel it was clearly stated in the Court

by the contemnor that he did not know that whether the orders passed by the High Court were complied with or not as he was in attendance in the

Court on 14.5.2002.

24. Today the contemnor has filed his affidavit along with certain documents. He placed his strong reliance upon a document dated 13.5.2002 said

to be a letter issued by the Forest Ranger. It is not the case of the petitioner that the said letter was served upon the petitioner or his representative

on 13.5.2002 itself. In fact it was served upon the representative of the petitioner on 14.5.2002. From Annexure-B it would appear that the

contemnor issued letter no. 71 in his capacity as D.F.O., Chapra to the Forest Ranger. In the said letter it is not shown that at what place the

contemnor was camping. On being asked the contemnor through his counsel says that on 14.5.2002 the contemnor camped at Patna and issued

the letter from Patna itself. He further informs the Court that he asked one of his subordinates to deliver the letter to the concerned Forest Ranger

at Lalganj. This letter, according to the admission of the contemnor, was prepared after the proceedings dated 14.5.2002 were recorded and

closed by this Court. From Annexure-C it would appear that on 15.5.2002 the vehicle was released. Much water had flown before the said

delivery. This Court had already issued a contempt notice to the contemnor. This Court had already recorded the conduct and the obsession

exhibited by the contemnor in the Court. Even if the order passed by this Court has been complied on 15.5.2002 that would not provide a

foundation in favour of the contemnor seeking clemency in award of sentence.

25. Learned counsel for the contemnor submitted that looking to the long career of the petitioner and as he was acting in the interest of the State

Government, the jail sentence be not awarded. In the opinion of this Court, when a man exhibits an absolute misconduct then he does so putting his

own career at stake. Law nowhere says that an Officer of the State Government has to act illegally in the interest of the State Govt. nor the law

provides any authority in favour of such an Officer to ignore the orders passed by the Highest Court of the State under the pretext that he was

acting in the interest of the State Govt.

26. Taking into consideration the totality of the circumstances I consider present to be a fit case for award of jail sentence. I think three months"

simple imprisonment would be sufficient and would meet the ends of justice. The contemnor shall also pay a fine of Rs. 1000/- (One thousand).

27. The effect and operation of this order shall remain in abeyance upto 30th June, 2002 enabling the petitioner to challenge this order before the

appellate forum.

28. If on or before 30th June, 2002 the contemnor is unable to secure any stay order in his favour from the competent appellate forum then on 1st

July, 2002 he shall surrender himself before the Chief Judicial Magistrate, Patna for undergoing the sentence. The contemnor is obliged to inform

the concerned Chief Judicial Magistrate on or before 30th June, 2002 that some stay order has been granted in his favour, therefore, he is not

required to undergo the sentence. If such information is not submitted by him before the Chief Judicial Magistrate, Patna on or before 30th June,

2002 and he does not surrender on 1st July, 2002 then the Chief Judicial Magistrate, Patna shall issue a non bail-able warrant of arrest against the

contemnor to secure his attendance for his undergoing the sentence.

29. Let a copy of this order be also sent to the Chief Judicial Magistrate, Patna for due compliance. The issue in relation to the contempt stands

disposed of. The matter be listed for further hearing on the question of admission and its final disposal at this stage. List in 2nd week of July, 2002

in the same list.