

(2016) 06 PAT CK 0087

PATNA HIGH COURT

Case No: Criminal Writ Jurisdiction Case No. 532 of 2016, (Arising Out of PS.Case No. null Year - null Thana - null District - Siwan).

Rameshwar Singh son of Bishun
Singh Resident of Village Kaithi,
P.S. - G.B. Nagar, District Siwan -
Petitioner @HASH The State of
Bihar

APPELLANT

Vs

RESPONDENT

Date of Decision: June 21, 2016

Acts Referred:

- Bihar Control of Crimes Act, 1981 - Section 3(3)

Citation: (2016) 3 BLJud 134 : (2016) 4 ECRC 430 : (2016) 4 PLJR 453

Hon'ble Judges: Navaniti Prasad Singh and Smt Nilu Agrawal, JJ.

Bench: Division Bench

Advocate: Mr. Naresh Prasad, Advocate, for the Petitioner; Mr. Kaushal Kumar Jha, AAG-14 with Mr. Amish Kumar, AC to AAG-14, for the Respondent

Final Decision: Disposed Off

Judgement

Mr. Navaniti Prasad Singh, J. (Oral)—Though this writ petition has become infructuous, impugned order having outlived its utility and force on 30.05.2016, in view of the issues rightly raised by the learned counsel for the petitioner, we would like to observe as follows:-

2. Firstly, this is an order in terms of Section 3 (3) of the Bihar Control of Crimes Act, 1981 (for brevity, the Act). The petitioner has been held to be a habitual offender and, accordingly, orders were passed directing him to report to another Police Station across the district at a distance of 50 kilometers twice a day. Petitioner is a poor farmer. He states that the condition, as put, are so impractical and inhuman, they take away the entire life of the petitioner. Expecting a person to travel 50

kilometers up and down twice a day across the district would involve the whole day and would be physical torture though the power of the Collector to order presentation of a person at a particular Police Station is there, as a method of keeping surveillance over antisocial elements, the restrictions have to be balanced practically and not inhumanly. If he is to report to a Police Station as a part of surveillance, the Police Station has to be nearby his residence and not making it impossible for him to do any other work rather than just keep travelling whole day reporting to the Police Station. The District Magistrate -cum-Collector would keep in mind the same when he exercises this power.

3. Secondly, in the order passed being CCA Case No. 19 of 2016 being order dated 16.04.2016, the Collector, Siwan has noticed that petitioner is an accused in four cases and there is a Sanha entry against him in respect of one other occurrence. So far as Sanha entry is concerned, it is of no consequence for it is neither a first information report of an offence nor a charge-sheet. The Collector must note this for future reference. The four cases, that are referred, the petitioner has pointed out that two out of the four cases relate to the occurrences more than three decades back which, on the face of it, are absolutely stale and cannot be taken note of. Even in those two cases, in one, he was never sent up for trial and in the other, he has been acquitted. The two remaining cases are of the year 2010, again stale cases. They are of no relevance in the year, 2016. Even in that, in one of them, he is not an accused and the other is a dispute in the family arising out of land. If these facts, as stated by the petitioner, are correct, then surely it is a cause of concern before the detaining authority or the appropriate authority who passes an order under the Bihar Control of Crimes Act, 1981 and takes a decision to encroach upon the fundamental rights of a citizen. He must act responsibly. The Collector-cum-District Magistrate must verify and ascertain himself as to the relevance of the cases that are sent to him along with recommendation to take action under the Act. Passing an order under Section 3 of the Act is a very serious matter. It is a serious invasion into the fundamental rights of a citizen. It cannot be done casually or without seriously examining the matter.

4. If the order had not spent its force, we would have been left with no option but to observe that the externment order, as passed, was clearly illegal and in violation of the petitioner's fundamental rights but as the order has outlived its utility, except for the observations made above, we hold that the matter has become in-fructuous and is disposed of accordingly.

5 Let the copy of this order be sent to the learned Home Secretary, Government of Bihar, Patna for necessary instructions.