

(2019) 05 PAT CK 0075

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7250 Of 2015, Letters Patent Appeal
No. 438, 439 Of 2019

Bimal Chandra Mishra And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 02-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 215, 323(B)
Indian Penal Code, 1860 — Section 120B, 406, 409, 420, 468, 471, 477A
Prevention Of Corruption Act, 1988 — Section 13(1)(A), 13(2)
Bihar Land Tribunal Act, 2009 — Section 7(2)
Code Of Criminal Procedure, 1973 — Section 438
Code Of Civil Procedure, 1908 — Section 27, 28, 29, 30, 31, 32

Citation : (2019) 05 PAT CK 0075

Hon'ble Judges : Amreshwar Pratap Sahi, CJ;Rajeev Ranjan Prasad, J

Bench : Division Bench

Advocate : Y.V. Giri, Sumit Kumar Jha, Lalit Kishore

Judgement

Re: C.W.J.C. No. 7250 of 2015

1. The records of this writ petition were summoned by us today that has given rise to L.P.A. Nos. 438 of 2019 and 439 of 2019 as we found it necessary to hear and dispose off the petition along with the appeals.
2. We have heard Shri Subodh Kumar Jha, learned counsel for the petitioner and the learned counsel for the State.
3. Dr. K.P. Ramaiah who is the author of the impugned judgment dated 24th February, 2015 was impleaded by name as Respondent No. 21 vide order dated 08.02.2019 and notices were issued to him. Similarly, notices were issued to the Private Respondents No. 4 to 20 by the same order to show cause as to why the writ petition be not heard and be disposed of at the time of admission itself. From the order dated 1st of April, 2019 we find that the Vakalatnama was filed on behalf of Respondent No. 4, Respondents No. 6 to 12, 14 to 16, 18 to 19 and

also on behalf of the newly impleaded Respondent No. 21. The case was directed to come up on 22nd April, 2019 awaiting service of notice on Respondents No. 5, 13, 17 and 20. The office-note dated 19th April, 2019 records that the notice to Respondent No. 5 was received by his son while that of Respondent No. 17 was received by his wife, Respondent No. 13 was not met while Respondent No. 20 is reported to have expired as per the Process Server report.

4. This writ petition questions the correctness of the order dated 24th February, 2015 passed by the Member of the Bihar Land Tribunal, Patna in B.L.T. Case No. 389 of 2013.

5. The petition was entertained by the learned Single Judge vide order dated 31st January, 2019, whereafter orders were passed on 8th February, 2019 keeping in view the facts that had come to the knowledge of the Court during the pendency of the writ petition. This was followed by another order on 28th March, 2019 and oral directions on 22nd April, 2019 followed by other orders and ultimately vide order dated 1st of May, 2019 the matter was directed to come up on 10th of May, 2019 after taking notice of the pendency of the two Letters Patent Appeals referred to hereinabove before this Bench. The orders dated 31st January, 2019 and 8th February, 2019 read with the order dated 28th March, 2019 and the last order dated 1st May, 2019 indicate that apart from the merits of the case the learned Single Judge also took notice of the other facts which shall be dealt with by us in the judgment delivered today in the two appeals referred to hereinabove.

6. For the purpose of the present writ petition, we find that this writ petition raises a challenge to the order dated 24th February, 2015 in respect whereof the learned Single Judge had expressed a prima facie opinion about the manner in which the said order came to be passed in the orders referred to hereinabove.

7. We are entirely in agreement with the view expressed by the learned Single Judge insofar as the impugned order dated 24th February, 2015 is concerned and the same, therefore, deserves to be quashed as it only records conclusions and no reasons. The impugned order dated 24th February, 2015 also suffers from the vice of malice in law, inasmuch as, the counter affidavit filed on behalf of the Chief Secretary through Shri Binay Kumar Thakur, the Assistant Director, Land Acquisition, Revenue recites that after the lodging of the criminal case against Dr. K.P. Ramaiah he does not appear to have been functioning on the post since 31st October, 2017. His absence was noted by the Superintendent of Police, Vigilance who informed the Chairman of the Bihar Land Tribunal that an

F.I.R. had been lodged against Dr. K.P. Ramaiah under Sections 406, 409, 420, 468, 471, 477A, 120B of the Indian Penal Code read with Section 13(2) and Section 13(1)(A) of the Prevention of Corruption Act. Taking notice of the same and the absence of Dr. K.P. Ramaiah, an office order was issued that no case should be placed before him for any further trial. We are mentioning this to indicate that a person who did not deserve to occupy the said office was

continuing and the Tribunal decided not to give any case to him to decide any further. The order passed by the learned Single Judge on 31st January, 2019 also deserves to be taken notice of calling upon the Chief Secretary to explain as to why he has not been removed up till now. As has now come on record in the affidavit filed in the two Letters Patent Appeals filed by the Respondent No. 21 he has tendered his resignation from the post. Thus, the impugned order dated 24th February, 2015 suffers from violation of principles of natural justice, arbitrariness and a mala fide exercise of power in the background of the conduct of the Respondent No. 21. We may also put on record that the supplementary counter affidavit filed on behalf of the Chief Secretary states that for determining whether a case of removal is made out or not, an inquiry has been instituted and charges have been framed against the Respondent No. 21 and a show-cause notice has been issued to him in this regard which process is underway and would reach a logical conclusion and finality as early as possible. The non-recording of reasons and only conclusions is writ large in the impugned order which only records in Paragraph 24 as follows:-

"24. After having heard the counsel for the parties and on going through the documents produced on the records and on perusing the order impugned, I find reason to interfere with the order impugned. Accordingly the order dated 02.02.2002, passed by the Collector, Madhubani in Bataidari Appeal no. 33 of 1999-2000 is hereby quashed and this application is allowed."

8. A perusal of the language used in the said paragraph leaves no room for doubt that after having recorded

23 paragraphs of facts and submissions in an almost ex parte manner an abrupt conclusion has been recorded allowing the claim petition. The nature of the order, therefore, establishes that nothing has been recorded to establish the link between the submissions raised and no findings have been recorded. We, therefore, entirely concur with the reasons recorded by the learned Single Judge in the order dated 31st January, 2019 as also in the order dated 8th February, 2019. Accordingly, the writ petition is allowed and the order dated 24th February, 2015 in B.L.T. Case No. 389 of 2013 is hereby set aside. The observations made by the learned Single Judge in the orders passed from time to time in the present writ petition are being dealt with separately by us in our orders in L.P.A. No. 438 of 2019 and L.P.A. No. 439 of 2019. The matter shall stand remitted to the Tribunal for decision afresh on merits in accordance with law after putting all concerned to notice. It shall be open to the contesting private respondents to pursue their case before the Bihar Land Tribunal in accordance with law on merits as the impugned order has been set aside on the ground of not having recorded reasons and being mala fide in nature, as observed above.

9. The writ petition stands allowed with the aforesaid observations.

Re: L.P.A. Nos. 438 of 2019 and 439 of 2019

These two appeals have been filed seeking leave to appeal in view of the

observations made by the learned Single Judge in C.W.J.C. No. 7250 of 2015 touching upon the conduct of the appellant and his function as a member of the Bihar Land Tribunal while passing orders vis-a-vis the other facts that have been noted in our order dated 22nd April, 2019. Two applications bearing I.A. No. 1 of 2019 have been filed in both the appeals seeking leave to appeal and one application bearing I.A. No. 2 of 2019 has been filed in L.P.A. No. 439 of 2019 with a prayer for condoning the delay in the filing of the appeal. We may put on record once again that the appellant in both the appeals was impleaded as Respondent No. 21 in the writ petition itself vide order dated 8th February, 2019. Thus, having impleaded as a respondent, the appellant being a respondent can prefer an appeal. The applications seeking leave to appeal are, therefore, allowed. The Limitation Petition is also allowed. The question of entertaining the appeal or its maintainability is no longer relevant in view of the order that we propose to pass hereinunder after having heard learned counsel for the parties at length as well as the learned Advocate General for the State of Bihar.

2. The order dated 22nd April, 2019 is reproduced hereinunder:-

"This appeal is filed assailing the order of a learned single Judge on 8.2.2019 and a mention was made by the learned counsel for the appellant on Friday last i.e. 19th of April, 2019 requesting the Court to take up the matter urgently in view of the nature of the order passed by the learned Single Judge calling upon an appropriate action to be taken against the appellant in the circumstances which have been indicated in the order itself.

A prelude to this matter being taken up today is that the appellant, in order to protect his interest, filed this appeal seeking leave as he was not a party-respondent before the learned Single Judge. To this effect, the direction given on the petition of urgent posting and noted by the court master on our directions is extracted hereinbelow:

"Mentioning is accepted subject to condition that the appellant will appear in person when the matter is taken up.

Put up these matters on Monday (22.04.2019).

Court Officer of this Court along with two Constables are directed to be present in Court on that date."

We had also orally instructed the learned Standing Counsel for making available an officer not below the rank of Inspector General of Police to be present on the date of the hearing.

The challenge in the present appeal is to the order dated 8th February, 2019 which is extracted here in under:

"I am stupefied to notice the averments made in the counter affidavit filed on behalf of the Chief Secretary of Bihar, in the light of this Court's observations made in the order, dated 30.01.2019, passed in the present case, which speaks

for itself.

From the counter affidavit, it transpires that Dr. K. P. Ramaiah, a member of the Bihar Land Tribunal (in short, the Tribunal') is facing a criminal prosecution pursuant to registration of Vigilance P.S. Case No. 081 of 2017, on 23.10.2017, for the offences punishable under Sections 406, 409, 420, 468, 471, 477A read with Section 120B of the Indian Penal Code and Section 13 (2) read with Section 13 (1) A of the Prevention of Corruption Act, 1988. There is an intimation, dated 26.12.2017, made by the Superintendent of Police, Vigilance Investigation Bureau, Bihar, addressed to the Chairman of the Tribunal in respect of the registration of the said First Information Report. On the same date, the Tribunal has come out with an Office Order that in the light of his involvement in the criminal case, no matter should be placed before him for consideration as Member of the Tribunal, till further orders. It is manifest from the said Office Order that it had approval of the Chairman of the Tribunal.

As a matter of fact, the lis, in the present case, is confined to challenge to an order, dated 24.02.2015, passed by Dr. K. P. Ramaiah (Member Administrative of the Tribunal), in B.L.T. Case No. 389 of 2013 and noticing glaring irregularities in passing of the order, the Court had wanted to know from the State of Bihar whether he is in habit of passing such orders and whether there are other materials to suggest that he suffers from 'incapacity' to hold the high position as Member Administrative of the Tribunal, within the meaning of sub-section (2) of Section 7 of the Bihar Land Tribunal Act, 2009 (hereinafter referred to as 'the Act').

I had noticed that the impugned order, dated 24.02.2015, runs into 15 pages, having altogether 24 paragraphs. In 23 paragraphs, he has just referred to the submission of the parties and in the last 24th paragraph, he allowed the appeal in one sentence as under:-

"24. After having heard the counsel for the parties and on going through the documents produced on the records and on perusing the order impugned, I find reason to interfere with the order impugned. Accordingly the order dated 02.02.2002, passed by the Collector, Madhubani in Bataidari Appeal no. 33 of 1999-2000 is hereby quashed and this application is allowed."

This is the background in which I had made certain observations pursuant to which the present counter affidavit on behalf of the Chief Secretary of Bihar has been filed.

In view of the nature of startling disclosure made in the counter affidavit, I feel it apt to re-produce relevant portion of the same, verbatim:-

"8. That Dr. k.P. Ramaiah, Member Administrative, joined on the said post i.e. Member (Administration) on 10.07.2014 against Notification No. 519(1) dated 10.07.2014 issued by Department of Revenue and Land Reforms, Government of Bihar, Patna. His notification for the said post stands about a period of 4 years

and 7 months, while the tenure for holding the said post has been fixed as 5 years or 70 years of age, whichever is earlier.

9. That in this context, information has been provided vide Letter No. 98 dated 05.02.2019 of Bihar Land Tribunal, Patna, whereby and where under it was informed that Dr. K.P. Ramaiah joined Bihar Land Tribunal on 10.07.2014. As per the report from BLT, Dr. K.P. Ramaiah is not functioning on the said post since 31.10.2017.

10. That initially, Dr. K.P. Ramaiah submitted an application seeking Earned Leave from 15.11.2017 to 15.12.2017. Thereafter, from time to time, different applications were submitted seeking earned leaves from 16.12.2017 to 31.12.2017, 01.01.2018 to 15.01.2018, 16.01.2018 to 31.01.2018, 01.02.2018 to 12.02.2018, 13.02.2018 to 19.03.2018, 20.03.2018 to 10.07.2018.

11. That as such, he was functional on the said post for a period of about 3 years and 4 months only. It is to be noted that from the date of his joining on the said post, about 4 years and 7 months has already elapsed.

12. That vide letter dated 26.12.2017 bearing number 3799, the Superintendent of Police, Vigilance Bureau, informed the Chairman, Bihar Land Tribunal that a FIR being Vigilance P.S. Case No. 081/2017 dated 23.10.2017 has been instituted against Dr. K.P. Ramaiah under Sections 406/409/420/468/471/477(A)/120 (B) of the Indian Penal Code and Sections 13 (2) read with 13(1)A of the Prevention of Corruption Act.

13. That an order was passed by the Bihar Land Tribunal vide order dated 26.12.2017 whereby and where under a decision was taken in light of the letter dated 26.12.2017 received by the Superintendent of Police, Vigilance Bureau, in furtherance of which it was decided that no case would be placed before Dr. K.P. Ramaiah for hearing and disposal, with immediate effect."

After having made the statement as noted above, it has been averred that necessary steps are being taken to determine whether a case of removal of Dr. K. P. Ramaiah, as Member Administrative of the Tribunal, may be instituted and that the matter has, now, been brought to the notice of the concerned officials of the Department of Revenue and Land Reforms, Government of Bihar. Leave of this Court has been sought to submit further supplementary affidavit, as and when required by this Court or as per the need of the situation.

Following five points conveniently emerge from what has been averred in the counter affidavit:-

(i) Dr. K. P. Ramaiah is an accused in a criminal case registered, on 23.10.2017, by the Vigilance Investigation Bureau, on the allegation of Commission of offences punishable under Sections 406, 409, 420, 468, 471, 477A read with Section 120B of the Indian Penal Code and Section 13(2) read with Section 13 (1) A of the Prevention of Corruption Act, 1988. He has, however, not been arrested.

(ii) He has successfully evaded his arrest till date.

(iii) From the date of registration of the First Information Report, he is not functioning as Member Administrative of the Tribunal.

(iv) His continuous absence from his duties as Member Administrative of the Tribunal is within the knowledge of all concerned.

(v) Despite definite knowledge about Dr. K. P. Ramaiah's conduct, the functionaries of the State of Bihar have not initiated any action except that the Tribunal has issued an Office Order, dated 26.12.2017, as noticed above, that no matter shall be placed before him for adjudication.

The First Information Report was registered on 23.10.2017 and ever since then, he has been continuously making application from time to time for grant of earned leave. It can be easily culled out from paragraph 10 of the counter affidavit that he has been filing is earned leave applications continuously right from the very beginning for leave, up to 10.07.2018.

It is rather painful to notice these facts stated in the counter affidavit. The Act was enacted for the sole purpose of establishing the Tribunal by the State Legislature exercising jurisdiction conferred under Article 323-B of the Constitution, noticing that dispute related to land pending before different fora in the State of Bihar are huge in number and the present machinery, including Civil Court, is over burdened because of pendency of huge number of disputes relating to land. The Preamble of the Act notices the complexities which the State Government has to face arising out of multiplicities of adjudicating authorities and delay in settlement of disputes. The Preamble further notices the hardship, which the people of the State had to face in the absence of any adjudicatory body. With this avowed object and purpose, the act was enacted and the Tribunal has been established. There is apparent gap between the objectives of the Act as declared in the Preamble of the Act and the seriousness which has been shown by the authorities towards functioning of the Tribunal by ignoring, which is glaring.

I am mindful of the fact that this High Court has power of superintendence not only over all courts throughout the territory of Bihar, such power of superintendence is over the Tribunals also, within the territory of the State.

I will be passing appropriate orders in this connection if I am constrained to do so in the present proceeding, in this regard.

Coming to the merit of the case, as I have already noticed, the impugned order, dated 27.02.2015, is apparently non-speaking and unsustainable. This view is, however, tentative subject to final adjudication. Let notices be issued to respondent nos. 4 to 20 to show cause as to why this application be not heard and preferably be disposed of at the time of admission itself, for which, requisites etc., under both processes, i.e., ordinary as well as speed post with A/D, must be filed by 21st February, 2019, failing which this application, as against the

concerned respondents, shall stand rejected without further reference to a Bench.

Learned Counsel for the petitioner is permitted to implead Dr. K. P. Ramaiah, through the Secretary, Bihar Land Tribunal, Patna, as respondent no. 21, in course of the day.

Issue notice to the newly added respondent no. 21 to show cause as to why this application be not heard and preferably be disposed of at the time of admission itself, for which, requisites etc., under both processes, i.e., ordinary as well as speed post with A/D, must be filed by 21st February, 2019, failing which this application, as against the concerned respondent, shall stand rejected without further reference to a Bench.

List this case, under the same heading, on 28th March, 2019.

The Court will expect affidavits to be filed by the Chief Secretary of Bihar stating developments, if any. The A.D.G., Vigilance Investigation Bureau, will also be required to file his affidavit about the stage of Vigilance P.S. Case No. 081 of 2017, and whether Dr. K. P. Ramaiah could be contacted by the Vigilance Investigation Bureau.

Is a Member of a Tribunal constituted by an Act of Legislature enacted under the power conferred under Article 323- B of the Constitution is a fugitive? This question, I will consider on the next date.

Before I part with, I express my displeasure over the fact that whereas, by order, dated 31.01.2019, considering the sensitivity of the issue, I had directed the Chief Secretary of Bihar to file affidavit, the affidavit, which has been filed, has been sworn by the Assistant Director, Land Acquisition Revenue Department, instead. I hereby issue a note of caution that this should not recur in future."

Learned counsel for the appellant contended that the order passed by the learned Single Judge is exceeding in authority inasmuch as, instead of the merits of the case, action has been directed to be taken against the appellant with certain directions to the Vigilance Investigation Bureau. At first flush, this Court was also a bit concerned about the nature of the directions issued by the learned Single Judge, but on further examination of facts, it is found that the appellant is involved in P.S. Case No. 81 of 17, Thana-Vigilance, District-Patna. The background of his involvement and the F.I.R. which was lodged, has been indicated in the order dated 23.3.2018 passed dismissing an application filed by the appellant under Section 438 Cr.P.C. before this Court, being Cr. Misc. Case No. 4117 of 2018. The order passed therein is extracted hereinunder:-

"Heard Sri Sandeep Kumar, learned counsel assisted by Sri Samrendra Kumar Jha, learned counsel for the petitioner and Sri Arvind Kumar, learned Law Officer, Vigilance Investigation Bureau.

The petitioner, who was an I.A.S officer and took voluntary retirement on 28-02-2014 while he was posted as Chief Executive Officer of Bihar Mahadalit

Vikash Mission, a Govt. of Bihar Wing established for upliftment of mahadalits, has approached this Court invoking its jurisdiction under Section 438 of the Code of Criminal Procedure, 1973, with a prayer to grant bail in the event of his arrest or surrender.

I have heard learned counsel for both the parties at length and examined the materials available on record. During argument, this fact has come that despite the fact that petitioner was arrayed as one of the accused in the F.I.R., the investigating agency has not taken any effort to apprehend him, rather it was submitted at bar that even after lodging F.I.R., the petitioner had appeared before the investigating agency and he was examined on 31-01- 2018 and he was allowed to return back. Prima facie, in such situation, since there was no apparent apprehension of arrest, there was no reason to entertain the anticipatory bail application, still the present anticipatory bail petition was entertained and on 02- 02-2018, while summoning legible carbon/photocopy of the case diary, a direction was issued by a coordinate Bench not to take any coercive step against the petitioner.

The Court is of the opinion that since there was no apprehension, there was no reason for the petitioner to approach this Court for grant of anticipatory bail.

Sri Sandeep Kumar, learned counsel for the petitioner has submitted at bar that even prior to interim order, the petitioner had participated during investigation and whenever, he was summoned, he had appeared. Accordingly, I am of the view that in such situation, the present petition was required to be rejected outrightly, since no apparent apprehension was available for being arrested. However, I have heard both the parties at length on merit of the case.

Sri Sandeep Kumar, learned counsel for the petitioner, by placing entire F.I.R. i.e. Annexure - 1 to the petition, submits that the petitioner remained as Chief Executive Officer of Bihar Mahadalit Vikash Mission only for a short period i.e. from 03-02-2014 to 28-02-2014, however; he subsequently submitted that there was typing error. This fact was also pointed out by Sri Arvind Kumar, learned counsel for the Vigilance that the petitioner remained in such capacity from 21-01-2014 to 28-02-2014. Sri Sandeep Kumar, learned counsel for the petitioner further submits that in the case, virtually, a so called selection for imparting training and certification was initiated long back in the year 2011, obviously, the petitioner was not having any connection with such transaction. According to learned counsel for the petitioner, within such short period of his posting, there was no occasion for the petitioner to examine as to whether any illegality or irregularity was committed by the earlier officers or not. Accordingly, it has been prayed for extending the privilege of anticipatory bail.

Sri Arvind Kumar, learned Law Officer for the Vigilance Investigation Bureau, on the basis of record, which he has received from the investigating agency, submits that it is a peculiar case that despite the fact that petitioner remained as Chief Executive Officer in the Mission only for a short period i.e. from 21-01-2014 to

28-02- 2014, even after knowing the fact that his application for voluntary retirement was accepted and his voluntary retirement was finally notified on 28-02-2014, on 26-02-2014, he signed two cheques of heavy amount, which were issued in favour of two accused persons of this case namely M/s Sri Ram New Horizon and M/s I.I.I.M. Limited. He further submits that record suggests that the said file, for which cheques for huge amount were signed, had processed at about 16 to 17 levels on the same date and hurriedly, cheques were signed by the petitioner. According to Sri Arvind Kumar, only this act of the petitioner categorically indicates that he was a part of a continuous conspiracy and unauthorisedly, such huge amount was paid to other two accused persons of the present F.I.R. It has been argued that under the Bihar Mahadalit Vikash Mission, there were two schemes i.e. "Dashrath Manjhi Kaushal Vikash Yojna" and other "Special Central Assistance Scheme" which were purposely meant for imparting appropriate training to youths of Mahadalits. He submits that during preliminary inquiry, it was noticed that fictitiously certain huge amount was siphoned. Even same candidates on particular date were shown in different training programmes on one date. This fact is itself highlighted in the F.I.R.

Besides hearing learned counsel for the parties, I have also perused material available on record. On going through the F.I.R. itself, the Court is of the view that number of accused persons holding high posts have committed serious offences, which had virtually deprived mahadalits, for whose upliftment the scheme was introduced and Bihar Mahadalit Vikash Mission was created by the government. In the case, several crores of government fund was siphoned off by the accused persons conniving with each other. Certainly, once the petitioner had opted for voluntary retirement and his voluntary retirement was accepted on 28-02-2014, his signing of two cheques for an amount of Rs. 24,93,899/- (Rupees twenty four lacs ninety three thousand eight hundred and ninety nine) in favour of one of the co-accused M/s Sri Ram New Horizon and another cheque for an amount of Rs. 2,24,76,787/- (Rupees two crores twenty four lacs seventy six thousand seven hundred and eighty seven) in favour of one another accused i.e. M/s I.I.I.M. Limited, indicates that this petitioner was also in connivance with other accused persons. Ofcourse, at this juncture, I am not recording any specific observation and this observation may not be treated otherwise at any stage, but this observation has been made only for the purposes of deciding the present anticipatory bail petition.

In view of serious nature of accusation as well as the fact that petitioner was holding a high post, no lenient approach can be taken. The prayer for grant of anticipatory bail stands rejected.

At the time of hearing, it was pointed out by learned Law Officer for the Vigilance Investigation Bureau that this petitioner had taken voluntary retirement for participating in a parliamentary election and just two dates prior to it he had signed two cheques for such a huge amount in favour of coaccused persons, this conduct also goes against the petitioner.

The petition stands dismissed."

As noted, we had also called upon the Administration to assist this Court and an officer of the rank of Inspector General of Police, Headquarters, Mr. Ganesh Kumar, is present in Court. We had also requested the learned Advocate General to be present in this matter and it is in this background that we had called the appellant to be also present in Court.

We find the affidavit filed in support of this appeal to have been drawn up and signed by the appellant on 27th March, 2019. The Vakalatnama in favour of Mr. Samrendra Kumar Jha, advocate, is also stated to have been executed on the same day and the affidavit in support of the appeal has been identified by the Oath Commissioner, stationed at Patna High Court and the appellant has also been duly identified. It therefore appears that the appellant must have been present in the High Court on 27th March, 2019. The appellant evidently is fully aware of the proceedings, but in spite of our clear direction to the appellant to be present in Court in person today, learned counsel for the appellant Mrs. Nivedita Nirvikar submits that her colleague had contacted the appellant on telephone but he was unaware about his whereabouts. The telephone mobile number of the learned counsel Mr. Samrendra Kumar Jha, is '9771807826' and the telephone number of the appellant disclosed is '9304466963' with whom the learned counsel might have contacted to make him aware of the Court proceedings, but on repeated queries, neither of the counsel were able to disclose the whereabouts of the appellant.

In the absence of any such disclosure, it is evident that the appellant's presence is being avoided and the appellant himself has not come up before this Court in spite of this communication to his counsel. It is, therefore, the absconding conduct of the appellant in avoiding his presence in the Court in spite of clear directions that raises a serious doubt about his bona fides and the presentation of the appeal on his behalf. This also raises a serious doubt about the appellant's swearing of the affidavit in support of the appeal and the execution of the 'Vakalatnama' in the background above and his presence in this regard. We have failed to get any assistance on this count and, therefore, we are compelled now to call upon the Administration to take appropriate steps for the production of the appellant in order to enable this Court to proceed further as what we find is that if the appellant is wanted in a case registered against him which involves a huge embezzlement scam as stated in the order dated 23rd March, 2018, extracted hereinabove, we find it imperative in order to uphold the rule of law and the majesty of this Court that no obstruction is caused in the administration of justice by this Court. Once the court had directed the appellant to be present in person, it was imperative on the appellant to have been present here.

We are constrained to make these observations inasmuch as the appellant, in spite of such directions having been issued and in view of the facts disclosed hereinabove, the appellant has failed to appear even after the lunch recess as we had posted this matter for being taken up at the request of the learned counsel

as they wanted to communicate with the appellant.

The aforesaid attitude of the appellant clearly amounts to defiance of the orders of this Court which is not only deliberate, but is an act that may result in lowering the esteem and majesty of this Court in ensuring the production of a person who is involved in a criminal case and who has filed this appeal seeking protection of his liberty. The appellant could have appeared and filed his affidavit or defense, but his defiance not to do so is clearly an obstruction to the course of justice. This act clearly tends to lower the authority of this Court and prejudices the due course of these judicial proceedings. His involvement in the criminal case since 2017 and his conduct as noted in the impugned order of the learned Single Judge as also in the order dated 23rd March, 2018 extracted hereinabove, leaves no room for doubt that the appellant's conduct calls for an explanation from him as to why proceedings for criminal contempt be not drawn against him. We, therefore, draw suo motu proceedings on a prima facie satisfaction that the appellant has attempted to obstruct the course of justice in the manner aforesaid with a view to obstinately violate the orders of this Court. Since the appellant has failed to turn up, we may also point out that this Court has the plenary powers under Article 215 of the Constitution of India and even otherwise the principles enunciated under Chapter 6 of the Criminal Procedure Code, Sections 27 to 32 of the Civil Procedure Code and the other provisions therein read with the Rules framed under Chapter-XXVIII by the Patna High Court under the Contempt of Courts Act empowering the Court to secure the attendance of a petitioner.

It is also necessary to secure the presence of the appellant as the formal charges, if have to be framed, the same shall be done in his personal presence.

In the present case, there are special circumstances as indicated hereinabove which did require the personal presence of the appellant in the background above. This attitude of the appellant, therefore, calls for distress proceedings to be undertaken and we are constrained to issue aailable warrant issued under the signature of the Registrar General, to be executed by the Inspector General of Police, Headquarters, who is present in Court, through his agencies as he may direct for ensuring production of the corpus of the appellant before this Court by day after tomorrow. Any failure on the part of the Administration shall be viewed seriously as a failure of Administration having come to the aid of this Court for enforcement of this Court's order.

Put up day after tomorrow.

A copy of this order be handed over to the learned counsel for the State with a request to the learned Advocate General, who is present in Court, to again make himself available for the assistance of this Court together with all such details of the background of the case that has been indicated hereinabove, particularly with regard to the functioning of the appellant in the Bihar Land Tribunal and his involvement in the criminal case.

The Registrar General to hand over the warrants to the Inspector General of

Police, Headquarters."

3. The matter was taken up on 24th April, 2019 when the following order was passed:

"Shri Samrendra Kumar Jha, learned counsel for the appellant states that he may be permitted to withdraw his instructions. It is the choice of the learned counsel, but in the facts of the present case, the matter will be taken up on Tuesday next (30.04.2019), as prayed by the learned Advocate General, who informs the Court about the efforts made by the Bihar Police for tracking down the appellant, who is still untraceable.

Put up on Tuesday next (30.04.2019).

The Court may proceed to further take steps for impounding of the passport of the appellant and also restraining the State Government from extending any such benefits, including his post-retiral benefits, keeping in view the conduct of the appellant in this matter."

4. On 30th April, 2019 when the matter was taken up before this Court, the Court was informed about the filing of Special Leave Petition before the Apex Court against the orders passed in these two appeals. The orders passed by the Apex Court on 24.04.2019 and 25.04.2019 passed in Special Leave Petition (Civil) Diary No(s). 15070/2019 and Petition(s) for Special Leave to Appeal (C) No(s). 10595-10596/2019 respectively are extracted hereinunder:-

"Date : 24-04-2019

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE DEEPAK GUPTA

HON'BLE MR. JUSTICE SANJIV KHANNA

For Petitioner(s) Mr. Shantanu Sagar, AOR

For Respondent (s)

UPON hearing the counsel the Court made the following

O R D E R

On mentioning, the matter is taken on Board.

List the matter on 25.04.2019 before the appropriate Bench as per the roster, subject to curing of defects, if any."

"Date : 25-04-2019

CORAM : HON'BLE MR. JUSTICE UDAY UMESH LALIT

HON'BLE MS. JUSTICE INDU MALHOTRA

For Petitioner(s) Mr. Nagendra Rai, Sr. Adv.

Ms. Prerna Singh, Adv.

Mr. Shantanu Sagar, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following

O R D E R

Mr. Nagendra Rai, learned senior counsel appearing for the petitioner submits that in deference to the order passed by the Division Bench, the petitioner shall appear before the Court on the next date of hearing. He submits that the next date of hearing in the matter is 30.04.2019.

List the matter for further consideration on 03.05.2019.

Petitioner shall file an affidavit of compliance before the next date of hearing."

5. The order dated 30th April, 2019 is extracted hereinunder:-

"Shri Y.V. Giri, learned Senior Counsel has appeared in this case, assisted by Shri Sumit Kumar Jha, Advocate, who has put in appearance now before this Court.

An affidavit has been filed today of the appellant, which is taken on record.

Shri Y.V. Giri, learned Senior Counsel upon instructions from his client, who is present in Court, has volunteered stating that the appellant never intended to offend or obstruct the proceedings of this Court and therefore he prays that he may be permitted to file an affidavit before this Court stating therein that the appellant is proposing to withdraw Special Leave Petitions filed before the Apex Court and also the present Letters Patent Appeal filed before this Court.

Shri Giri has also submitted that the appellant also undertakes to resign from his present post as Member of the Bihar Land Tribunal which shall be tendered before the State Government.

Let all these facts together with a copy of the affidavit proposed to be filed before the Apex Court be brought on record before this Court by 2nd of May, 2019.

List this case on 2nd of May, 2019.

The appellant is permitted to travel to Delhi and again be present in this Court by the next date fixed.

The appellant shall fill up his bail bond together with one surety before the Registrar General, subject to the order herein above."

6. The appellant has filed an affidavit today in compliance of the said order.

7. The affidavit filed by the appellant reads as follows:

"1. That the present supplementary show cause is being filed by the deponent (Appellant) in pursuance to the order dated 30.04.2019 passed by this Hon'ble Court in the present L.P.As.

2. That it is most respectfully stated and submitted that the appellant has already filed an affidavit before the Hon'ble Apex Court in SLP (C) No. 10595-10596/2019 for the withdraw of the said SLP. The aforesaid fact is being brought to the notice of this Hon'ble Court in pursuance to the statement made before this Hon'ble Court on 30.04.2019.

True copy of the affidavit of withdrawal of SLP (C) No. 10595-10596/2019 (without annexure however the annexure may be filed if required) is annexed herewith and marked as Annexure-B which forms part of this supplementary show cause.

3. That the deponent (appellant) have also submitted/tendered his resignation from the post of member (Administration) Bihar Land Tribunal Patna, to the State Government w.e.f. 11.07.2018 (till the deponent was on leave). The aforesaid fact is manifest from the resignation submitted by the petitioner on 30.04.2019 before the state government through the principal secretary, Revenue and Land Reforms Department.

True copy of the resignation letter dated 30.04.2019 is annexed herewith and marked as Annexure-C which forms part of this supplementary show cause.

4. That it is stated that the LPA No. 438/2019 was filed against the order dated 08.02.2019 passed in CWJC No. 7250/2015, by which the petitioner was added as party respondent in the aforesaid writ petition and LPA No. 439/2019 was filed against the order dated 31.01.2019 passed in the aforesaid writ petition by which the learned Single Judge directed the state government to take steps for removal of the deponent (appellant) from the post of Member (Administrative), Bihar Land Tribunal, Patna.

5. That it is stated that since, the petitioner has already tendered his resignation from the post of Member (Administrative), Bihar Land Tribunal, Patna, the issue involved in both the LPAs have become academic and thus, the deponent seeks permission to withdraw both the said LPAs from this Hon'ble Court and the deponent also state here that the deponent will appear before the Hon'ble Single Judge in CWJC No. 7250/2015 and will cooperate the writ proceedings in accordance with law.

6. That in light of the aforesaid facts and circumstances of the case your lordships may kindly permit the deponent to withdraw the both the LPAs i.e. LPA No. 438/2019 & 439/2019.

7. That the deponent once again state here that the deponent has highest regard for this Hon'ble Court and the orders/directions passed by this Hon'ble Court and has never intended to defy/disobey or pay disrespect to the order/direction passed by this Hon'ble Court or any other court of law.

8. That the deponent again tenders his unconditional and unqualified apology for any act of omission or commission which may be constitute as contempt of court or having caused inconvenience to this Hon'ble Court which were neither intention nor deliberate in any manner by the deponent.

9. That in this background, the deponent prays that the contempt proceedings may be dropped and the deponent again tenders their unqualified apology for any inconvenience cause to this Hon'ble Court as the same was not intentional.

It is, therefore, prayed that your Lordships may graciously be pleased to accept the supplementary show cause and drop the present proceeding against the appellant and pleased to allow the deponent to withdraw the present LPAs.

And for this the appellant shall ever pray."

8. It is in this background that Shri Y.V. Giri, learned senior counsel submits that these proceedings may now be foreclosed keeping in view the fact that the writ petition has also been finally allowed and the appellant has expressed his willingness to withdraw these appeals.

9. In the light of the aforesaid affidavit and the facts which have been brought on record, we allow the appellant to withdraw these appeals subject to the observations and directions hereinunder.

10. The appellant admittedly has now been chargesheeted in Vigilance P.S. Case No. 081/2017 registered on 23.10.2017 in respect of the offences indicated therein.

11. As noted by us in our order dated 22nd April, 2019, the appellant had filed an application under Section 438 Cr.P.C. before this Court in the said case seeking anticipatory bail that was not entertained and was dismissed with certain observations.

12. It is informed by Shri Giri that after dismissal of the aforesaid application, the appellant has filed S.L.P. (Criminal) Diary No. 43528 of 2018 on 20th November, 2018 seeking anticipatory bail which appeal is still pending before the Apex Court.

13. We have also heard the learned Advocate General who has informed the Court of the filing of the charge- sheet against the appellant and some other accused in the matter.

14. In the wake of the aforesaid facts, once the charge-sheet has been filed in the criminal case, the appropriate course for the appellant is to seek bail from the trial court and, accordingly, we dispose of these appeals with liberty to the appellant to apply for regular bail before the concerned court in the background that the charge-sheet has already been filed. In the event, such a bail application is filed within a week from today before the appropriate court, the same shall be considered and disposed of by the concerned court within a period of 15 days thereafter. It shall be open to the authorities to take appropriate action in accordance with the orders passed by the concerned court and till such orders

are passed by the court within the time frame as indicated hereinabove, the appellant shall give an undertaking before the court concerned that he shall present himself whenever directed by the court to attend the proceedings. The learned counsel for the State shall hand over a copy of this order to the Superintendent of Police (Vigilance) as well as to the Investigating Officer to take follow up action.

15. It is further made clear that the resignation tendered by the appellant shall be subject to any orders to be passed by the State Government and it shall be open to the State Government to proceed to take any appropriate action in accordance with law subject to rules and regulations in the proceedings as disclosed in the supplementary counter affidavit filed on behalf of the Chief Secretary before the learned Single Judge. The disposal of these appeals and the writ petition will not be any impediment in taking of appropriate action in accordance with law.

16. It is also clarified that we had drawn the proceedings for criminal contempt on account of the non- appearance of the appellant. The appellant has already filed his affidavit tendering apology and giving an explanation to the effect that he did not intend to deliberately avoid appearing before this Court. We accept the apology and the explanation and accordingly drop the proceedings of a criminal contempt as the appellant has appeared before us in pursuance of the bailable warrant issued against him. We accordingly discharge the bailable warrants and the surety furnished pursuant to our order dated 22.04.2019. This order shall, however, be subject to any orders of the Apex Court or otherwise. In the event of any violation of any of the directions given by this Court, it shall be open to the State Government to take appropriate action.

17. Before parting with these appeals, we may observe that the attempt of a legal gamble cannot in any way distract us from setting things right as the judiciary is not a disembodied abstraction. A judicious discretion has to be exercised in accordance with law keeping in view the fundamental rights guaranteed to a citizen and without defeating the purpose of justice. Litigants have a right to judicial remedies, but not at the cost of miscarriage of justice. The writ- petitioner was a victim of gross injustice, as is evident from the manner in which the order was delivered and has been set aside for the reasons already indicated while allowing the writ petition. At the same time, the appellant should abide by the rule of law and not only seek protection so as to give an impression that he is evading or defying the law. The legal remedies available to any litigant are not unfettered of discretion and, therefore, the Courts are required to strike a balance while protecting the rights of the litigants as well as those who are obligated to observe the rule of law. A Court of law has to devise methods and the rules which may involve innovation as extraordinary situations require extraordinary remedies. It is in order to maximize the efficiency in the execution of the laws that the Court has to adopt peculiar methods for implementing the law and bringing about the desired result. The active jurisdiction of the Court

adds dynamics to the processual fair play that is required to be observed while conserving and preserving the rule of law. In our opinion, it is the essential duty of the Courts to take up such challenges in order to restore faith of the public at large in the judicial institution. It is in this background that we have drawn a curtain to this entire episode.

18. With the aforesaid directions, both the appeals stand consigned as withdrawn.