
(1985) 11 PAT CK 0015
In the Patna High Court

Jairam Tiwary

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 28-11-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 160, 161, 439
Penal Code, 1860 (IPC) — Section 120B, 420

Citation : (1987) CriLJ 254

Hon'ble Judges : Udai Pratap Singh, J

Bench : Single Bench

Judgement

Udai Pratap Singh, J.—This is an application for cancellation of anticipatory bail granted to opposite party 2, Dr. Bishwanath Prasad, the Vice-Chancellor, Ranchi University, Ranchi, on 29-8-1985 in connection with a case registered u/s 420 read with Section 120B, Indian Penal Code (in short, the Penal Code").

2. The petitioner was the informant who had lodged a first information report against Dr. Bishwanath Prasad, the Vice-Chancellor, Ranchi University, Ranchi and others, on the basis of which, Ranchi (Kotwali P.S.) Case No. 296 of 1985 was instituted u/s 420 read with Section 120B, Penal Code, and Section 4, Bihar Non-Government Teachers Training College Act, 1981. Serious offences of conspiracy, cheating and defalcation of huge amount of public money was alleged. Charge-sheet was submitted by the police on 22-8-1985 in the Court of the Chief Judicial Magistrate, Ranchi. Cognizance was taken by the Chief Judicial Magistrate, Ranchi, on 3-9-1985 and the case was transferred to the Court of Sri J. N. Singh, Judicial Magistrate, Ranchi, for further trial. In the charge-sheet, twenty five witnesses are mentioned and out of them, the petitioner being the informant, Sri Misiri Oraon, Registrar, Ranchi University and Sri Harihar Prasad, Estate Officer, Ranchi University are the material witnesses.

3. On 29-8-1985, opposite party 2, Dr. Bishwanath Prasad, the Vice-Chancellor, Ranchi University, obtained anticipatory bail from this Court and on 31-8-1985 he suspended the petitioner-informant who ceased to function as lecturer and

perform his duties as an elected member of the Syndicate of the said University. The day on which the Vice-Chancellor obtained anticipatory bail on 29-8-1985, he issued a show cause notice to the Registrar under his own signature (Annexure 3) which reads as follows:

It is learnt that you have deposed before the investigating officer in Kotwali P. S. Case No. 296 of 1985 against the University. Please let me know the propriety of making deposition without permission of the Vice-Chancellor and the nature of your deposition by 30-8-1985.

In addition to that, the Vice-Chancellor again in his communication dt. 1-9-1985 (Annexure 4) under his own signature asked the Registrar to justify the propriety under which he felt obligatory to go to the police station to depose without obtaining his prior approval and without his endorsement before the police. He was asked to give reply to the points noted in the said communication within three days failing which necessary action was threatened to be taken.

4. Annexure 5 is another show cause issued under the signature of the Registrar to the Estate Officer, Sri Harihar Prasad which reads as follows:

It is learnt that Sri Harihar Prasad has made deposition before the police in Case No. 296 of 1985 in connection with the case relating to Teachers' Training College without permission of the Registrar/Vice-Chancellor.

He is called upon to explain by the 3rd Sept. '85 under what circumstances he deposed before the police without obtaining permission from the authority of the University and the nature of deposition. If his reply is not received within the time limit, it will be presumed that he has no explanation to offer and the University will take further action as per provisions in the Statutes.

This Annexure 5 was also issued on 31-8-1985 under the order of the Vice-Chancellor, which is not disputed, just two days after the grant of anticipatory bail on 29-8-1985. The other Annexures 6, 6A and 6B are not relevant to be considered in this case.

5. It is urged by the petitioner's counsel that Annexures 3 to 5 are sufficient evidence to show that opposite party 2, the Vice-Chancellor of the Ranchi University tampered with the witnesses and it amounts to interference in the course of justice. On account of the steps taken by opposite party 2, not only the material witnesses have been threatened by Annexures 3 to 5 but also other witnesses will have a reasonable feeling of insecurity if they depose against the Vice-Chancellor in the said criminal case.

6. A counter affidavit has been filed on behalf of opposite party 2, the Vice-Chancellor. Mr. P. S. Dayal, the learned Counsel appearing on his behalf has contended that those annexures are the administrative correspondence. Except a bare denial that opposite party 2 has not tampered with the witnesses, nothing has been stated in regard to the permission of the Vice-Chancellor required under any Act, Statutes, Rules or Regulations of the University before a witness,

being an employee of the University, can appear before the police and depose against the Vice-Chancellor, who happens to be an accused in this case. During course of hearing, several adjournments were taken in order to place before this Court any such provision but nothing was placed before this Court.

7. There is no denial of the fact that the petitioner being the informant, the Registrar and the Estate Officer of the University are the material witnesses. u/s 160, Cr.P.C, their attendance was required by the police officer during course of investigation. Under Clause (1) of Section 161, Cr.P.C, any police officer making an investigation may examine orally any person supposed to be acquainted with the facts and circumstances of the case and under Clause (2) of Section 161, Cr.P.C, such person shall be bound to answer truly all questions relating to such case put to him by such officer. Thus, the question of propriety in making deposition without permission of the Vice-Chancellor could not be raised by him who was himself an accused in this case. The Registrar, the Estate Officer and the informant were justified in giving their statements before the police as required by them Under Sections 160 and 161, Cr.P.C. Asking them as to why they deposed against the University without prior permission of the Vice-Chancellor in which he is himself an accused, is a glaring example of tampering with these witnesses. Propriety demanded that the Vice-Chancellor being an accused himself ought to have refrained from dealing with the record and the papers concerning the case in which the charge-sheet had been submitted against him on 22-8-1985.

8. It cannot be overlooked that after obtaining anticipatory bail on 29-8-1985, the Vice-Chancellor, being an accused, suspended the petitioner, who was informant in the criminal case, just after two days on 31-8-1985 from the post of the lecturer and membership of the Syndicate. The same day when anticipatory bail was granted on 29-8-1985, the Vice-Chancellor, being an accused in the criminal case, in his communication signed by him (annexure-3) asked the Registrar, a witness in the said case to explain his propriety as to why he deposed before the investigating officer against the University without his prior permission. Again on 1-9-1985, another communication (annexure-4) was issued by the Vice-Chancellor himself to the said witness, the Registrar, asking him to justify the propriety under which he felt obligatory to go to the police station to depose against him without his approval and failure to give reply within three days would result in necessary action against him. Similar is another communication (annexure-5) dt. 31-8-1985 issued just after two days of the anticipatory bail granted to the Vice-Chancellor and under his orders, which is not disputed, asking the Estate Officer of the University, another witness in the said criminal case, to explain the circumstances under which he deposed before the police without permission of the Vice-Chancellor and failure to explain within three days would result in further action against him.

9. While dealing with the jurisdiction of the High Court in the matter of cancellation of bail u/s 439(2) of the Code, the Supreme Court in the case of

State (Delhi Administration) Vs. Sanjay Gandhi, held:

Section 439(2) of the Code of Criminal Procedure confers jurisdiction on the High Court or Court of Session to direct that any person who has been released on bail under Chap. XXXIII be arrested and committed to custody. The power to take back in custody an accused who has been enlarged on bail has to be exercised with care and circumspection. But the power, though of an extraordinary nature, is meant to be exercised in appropriate cases when, by a preponderance of probabilities, it is clear that the accused is interfering with the course of justice by tampering with witnesses. Refusal to exercise that wholesome power in such cases, few though they may be, will reduce it to a dead letter and will suffer the courts to be silent spectators to the subversion of the judicial process. We might as well wind up the Courts and bolt their doors against all than permit a few to ensure that justice shall not be done.

10. Mr. Dayal, the learned Counsel appearing for the Vice-Chancellor urged that now he has been removed by the State Government and, therefore, there is no occasion for him to make any future attempt of tampering with the witnesses. That may be so, but while asking explanation from the witnesses, i.e., the Registrar or the Estate Officer (Annexures 3,4 and 5) and suspending the informant (the petitioner herein) just after obtaining anticipatory bail from this Court, the Vice-Chancellor, being an accused did not anticipate his removal by the State Government in the near future. The sole question to be considered is whether on grant of anticipatory bail on 29-8-1985, the Vice-Chancellor misused the privilege of bail and tampered with the witnesses.

11. After giving my anxious thought and a careful consideration of the contents of annexures 3, 4 and 5, I have to doubt in my mind to hold that the said Vice-Chancellor has abused his liberty by attempting to suborn the prosecution witnesses. He has, therefore, forfeited his right to remain free. Annexures 3 to 5 furnish satisfactory proof that the Vice-Chancellor has tampered with the witnesses.

12. In the result, this application is allowed and anticipatory bail of opposite party 2, the said Vice-Chancellor, is hereby cancelled for a period of one month from today and I direct that he be taken into custody. Opposite party 2 will, in the normal course, be entitled to be released on fresh bail on the expiry of the aforesaid period. The Judicial Magistrate, Ranchi, where the case is pending, will be at liberty to fix the amount and conditions of bail. The order of anticipatory bail will stand modified to the extent indicated herein.