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**(1954) 07 PAT CK 0001**

**In the Patna High Court**

**Case No :** Original Criminal Miscellaneous No. 11 of 1954

Rameshwar Singh

APPELLANT

Vs

A.N. Choubey and Another

RESPONDENT

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**Date of Decision :** 14-07-1954

**Acts Referred:**

Contempt of Courts Act, 1971 — Section 3

**Citation :** AIR 1954 Patna 554 : (1954) 2 BLJR 482

**Hon'ble Judges :** Misra, J;Jamuar, J

**Bench :** Division Bench

**Advocate :** S. Sarwar Ali, for the Appellant; The Standing Counsel, for the Respondent

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## Judgement

Jamuar, J.—This rule was issued upon an application filed by Rameshwar Singh praying that a notice may be issued upon the opposite party No. 1, Mr. A. N. Choubey, the Second Officer of Jamui, in the district of Monghyr, to show cause why he should not be punished for contempt of this Court and further praying that notice may be issued upon the Second Officer as well as upon Mr. Bhola Rai, Sub Inspector of Police of Sikandra Police Station, directing them to restore a well situated in plot No. 3939 in village Kaiyar, Police Station Sikandra, to the condition in which it was prior to its having been filled up.

2. The circumstances may be shortly stated as follows.

3. There was a proceeding u/s 133, Criminal P. C., between one Misri Singh and others and Maheshwar Pathak and others in respect of a pucca well on a public road. The then Second Officer of Jamui, Mr. P. N. Sen, on 15-7-1952 made an order that the alleged encroachment should be removed by filling up the well. As against that order an application in revision was filed in this Court and it was dismissed on 12-11-1953.

4. Then on 11-2-1954, the present petitioner Rameshwari Singh and others filed a title suit in the Court of the Munsif at Jamui in a representative capacity under

Order 1, Rule 8, Civil P. C., claiming a declaration that the well in question was a public well and that the plaintiffs had unrestricted rights to use water thereof for the purposes of drinking and bathing. In that title suit an application had been filed before the Munsif praying that the defendants be restrained from filling up the well in question.

By an order dated 22-3-1954, the Munsif admitted the application and issued an "ad interim" injunction upon the defendants restraining them from filling up the well. Then on 25-3-1954, the petitioner filed an application before the Second Officer of Jamui, who is the present opposite party No. 1, Mr. A. N. Choubey, praying that no step be taken for filling up the well till the disposal of the title suit pending in the Court of the Munsif of Jamui. The Second Officer rejected this application in view of the fact that the order passed u/s 133, Criminal P. C., had been already upheld by the High Court and that, therefore, the order of stay should be obtained from the High Court.

The petitioner then moved this Court and prayed for stay of the proceedings in the Court below. This application was admitted in Criminal Revision No. 335 of 1954 and further proceedings were stayed. This was on 30-3-1954.

It is stated in the petition filed in this Court, in this case, that the petitioner applied for an urgent certified copy of the order made by the High Court but since he was apprehensive that further delay may result in the filling up of the well he obtained a letter from his advocate Mr. S. Sarwar Ali, stating that the petitioner's application filed in this Court had been admitted and an order for the stay of further proceedings obtained. This letter written by Mr. S. Sarwar Ali was addressed to Mr. Jamuna Prasad Singh, a pleader of Jamui. With this letter the petitioner went to Jamui and on 31-3-1954, he filed an application before the Second Officer stating that further proceedings had been stayed by the High Court, and in support of that statement he attached with his petition the letter from Mr. S. Sarwar Ali.

The Second Officer, however, made this order upon that application.

"Let the certified copy of the order passed by the High Court be filed. The order passed by the High Court cannot be accepted unless certified copy of the order passed is filed. The prayer is rejected."

The result was that the well was in fact filled up on the very same date. It was in these circumstances that the petitioner filed the present application before this Court alleging that the Second Officer of Jamui, opposite party No. 1, had committed contempt of this Court by refusing to stay further proceedings which order had been intimated to him in the letter sent by Mr. S. Sarwar Ali to Mr. Jamuna Pd. Singh, the petitioner's pleader at Jamui.

The question, therefore, is whether in these circumstances it can be held that the Second Officer of Jamui has committed contempt. The learned Standing Counsel, who has appeared for the Second Officer, has filed an affidavit stating therein

that the Second Officer had no intention of disobeying the order passed by the High Court and that since he was not satisfied with the application filed before him on 31-3-1954, he wished for the filing of a certified copy of the order passed by the High Court. The Standing Counsel has intimated that although the letter written by Mr. S. Sarwar Ali had been addressed to Mr. Jamuna Pd. Singh the application before the Second Officer was, in fact, filed not by Mr. Jamuna Pd. Singh but by a mokhtar named Mr. Birendra Pd. Singh. The Second Officer did not accordingly feel satisfied with the statement made before him that the High Court had passed orders staying further proceedings in the case.

The learned Standing Counsel has also referred to a decision of this Court to which I was a party -- Har Kishun Singh and Others Vs. Chhotan Mahton and Others, . It must be stated that the application filed before the Second Officer of Jamui was not supported by any affidavit. I do think that when the letter written by Mr. S. Sarwar Ali, an advocate of this Court, was filed before the Second Officer, he would have been better advised either to act upon that letter or to ask the petitioner to support the statements made in that letter by an affidavit.

In the case just referred to above the following observation was made by Shearer J.:

"When an order of stay or other such prohibitory, order has been made by this Court and when the Subordinate Judge or Magistrate is informed of the order by an advocate or pleader, he ought, I consider, ordinarily to accept what is stated by the advocate or pleader, and stay further proceedings. Certainly, he ought to do so, if the advocate or pleader is in a position to satisfy him as to the source of his information and is prepared to support it by an affidavit. The reason why the Subordinate Judge or Magistrate should invariably take such a course is that an advocate or a pleader is an officer of the Court and is not likely to supply information as to the correctness of which he is not himself completely satisfied. If an advocate or pleader acts improperly or carelessly and it eventually turns out that no prohibitory order has been made by this Court suitable action can be taken against him."

The more important question, however, still remains, namely, whether the action of the Second Officer will, in the circumstances of this case, amount to a contempt of this Court. Although I think that Mr. Choubey, the Second Officer of Jamui, acted somewhat indiscreetly in the matter and that he would have been better advised to have either acted upon the information supplied to him by the advocate of this Court, or asked for the filing of an affidavit in support of that statement, I do not think that Mr. Choubey did anything deliberately in the way of committing a contempt of this Court. Accordingly, in the circumstances, I am not prepared to hold that Mr. Choubey's action amounts to a deliberate disobedience of an order of this Court. I would accordingly discharge this rule.

5. I desire, however, to point out one matter which is of some importance in this connection. The order of this Court staying further proceedings was made on

30-3-1954, and although it appears that this order was communicated by this Court to the District Magistrate on the very same date, and the District Magistrate was asked to communicate that information to the Second Officer of Jamui, the information did not reach the Second Officer of Jamui till 14-4-1954. There was undoubtedly considerable delay in the information reaching the Second Officer of Jamui.

In a matter of this kind where stay orders are passed, matters being of urgency, such a long delay ought never to have occurred. In this respect, therefore, I desire to draw the attention of the District Magistrate of Monghyr.

6. Mr. S. Sarwar Ali then contended that this Court should direct the opposite parties, namely, the Second Officer of Jamui and the Sub Inspector of Police, Sikandra Police Station, to restore the well, which has now been already filled up, to the condition in which it was prior to the passing of the order by this Court staying further proceedings. He contended that if there has been no case made out of a criminal contempt, it would be a case of civil contempt, and that, therefore, such an order should be passed by this Court, I am unable to accept this contention. I do not think that the action of the opposite party amounts to any contempt at all.

7. The result, therefore, is that the application is dismissed and the rule is discharged.

Misra, J.

8. I agree.