

(1992) 02 PAT CK 0005

In the Patna High Court

Case No : Cr. Writ Jurisdiction Case No. 39 of 1985

S.C. Yadav

APPELLANT

Vs

S.P. Seth and Another

RESPONDENT

Date of Decision : 18-02-1992

Acts Referred:

Citation : (1992) 02 PAT CK 0005

Judgement

Om Prakash, J.—On 27th February, 1983, petitioner S.C. Yadav, an advocate of this Court, appearing for opposite party No. 2 in Case No. 1917 of 1984 pending before respondent No. 1, Director of Consolidation, Bihar, Patna filed a transfer petition (Annexure, 2) under instruction of his client stating that certain matters mentioned in the petition have created apprehension in the mind of the opposite party No. 2.

2. The respondent No. 1 recorded in his ordersheet that "while the hearing was being made with the sole purpose of stalling proceedings Shri SC Yadav, advocate, moved a pre-typed petition casting certain allegations against this Court. This petition was moved in the middle of the hearing and with the sole purpose of stalling the proceedings. As such Shri S.C. Yadav had committed wilful contempt of this Court. He issued a notice u/s 345 Cr. P.C. calling upon him to show cause by 4-3-1985 as to why an order u/s 345, Cr. P.C. should not be passed against him (Annexure 3).

3. On 4-3-85, the petitioner filed a petition for time stating that he would move the High Court against the order dated 27-2-85. Rejecting his such prayer the respondent No. 1 held him "guilty of wilfully interrupting the proceeding of the Court on 27-2-1985 and also guilty of having committed the contempt of this Court" and sentenced him to pay a fine of Rs. 200, and in default, to undergo simple imprisonment for one month (Annexure-5). In his such order dated 4-3-85 respondent No. 1 states that "the accused was detained by this Court on 27-2-85 till the rising of the Court."

4. Learned Counsel for the petitioner has argued that filing of a transfer petition

by an advocate under instruction from his client does not amount to intentionally offering any insult or causing an interruption to any public servant sitting in a judicial proceeding. On the other hand, learned Standing Counsel No. 1 has submitted that the transfer petition in question was filed by the petitioner on behalf of his client and not by opposite party No. 2 himself,

5. In my opinion if an advocate files a petition for transfer of a case under instruction from his client who apprehends, even without good reasons, that justice would not be done to him, he discharges his professional duty towards his client. He neither offers insult nor causes any interruption to any public servant sitting in a judicial proceeding unless there is something to show that he has done so out of some mala fide or personal ill will towards such public servant.

6. If the transfer petition filed is considered to be frivolous, it must be rejected by a speaking order. But the advocate who files such petition under instruction from his client cannot ordinarily be held guilty of offering insult or causing interruption to any public servant sitting in a judicial proceeding. It is not necessary that the transfer petition should be filed by the party himself if he has engaged an advocate. Filing a pre-typed petition for transfer in course of hearing does not show that such petition was filed out of malice towards the respondent No. 1 or with some ulterior motive or simply to insult or to interrupt the judicial proceeding being conducted by him. No petition is typed in the Court room. Petitions are always typed previously. Having considered the facts and circumstances, I am of considered opinion, that this is not a fit case in which jurisdiction vested u/s 345, Cr. P .C. can reasonably and legally be exercised.

7. Learned Counsel for the petitioner has further argued that the respondent No. 1 could not have taken cognizance of the offence punishable u/s 228, I.P.C because the court of Director or Consolidation is not a Civil, Criminal or Revenue Court. In this connection he has referred to Purushottam Das v. The State of Bihar 1990 BBCJ. 227, wherein it has been held that compensation officer appointed under the provisions of Land Reforms Act is not a court within the meaning of Section 195(1)(b), Cr. P.C. in the absence of declaration to that effect in the Bihar Act. His performing judicial functions and having the attributes and trappings of a Court makes no difference.

8. On the other hand, the learned Standing Counsel has referred to Section 37-B of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 to argue that Court of Director of Consolidation has powers vested in a Civil Court in the matter of punishing persons guilty of contempt. He has relied upon the case of Ram Sigashan Pathak Vs. K.P. Sinha, Deputy Director, Consolidation and Others, . It has been held in this case that by a legal fiction the authorities under the Consolidation Act are deemed to be Courts for all purposes including for the purpose of taking evidence in this regard. In terms of Section 37-B of the Act the aforesaid authorities are vested with all powers, rights and privileges while hearing any matter in dispute as are vested in the Civil Courts inter alia in respect of the matters of examining the witnesses on oath and punishing the

person guilty of contempt.

9. Section 37-B of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956, runs as follows:

Authorities under this Act to have powers and privileges as are vested in a civil Court in certain matters.

37-B. Authorities under this Act to have powers and privileges as are vested in a civil Court in certain matters. -(1) The Directors of Consolidation, the Deputy Director of Consolidation, the Assistant Director of Consolidation, the Consolidation Officer and the Assistant Consolidation Officer shall have all such powers, rights and privileges while hearing any matter in dispute as are vested in a Civil Court in respect of the following matters, namely:

(a) The enforcing of the attendance of witnesses and examining them on oath, affirmation or otherwise and issuing a commission to examine witnesses;

(b) Compelling any person for the production of any document ;

(c) Punishing the persons guilt of contempt.

(2) A summon signed by such officer may be substituted for and shall be equivalent to any formal process capable of being issued in any action by a civil court for enforcing the attendance of witnesses and compelling the production of any document.

10. From a plain reading of Section 37-B, it appears that Director of Consolidation has all such powers, rights and privileges while hearing any matter in dispute as are vested in a civil court in respect of punishing any person guilty of contempt. Obviously the Director of Consolidation is a civil court for the purpose of punishing the person guilty of contempt and he has jurisdiction to take cognizance u/s 345, Cr. P.C.

11. The Director of Consolidation, respondent No. 1. has taken cognizance of such offence u/s 345, Cr. P.C. and not u/s 195(1)(b) of the Code. The decision in Purshotam Das's case does not deal with the question as to whether Director of Consolidation is a civil court within the meaning of Section 345, Cr. P.C. Question for consideration in that case was as to whether in absence of any provision in the Bihar Land Reforms Act declaring compensation officer to be a court for the purpose of Section 195, Cr. P.C. can a compensation officer be deemed to be a court within the meaning of Section 195(1)(b) of the Code.

12. In view of the above discussion, I am of opinion that neither Annexure-3, the show cause notice dated 27-2-85 nor Annexure-5, the order dated 4-3-85 holding the petitioner guilty of wilfully interrupting the proceeding and committing contempt of court and punishing the petitioner can be sustained.

13. In the result, this writ petition is allowed. Annexures-3 and 5 are hereby quashed.