
(2011) 06 PAT CK 0027
In the Patna High Court
Case No : MJC No. 2867 of 2008

Sudama Chero

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-06-2011

Acts Referred:

Citation : (2011) 06 PAT CK 0027

Judgement

Ramesh Kr. Datta, J.—Heard learned counsel for the Petitioner, learned counsel for opposite party No. 3, for opposite party No. 6 as also for the State.

2. This application was filed for initiating contempt proceedings against the opposite parties for willfully and deliberately violating the direction of this Court contained in order dated 19.9.2008 passed in C.W.J.C. No. 14190 of 2008. By the said order this Court while issuing notice to the Respondents had passed an interim order that no special meeting for considering the "No Confidence Motion" against Pramukh and Up-Pramukh, which had been fixed on 22.9.2008 pursuant to the notice dated 12.9.2008, shall be held. Copy of the order was also handed over to learned Government Pleader No. 13.

3. It is the stand of the Petitioner that the said order was communicated by learned Government Pleader No. 13 on 19.9.2008 itself through Fax message sent to the District Magistrate, Rohtas as well as to the District Panchayat Officer, Rohtas. It is also stated in the application that a certificate granted by learned Advocate of the Petitioner was also handed over by him to the opposite party No. 6, the Block Development Officer, Nauhatta personally and he himself received the same and issued receipt on 20.9.2008. It is further stated that the District Panchayat Officer, Rohtas by his Memo No. 576 dated 22.9.2008 sent copy of the Fax message to the Sub-Divisional Officer, Dehri and Block Development Officer, Nauhatta for necessary action stating that they have already been informed on telephone regarding the order passed by this Court. However, despite the communication of the order of this Court the Block Development Officer-cum-Executive Officer of Panchayat Samiti, Nauhatta Block allowed the special

meeting on 22.9.2008 to be held which removed the Petitioner from the post of Pramukh and also removed the Up-Pramukh. It is also pointed out that from the record of proceedings of the meeting dated 22.9.2008 it is evident that the same was signed by the opposite party No. 6 on 22.9.2008 at 12.30 P.M. much after the receipt of the Advocate's certificate on 20.9.2008 and the telephonic and other communications by the opposite party No. 3.

4. On a consideration of the respective show causes filed by the opposite parties this Court by order dated 2.12.2008 initiated proceedings of contempt against opposite party No. 3, the Deputy Development Commissioner, Rohtas and opposite party No. 6, the then Executive Officer-cum-Block Development Officer, Nauhatta, District-Rohtas. Further show causes were permitted to be filed by the opposite parties thereafter.

5. Learned counsel for the Petitioner submits that it is evident from the facts stated in the application and the documents brought on the record that the opposite parties were aware of the order of this Court much before the special meeting was held and the opposite party No. 6 by proceeding with the meeting despite knowledge of the order of this Court as well as the opposite party No. 3 by not taking steps preventing such meeting from being held are guilty of having deliberately disobeyed the order of this Court and thus have committed contempt of this Court.

6. Apart from the aforesaid documents learned counsel also relies upon the Fax message purported to have been sent to the office of the Deputy Development Commissioner on 21.9.2008 at 6.26 A.M. on Fax No. 16184-221123. It is submitted on the strength of the said Fax message that the Deputy Development Commissioner, Rohtas at Sasaram had full knowledge about the order of this Court much prior to the holding of the meeting and by not taking appropriate steps in the matter he is equally guilty of deliberate violation of the order of this Court.

7. Learned counsel for the opposite party No. 3, on the other hand, submits that the clear stand of the opposite party No. 3 in his show cause is that no such Fax message was received on 21.9.2008, which was a Sunday and his office was closed, on Fax No. 06184-221123 at 6.26 A.M. which facts were verified on enquiry made by the opposite party No. 3 from his Steno. The opposite party No. 3 has also assailed the genuineness of the Fax message as annexed by the Petitioner. It is submitted by learned counsel that the clear stand of the opposite party is that the Fax message was received in the office of the District Magistrate, Rohtas only on 22.9.2008 at 11.35 A.M. and it was immediately placed before the District Magistrate and as per his order the opposite party No. 3 immediately communicated the same to the opposite party No. 6, the Block Development Officer who has also admitted the fact of having received the message on his Mobile. It is further submitted that the first and only Fax message was received in the office of the District Magistrate at 11.35 A.M. on 22.9.2008 and there is no other Fax message and the opposite party No. 3 had

immediately communicated the same to the opposite party No. 6 on his mobile phone. Thereafter a copy of the Fax message was also communicated by the District Panchayat Officer to opposite party No. 6 by Memo No. 576/P dated 22.9.2008.

8. The stand of learned counsel for the opposite party No. 3 is that the so-called Fax message dated 21.9.2008 ought not to be relied upon as the Petitioner has failed to prove the genuineness of the same and considering the conduct of the opposite party No. 3 the proceedings of the contempt against him should be dropped.

9. Learned counsel for the opposite party No. 6 submits that the opposite party has not deliberately committed any act of willful disobedience of the order of this Court. It is urged by him that having learnt from the Deputy Development Commissioner, Rohtas on his Mobile phone that the holding of the meeting had been stayed by this Court the opposite party No. 6 informed the participants of the meeting and requested them not to convene the meeting but the participants hurriedly conducted the meeting stating that there was no copy of the Fax message at 12.30 P.M.

10. It is also the stand of learned counsel that the Fax message, as a matter of fact, was received by opposite party No. 6 at 1.20 P.M. on 22.9.2008 and he subsequently informed the Sub-Divisional Officer, Dehri by Office Memo No. Camp (Dehri) dated 24.9.2008 regarding the entire circumstances and events. Accordingly, the Sub-Divisional Officer by his letter dated 14.10.2008 held that the proceedings of the meeting dated 22.9.2008 and the resolution passed therein are invalid and cannot be given effect to.

11. In view of the aforesaid fact learned counsel submits that the acts of the opposite party No. 6 cannot be held to be deliberate violation of the order of this Court and even if it is found that he has committed a mistake a lenient view should be taken and further if the opposite party is found guilty of contempt he may not be given a sentence of imprisonment. In support of the same learned counsel relies upon a decision of the Apex Court in the case of Smt. Pushpaben and Another Vs. Narandas V. Badiani and Another, in paragraphs 6 & 7 of which it has been held as follows:-

6. A close and careful interpretation of the extracted section leaves no room for doubt that the Legislature intended that a sentence of fine alone should be imposed in normal circumstances. The statute, however, confers special power on the Court to pass a sentence of imprisonment if it thinks that ends of justice so require. Thus before a Court passes the extreme sentence of imprisonment, it must give special reasons after a proper application of its mind that a sentence of imprisonment alone is called for in a particular situation. Thus, the sentence of imprisonment is an exception while sentence of fine is the rule.

7. Having regard to the peculiar facts and circumstances of this case, we do not find any special reason why the Appellants should be sent to jail by sentencing

them to imprisonment. Furthermore, Respondent No.1 before us despite service, has not appeared to support the sentence given by the High Court. Having regard to these circumstances, therefore, we are satisfied that the present case, squarely falls in the first part of Section 12(3) and a sentence of fine alone should have been given by the High Court. We, therefore, allow this appeal to this extent that the sentence of imprisonment passed by the High Court is set aside and instead the Appellants are sentenced to pay a fine of Rs. 1,000/- each. In case of default, 15 days simple imprisonment. Four weeks time to pay the fine. Orders accordingly.

He further relies upon a decision of the Apex Court in the case of Sita Ram Sahu Vs. Smt. Lalpari Devi and others, in paragraph-3 of which is as follows:-

3. We are, however, of the opinion that the Respondents have committed contempt. The allegations as to justification for demolition are not beyond the pale of controversy. But we do not want to take a serious view of the matter in view of the Panchayat direction to reconstruct the building for the use of the Petitioner. We take a lenient view of the matter, but not without directions. We direct that the Respondents shall re-construct the portion of the building which is to be given to the Petitioner within six months from today and he shall be reinducted into the premises immediately thereafter. The Petitioner shall be reinducted as a tenant not for three years as stated by Panchayat, but just like any other tenant without terms as to period. The Petitioner shall not be asked to pay enhanced rent or prevailing rent for the new premises but the old rent only. The Petitioner will be at liberty to mention if there is any difficulty.

12. Reliance is also placed by learned counsel upon a decision of the Supreme Court in the case of Debabrata Bandopadhyay and Others Vs. The State of West Bengal and Another, paragraphs 9 & 10 of which are quoted below:-

9. A question whether there is contempt of court or not is a serious one. The court is both the accuser as well as the Judge of the accusation. It behoves the court to act with as great circumspection as possible making all allowances for errors of judgment and difficulties arising from inveterate practices in courts and tribunals. It is only when a clear case of contumacious conduct not explainable otherwise, arises that the contemnor must be punished. It must be realized that our system of courts often results in delay of one kind or another. The remedy for it is reform and punishment departmentally. Punishment under the law of Contempt is called for when the lapse is deliberate and in disregard of one's duty and in defiance of authority. To take action in an unclear case is to make the law of contempt do duty for other measures and is not to be encouraged.

10. In this case, no doubt there was some avoidable delay but as pointed out above it was the result of our system of transmission of orders of superior courts which must pass through several hands and not the product of design or defiance of the superior courts. In these circumstances, it cannot be said that there was contempt of the authority of the High Court or of the Sessions Judge and the

several Appellants could not be convicted or punished. In this view of the matter we set aside their convictions and order for refund of their fines. We, however, caution all concerned that orders of stay, bail, injunctions received from superior courts must receive close and prompt attention and unnecessary delay in dispatching or dealing with them may well furnish grounds for an inference that it was due to a natural disinclination to deal with the matter born of indifference and sometimes even of contumaciousness. RGD convictions set aside.

13. I have considered the materials on the record and the rival submissions of learned counsel for the parties. From the facts on the record there can hardly be any doubt that at the very least the order dated 19.9.2008 of this Court was known to the opposite party No. 3, the Deputy Development Commissioner and communicated to the opposite party No. 6 on his Mobile phone at 11.35 A.M. before the special meeting for considering the "No Confidence Motion" took place as admitted by opposite party No. 6 himself. So far as the question of intimation by Fax on 21.9.2008 to the opposite party No. 3 is concerned, from the materials on the record it cannot be said that the Petitioner has succeeded in establishing that the Fax, as a matter of fact, had been received on a Sunday in the office of the Deputy Development Commissioner. This Court had granted sufficient time to the Petitioner to produce relevant materials on the record from the authorities and other sources, i.e., B.S.N.L. etc., so as to establish that the said Fax had been received in the office of the Deputy Development Commissioner on 21.9.2008. The Petitioner has been unable to produce any clinching evidence on the record and in view of the denial of the said facts, and there being some basis for such denial on behalf of the opposite party No. 3, this Court is not inclined to accept that the Fax message had been received by the office of the Deputy Development Commissioner on 21.9.2008.

14. Thus this Court must proceed on the admitted fact that the Fax message was received in the office of the District Magistrate at 11.35 A.M. on 22.9.2008 and immediately thereafter the opposite party No. 3 was informed about the same and he communicated the same to the opposite party No. 6, the Block Development Officer, on his Mobile phone. If even thereafter the special meeting for considering the "No Confidence Motion" was convened and held and resolution passed despite the order of this Court dated 19.9.2008 then the same definitely amounts to willful disobedience of the order of this Court. The question is whether the opposite party No. 3 can be held guilty of such deliberate disobedience. This Court is of the view that while there may have been failure on the part of the DDC to have taken further steps to ensure that the order of this Court was not violated but failure on his part is essentially of an administrative nature and cannot be considered to be a deliberate disobedience of the order of this Court, as the same was required to be complied with by the Block Development Officer, Nauhatta the opposite party No. 6 who being the ex-officio Executive Officer of the Panchayat Samiti was required to have ensured that no such meeting took place in violation of the orders of this Court.

15. The opposite party No. 6 was already aware of the orders of this Court on the basis of the certificate granted by the counsel appearing in the case in this Court on 20.9.2008 itself and even officially the order had been communicated to him by the DDC immediately after 11.35 A.M. on his Mobile phone yet he did not take effective steps to prevent the meeting from taking place. Not only that the special meeting continued and passed a resolution of "No Confidence" against the Pramukh which proceeding was duly signed by opposite party No. 6 as the Executive Officer of the Panchayat Samiti giving a stamp of legality to the proceeding. Under such circumstances it is not open to the opposite party No. 6 to take the stand that he informed the members about the orders of this Court but they did not pay any heed to the same but proceeded with the matter and passed the resolution. As the Executive Officer of the Panchayat Samiti and also a State official he had sufficient powers vested in him to prevent any such meeting from having taken place. Moreover, there was no occasion for him to have given the stamp of legality to the proceedings of the meeting by signing the same even after he had received the communication about the order of this Court not to proceed with the said special meeting. The said act of the opposite party No. 6 amounts to willful disobedience of the order dated 19.9.2008 of this Court.

16. In the aforesaid circumstances, this Court holds the opposite party No. 6 Mr. Mritunjay Kumar, the then Block Development Officer, Nauhatta, District-Rohtas-cum-Executive Officer, Panchayat Samiti as guilty of having committed contempt of this Court by willfully and deliberately violating the order dated 19.9.2008 passed by this Court. So far as the opposite party No. 3, the Deputy Development Commissioner, Rohtas at Sasaram is concerned, he is entitled to the benefit of doubt.

17. Next question to consider is whether it is a fit case for imposition of sentence of imprisonment or sentence of fine alone would suffice. It is evident that this is not a case where the opposite party No. 6 had merely failed in ensuring that the special meeting for considering "No Confidence Motion" was not held rather he had actively participated and colluded with the participants in the special meeting by putting the stamp of legality to the proceedings by signing the minutes and proceedings of the special meeting after the same was over, although he was fully aware that this Court had directed that no such special meeting should be held. In the said circumstances, this Court is of the view that a sentence of fine (sic-fine ?) would not be sufficient to meet the ends of justice. The opposite party No. 6 is, accordingly, sentenced to simple imprisonment for a term of 15 days.

18. Learned counsel for the opposite party No. 6 submits that the opposite party No. 6 intends to prefer an appeal against the present order and prays that the execution of the punishment may be suspended for a short period.

19. It is, accordingly, directed that the execution of the punishment in the present order shall remain stayed for a period of six weeks.

20. The proceedings of contempt against opposite party No. 3 are hereby dropped.