
(2013) 09 PAT CK 0090

In the Patna High Court

Case No : Civil Review No. 402 of 2012 in CWJC No. 4504 of 2012

The State of Bihar

APPELLANT

Vs

Anand

RESPONDENT

Date of Decision : 26-09-2013

Acts Referred:

Citation : (2014) 1 PLJR 456

Hon'ble Judges : Shivaji Pandey, J

Bench : Single Bench

Judgement

Shivaji Pandey, J.—Heard learned counsel for the petitioners and the State. In this case, petitioners are seeking review of the order dated 26th April, 2012 passed in C.W.J.C. No. 4504 of 2012 on the ground that the writ petitioner Anand son of Sri Parmanand Rai O.P. No. 1 in the present review application has obtained the order by playing fraud as the order dated 6th August, 2011 passed by Sub-Judge-II, Buxar in Execution Case No. 2 of 2007 is a tampered/fabricated and manipulated order and on that basis this Court has passed the order directing to take action in terms of order dated 6th August, 2011.

2. When this fact was brought to notice, this Court issued notice on O.P. No. 1, in the meantime, the order dated 26th April 2012 passed in CWJC No. 4504 of 2012 was stayed.

3. The O.P. No. 1 appeared and submitted that he has annexed the photocopy of certified copy of the order which was supplied to him by the Copying Section of Civil Court, Buxar but he could not explain the incoherency inconsistency of the order dated 6th August, 2011 attached with the review application and in the writ application. While passing the order, the Court itself examined and found that the aforesaid order attached with the review application is completely different to the order attached with the writ application. The fact is the order dated 6th August, 2011 attached to present Review Application is quite different to that order attached to the writ petition.

4. In pursuance of this conflicting position this Court referred the matter to the Registrar General of this Court for making an enquiry about the genuineness of the order and submit his report.

5. The Registrar General called for the records from the court below, gave opportunity to the parties, made enquiry and submitted his report dated 7th September, 2013 and has concluded that the copy attached to the writ application is not the real recording of the order but it is quite different to the original order, accordingly, matter has been placed before this Court for its consideration.

6. Counsel for the O.P. No. 1 submits that whatever he has received from the Copying Section of the Buxar Civil Court, he attached the photocopy of the order-sheet of Execution Case No. 2 of 2007 with the writ application and it cannot be said that O.P. No. 1 played any fraud upon the court.

7. The Court asked the writ petitioner-O.P. No. 1 to produce the original certified copy of the order which he has produced and prima facie it appears that it has been issued from the Copying Section but the recording of the statements in the order dated 23rd July, 2011 and 6th August, 2011 are completely inconsistent and different which has been made in the order dated 23rd July, 2011 and 6th August 2011 recorded in the original order-sheet. The court examined and compared both the aforesaid orders, has come to the conclusion that the statements made in order dated 23rd July, 2011 and 6th August, 2011 in original order sheet is quite different to orders attached to writ petition and original certified copy produced before this Court.

8. The stream of justice is trying to be polluted. Credibility of justice delivery system is at stake. If this malady will be allowed to be continued, the citizen will lose faith in court. Probity is hallmark of justice delivery system. It appears serious wrong is prevailing in the judgeship of Buxar from where this fabricated order-sheet has been released. As per the claim of the petitioner, he has obtained the order-sheet from the Copying Section of the judgeship of Buxar. As the matter is serious, it requires deep investigation by the Central Bureau of Investigation (CBI) so that the real culprit, whosoever he/she may be, brought to book.

9. It will be apt to rely on the judgment of the Hon''ble Supreme Court reported in State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others, where the Hon''ble Supreme Court has taken view, the Court in serious matter feels that the case should be investigated by the CBI, in that circumstance the Court should not feel any hesitation in referring the matter to the CBI for investigation to find out the real truth. It will be apt to quote Paras. 44, 45 and 46 of the judgment which are as follows:--

44. Thus, having examined the rival contentions in the context of the Constitutional Scheme, we conclude as follows:--

(i) The fundamental rights, enshrined in Part-III of the Constitution, are inherent and cannot be extinguished by any Constitutional or Statutory provision. Any law that abrogates or abridges such rights would be violative of the basic structure doctrine. The actual effect and impact of the law on the rights guaranteed under Part-III has to be taken into account in determining whether or not it destroys the basic structure.

(ii) Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said Article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State.

(iii) In view of the constitutional scheme and the jurisdiction conferred on this Court under Article 32 and on the High Courts under Article 226 of the Constitution the power of judicial review being an integral part of the basic structure of the Constitution, no Act of Parliament can exclude or curtail the powers of the Constitutional Courts with regard to the enforcement of fundamental rights. As a matter of fact, such a power is essential to give practicable content to the objectives of the Constitution embodied in Part-III and other parts of the Constitution. Moreover, in a federal constitution, the distribution of legislative powers between the Parliament and the State Legislature involves limitation on legislative powers and, therefore, this requires an authority other than the Parliament to ascertain whether such limitations are transgressed. Judicial review acts as the final arbiter not only to give effect to the distribution of legislative powers between the Parliament and the State Legislatures, it is also necessary to show any transgression by each entity. Therefore, to borrow the words of Lord Steyn, judicial review is justified by combination of "the principles of separation of powers, rule of law, the principle of constitutionality and the reach of judicial review".

(iv) If the federal structure is violated by any legislative action, the Constitution takes care to protect the federal structure by ensuring that Courts act as guardians and interpreters of the Constitution and provide remedy under Articles 32 and 226, whenever there is an attempted violation. In the circumstances, any direction by the Supreme Court or the High Court in exercise of power under Article 32 or 226 to uphold the Constitution and maintain the rule of law cannot be termed as violating the federal structure.

(v) Restriction on the Parliament by the Constitution and restriction on the Executive by the Parliament under an enactment, do not amount to restriction on the power of the Judiciary under Articles 32 and 226 of the Constitution.

(vi) If in terms of Entry 2 of List-II of The Seventh Schedule on the one hand and

Entry 2A and Entry 80 of List-I on the other, an investigation by another agency is permissible subject to grant of consent by the State concerned, there is no reason as to why, in an exceptional situation, court would be precluded from exercising the same power which the Union could exercise in terms of the provisions of the Statute. In our opinion, exercise of such power by the constitutional courts would not violate the doctrine of separation of powers. In fact, if in such a situation the court fails to grant relief, it would be failing in its constitutional duty.

(vii) When the Special Police Act itself provides that subject to the consent by the State, the CBI can take up investigation in relation to the crime which was otherwise within the jurisdiction of the State Police, the court can also exercise its constitutional power of judicial review and direct the CBI to take up the investigation within the jurisdiction of the State. The power of the High Court under Article 226 of the Constitution cannot be taken away, curtailed or diluted by Section 6 of the Special Police Act. Irrespective of there being any statutory provision acting as a restriction on the powers of the Courts, the restriction imposed by Section 6 of the Special Police Act on the powers of the Union, cannot be read as restriction on the powers of the Constitutional Courts. Therefore, exercise of power of judicial review by the High Court, in our opinion, would not amount to infringement of either the doctrine of separation of power or the federal structure.

45. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to the CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part-III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.

46. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. In so far as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has leveled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in

investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

10. As the matter related to justice delivery system, its relevance and existence has been brought to at stake, this Court for ends of justice directs the Central Bureau of Investigation to institute a case in connection of issuance of certified copy of order dated 23rd July, 2011 and order dated 6th August, 2011 which is claimed to have been issued from the Copying Section of Buxar judgship and after proper investigation into the matter, take action in accordance with law.

11. This Court directs the Registry to hand over the photocopy of the whole record of C.W.J.C. No. 4502 (sic--4504?) of 2012, Civil Review No. 402 of 2012 including counter affidavit, if any, and of Execution Case No. 2 of 2007, including the original certified copy of the order produced by the writ petitioner-O.P. No. 1; passed in Execution Case No. 2 of 2007 by the Sub-Judge-II, Buxar to the CBI Officials after proper certification, under sealed cover. The copy of C.W.J.C. No. 4502 (sic--4504?) of 2012, Civil Review No. 402 of 2012, Photocopy of whole record of Execution Case No. 2 of 2007, including photocopy of original certified copy produced before this Court be kept in safe custody which may be used at proper time. It is also directed that the registry of this Court and the registry of the judgship of Buxar will extend all possible assistance to the CBI, whenever it requires. The Registry of Judgship, Buxar would keep relevant Chirkut (receipt) and relevant register in safe custody.

12. The CBI will also examine the objection filed by the writ-petitioner by way of counter affidavit filed in this case.

13. In case the CBI feels any hindrance, it will have liberty to approach this Court for proper order.

14. As it appears that the writ petitioner-O.P. No. 1 has obtained the order on the strength of manipulated document, the order dated 26th April, 2012 passed in CWJC No. 4504 of 2012 is recalled and it will be deemed that no order has been passed by this Court on that day.

15. Accordingly, this review application is allowed.

16. However, this Court is not giving any opinion on the authenticity of the documents in question and that will be subject to result of investigation by the CBI or upon the adjudication by the competent court of law. A copy of final report after investigation by CBI shall be placed before this court for its perusal. The record of Execution Case No. 2 of 2007 be returned to the court below without unnecessary delay. The copy of the order be also sent to the District & Sessions Judge, Buxar for his information and necessary action.