

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.635 of 2024

Arising Out of PS. Case No.- Year-0 Thana- District- Khagaria

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Harshvardhan Singh @ Harsh Vardhan Son of Ravindra Kumar Singh Resident of 51,
Sanhauili, Sonhauili, P.S.-Sanhauili, Distt.-Khagaria, Bihar- 851205

... .. Petitioner/s

Versus

1. The State of Bihar through the Home Secretary, Government of Bihar, Patna, Bihar
2. The District Magistrate, Khagaria Bihar
3. The Superintendent of Police, Khagaria. Bihar
4. The Sub Divisional Police Officer, Sadar, Khagaria. Bihar

... .. Respondent/s

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Issue in consideration : Does District Magistrate derive the jurisdiction, power or authority to make an order of externment in the mentioned circumstances and petitioner being not an anti social element.

Is notice of natural justice a formality as was issued by respondent authority on 21.10.2023 and petitioner was directed to file show cause on 22.10.2023.

Held : It was held that principle of natural justice has been made mere formalities just to overcome the impact of natural justice. It is evident that principle of natural justice has been made a mere empty formality and as such action of respondent cannot be appreciated while making an order of externment.

Does District Magistrate derive the jurisdiction, power or authority to make an order of externment by taking recourse to Section 3 of Bihar Control of Crimes Act, 1981. Is the impugned order of externment not sustainable and therefore warrants interference.

Held: sub-section (i) of Section 3 of Bihar Control of Crimes Act, 1981 makes clear that a person has to be an anti-social element within the meaning of Section 2(d) of Bihar Control of Crimes Act, 1981, in order to bring him within the ambit of Section 3 of Bihar Control of Crimes Act, 1981, so that an order of externment can be made against him. It becomes clear that unless a person is an anti-social element within the meaning of Section 2(d) of Bihar Control of Crimes Act, 1981, a District Magistrate does not derive the jurisdiction, power or authority to make an order of externment by taking recourse to Section 3 of Bihar Control of Crimes Act, 1981.

It can be noticed that a person would be regarded as an anti-social element within the meaning of Section 2(d) of Bihar Control of Crimes Act, 1981, if he has been convicted of offence under Sections 25, 26, 27, 28 or 29 of the Arms Act, 1959.

In the present case, two cases have been registered against the petitioner as mentioned above but no case is registered under the Arms Act. Then the question, therefore, applying sub-clause (v) of Section 2(d) of Bihar Control of Crimes Act, 1981, does not arise at all.

Coupled with above, cases which have been referred to and relied upon by the District Magistrate, Khagaria are of years 2021 and 2022 which can't be relevant in the year 2023 also as it has been clearly laid down by Hon'ble Supreme Court that the expression "habitually" means "repeatedly" or "persistently" in Vijay Narain Singh v. State of Bihar reported in (1984) 3 SCC 14

Vijay Narain Singh v. State of Bihar reported in (1984) 3 SCC 14, the Hon'ble Supreme Court has clearly laid down that The expression "habitually" means "repeatedly" or "persistently".- Discussed-[para 17]

Principles of natural justice-reasons in support of order - Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner, New Delhi & Ors. reported in AIR 1978 SC 851; D.K. Yadav vs. J.M.A. Industries Ltd. reported in (1993) 3 SCC 258; Oryx Fisheries Private Limited vs. Union of India and Others reported in (2010) 13 SCC 427; Kranti Associates Pvt. Ltd. v. Masood Ahmed Khan reported in (2010) 9 SCC 496-discussed [para 21]

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4. The Sub Divisional Police Officer, Sadar, Khagaria. Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s : Ms.Mayuri Mishra, Adv.
For the Respondent/s : Mr. G.P.12

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)

Date : 03-05-2024

This criminal writ petition has been filed by the petitioner against the order of externment dated 22.10.2023 passed by the respondent no. 2, namely, the District Magistrate, Khagaria in B.C.C.A. Case No. 33 of 2023.

2. By filing the present writ petition, the petitioner has sought for the following relief(s):-

(i) Issuance of a direction, order or writ, including writ in the nature of certiorari to quash the order dated 22.10.2023



passed in B.C.C.A. Case Number 33 of 2023 whereby the petitioner has been declared to be an anti-social element and an order of externment has been passed against him under Bihar Control of Crimes Act, 1981.

(ii) Issuance of a direction, order or writ, including writ in the nature of mandamus directing the Respondent Authorities to show cause as to under what circumstances vide order dated 21.10.2023 the proceedings were carried out in such a haste that less than one day was provided to the petitioner to furnish a reply to the show cause issued against him.

(iii) Issuance of a direction, order or writ, including writ in the nature of mandamus directing Respondent number 4 to show cause as to under what circumstances and on what grounds the proceedings against the petitioner was initiated under the Bihar Control of Crimes Act, 1981.

(iv) Issuance of a direction, order or writ, including writ in the nature of mandamus directing Respondent Authorities to compensate the petitioner for the harassment and humiliation caused to the petitioner and his family members due to the unjust, arbitrary and manifestly illegal order passed by the Respondent Authority.

(v) Any other relief/reliefs that the petitioner may be found to be entitled to in



the facts and circumstances of the present case.

3. Briefly stated the facts of the case is that by notice dated 21.10.2023, issued, in the exercise of power under Section 3(3) of Bihar Control of Crimes Act, 1981, by respondent No. 2. namely, the District Magistrate, Khagaria, the present petitioner was directed to show cause, if any, as to why an order of externment be not passed against him.

4. In response to the notice, the petitioner submitted show cause. The District Magistrate, Khagaria expressed his satisfaction that externment order was necessary and directed that petitioner shall not enter into district of Khagaria for one month since the date of order of externment dated 22.10.2023. Further petitioner was directed to appear in person in Sadar Thana, Siwan in District Siwan on every day from 9 AM to 11 AM and 5 PM to 8 PM.

5. Learned counsel for the petitioner submitted that impugned order of externment raised the question of principle of natural justice as notice was issued by respondent authority on 21.10.2023 and petitioner was directed to file show cause on 22.10.2023. Learned counsel further submitted that time gap between issuance of notice to the reply to said notice was less than 24 hours which clearly denotes that principle of natural



justice has been made mere formalities just to overcome the impact of natural justice. Learned counsel further submitted that there must be a nexus between the date of offences which the petitioner is stated to have committed and the date of impugned order of externment but in the instant case, the FIR is said to be registered in the year 2021 and 2022 whereas order of externment has been passed on 22.10.2023 which has no nexus and any basis. Learned counsel further submitted that petitioner has filed detailed reply to the show cause issued by the respondent authority but his reply was not at all considered and order of externment was passed mechanically by the respondent authority on 22.10.2023. Learned counsel further submitted that from perusal of the FIR registered against the petitioner, it is crystal clear that only an offence under Section 353 which is covered under Chapter XVI or Chapter XVII of the Indian Penal Code, 1860 can be made out. In such a scenario, petitioner cannot be said to be habitually committing the offences. Learned counsel further submitted that Section 3(1) of the Bihar Control of Crimes Act, 1981 makes it clear that a person has to be an anti-social element within the meaning of Section 2(d) of the said Act so that an order of externment can be passed against him but in the instant case, petitioner does not fall within the



definition of anti-social element. Learned counsel further submitted that order of externment has been passed without appreciating the law as laid down in the Act itself. Learned counsel further submitted that petitioner received a notice vide Memo No. 2041 dated 21.10.2023 under Section 3 of Bihar Control of Crimes Act, 1981 whereby he was directed to show cause as to why an order of externment should not be passed against him. By way of show cause petitioner was given time less than 24 hours to appear which clearly indicates that how the hasty approach has been followed in overcoming the cardinal principle of natural justice just to put the petitioner under the provision of Bihar Control of Crimes Act, 1981. Learned counsel further submitted that there is no material basis for taking action against the petitioner under Bihar Control of Crimes Act, 1981 as two cases have been registered against the petitioner, one is in the year 2021 and another is in the year 2022. There is no live link between the two cases and how the cases of 2021 and 2022 is relevant for 2023 for passing the impugned order of externment is also not explained. Learned counsel further submitted that externment order is totally vague and it cannot be justified by any stretch of imagination and action of respondent no. 2 is full of biasness and predetermined.



In the light of aforesaid submissions, order of externment passed by respondent no. 2 is nullity in the eye of law and hence, same is liable to be set aside and quashed.

6. Learned counsel for the respondents submitted that order of externment dated 22.10.2023 is based on the report of Superintendent of Police, Khagaria, Sub-divisional Police Officer, Sadar Khagaria and S.H.O., Chitraguptanagar, Khagaria Police Station. Learned counsel further submitted that petitioner is said to have committed serious offences and he is in association with several criminals. He further submitted that two cases are said to have registered against the petitioner and on the basis of two cases, the order of externment has been passed against the petitioner and same is justified and legal and is based on sound reasoning. Hence, no interference is required.

7. The rival submissions made before us brings to the definition of anti-social element as contained in Section 2(d) of the Bihar Control of Crimes Act, 1981, which reads as under:

"2(d). "Anti-Social element"
means a person who-

(i) either by himself or as a member of or leader of a gang, habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code; or



(ii) habitually commits or abets the commission of offences under the Suppression of Immoral Traffic in Women and Girls Act, 1956;

(iii) who by words or otherwise promotes or attempts to promote, on grounds of religion, race, language, caste or community or other grounds whatsoever, feelings of enmity or hatred between different religions, racial or language groups or castes or communities; or

(iv) has been found habitually passing indecent remarks to, or teasing women or girls; or

(v) who has been convicted of an offence under sections 25, 26, 27, 28 or 29 of the Arms Act of 1959.

8. A close reading of sub-section (1) of Section 3 of Bihar Control of Crimes Act, 1981, reads thus:

"3. Externment, etc., of anti-social elements-(1) Where it appears to the District Magistrate that-

(a) any person is an anti-social element, and

b) (i) that his movements or acts in the district or any part thereof are causing or calculated to cause alarm, danger or harm to persons or property; or

(ii) that there are reasonable grounds for believing that he is engaged or about to engage, in the district or any part thereof, in



the commission of any offence punishable under Chapter XVI or Chapter XVII of the Indian Penal Code, or under the Suppression of Immoral Traffic in Women and Girls Act, 1956, or abetment of such offence;

The District Magistrate shall by notice in writing inform him of the general nature of the material allegation against him in respect of clauses (a) and (b) and shall give him a reasonable opportunity of tendering an explanation regarding them.

9. From a bare reading of sub-section (i) of Section 3 of Bihar Control of Crimes Act, 1981, it becomes abundantly clear that a person has to be an anti-social element within the meaning of Section 2(d) of Bihar Control of Crimes Act, 1981, in order to bring him within the ambit of Section 3 of Bihar Control of Crimes Act, 1981, so that an order of externment can be made against him. Considered in this light, it becomes crystal clear that unless a person is an anti-social element within the meaning of Section 2(d) of Bihar Control of Crimes Act, 1981, a District Magistrate does not derive the jurisdiction, power or authority to make an order of externment by taking recourse to Section 3 of Bihar Control of Crimes Act, 1981.

10. To put it a little differently, a person cannot be externed by taking recourse to Section 3 of Bihar Control of



Crimes Act, 1981, unless he can be described as an anti-social element within the meaning of Section 2(d) of Bihar Control of Crimes Act, 1981. One of the condition precedents for making an order of externment, under Section 3 of Bihar Control of Crimes Act, 1981, is that the person, sought to be externed, must be an anti-social element as envisaged in Bihar Control of Crimes Act, 1981.

11. The question, therefore, is: whether in the facts and circumstances of the present case, the impugned order of externment make out the petitioner an anti-social element as defined by Section 2(d) of Bihar Control of Crimes Act, 1981?

12. It is relevant to note that in his order dated 22.10.2023 passed in B.C.C.A Case No. 33/2023, respondent no. 2, namely, District Magistrate, Khagaria, has taken into account two cases, which have been registered against the petitioner in order to treat the petitioner as anti-social element. These two cases with relevant penal provisions, are reproduced below-

(i) Khagaria P.S. case. No. 1041/ 2022 dated 06.10.2022 u/s 147, 341, 323, 188, 290, 353, 504, 506, 120(B) of the IPC and 37 of Bihar Prohibition and Excise (Amendment) Act, 2022.



(ii) Khagaria (Chitraguptanagar) P.S. case no.829/ 21 dated 16.10.21 u/s 188, 353, 290, 34 of the IPC.

13. Out of two cases, one case has been registered in the year 2021 and another case has been registered in the year 2022, which became the foundation of the impugned order of externment.

14. From the definition of anti-social element which we discussed above, it can be easily noticed that a person would be regarded as an anti-social element within the meaning of Section 2(d) of Bihar Control of Crimes Act, 1981, if he has been convicted of offence under Sections 25, 26, 27, 28 or 29 of the Arms Act, 1959.

15. In the present case, two cases have been registered against the petitioner as mentioned above but no case is registered under the Arms Act. Then the question, therefore, applying sub-clause (v) of Section 2(d) of Bihar Control of Crimes Act, 1981, does not arise at all.

16. Sub clause (i) of Section 2(d) of Bihar Control of Crimes Act, 1981 shows that a person who either by himself or as a member of or leader of a gang, habitually commits or attempts to commit or abets the commission of offence punishable under Chapter XVI or Chapter XVII of the Indian



Penal Code shall be anti-social element.

17. We may quote, at this stage, to point out that in **Vijay Narain Singh v. State of Bihar** reported in (1984) 3 SCC 14, the Hon'ble Supreme Court has clearly laid down that The expression "habitually" means "repeatedly" or "persistently". It implies a thread of continuity stringing together similar repetitive acts. Repeated, persistent and similar, but not isolated, individual and dissimilar acts are necessary to justify an inference of habit. It connotes frequent commission of acts or omissions of the same kind referred to in each of the said sub-clauses or an aggregate of similar acts or omissions. This appears to be clear from the use of the word "habitually" separately in sub-clause (i), sub-clause (ii) and sub-clause (iv) of Section 2(d) of Bihar Control of Crimes Act, 1981, and not in sub-clauses (iii) and (v) of Section 2(d) of Bihar Control of Crimes Act, 1981. If the State Legislature had intended that a commission of two or more acts or omissions referred to in any of the sub-clauses (i) to (v) of Section 2(d) of Bihar Control of Crimes Act, 1981, was sufficient to make a person an "anti-social element", the definition would have run as "Anti-social element" means "a person who habitually is". As Section 2(d) of Bihar Control of Crimes Act, 1981, now stands, whereas



under sub-clause (iii) or sub-clause (v) of Section 2(d) of Bihar Control of Crimes Act, 1981, a single act or omission referred to in them may be enough to treat the person concerned as an 'antisocial element', in the case of sub-clause (i), sub-clause (ii) or sub-clause (iv), there should be a repetition of facts or omissions of the same kind referred to in sub-clause(i), sub-clause (ii) or sub-clause (iv) by the person concerned to treat him as an "anti-social element". Commission of an act or omission referred to in one of the sub-clauses (i), (ii) and (iv) and of another act or omission referred to in any other of the said sub-clauses would not be sufficient to treat a person as an "anti-social element". A single act or omission falling under sub-clause (i) and a single act or omission falling under sub-clause (iv) of Section 2(d) of Bihar Control of Crimes Act, 1981, cannot, therefore, be characterized as a habitual act or omission referred to in either of them. Because the idea of "habit" involves an element of persistence and a tendency to repeat the acts or omissions of the same class or kind, if the acts or omissions in question are not of the same kind or even if they are of the same kind when they are committed with a long interval of time between them they cannot be treated as habitual ones. (Said matter has already discussed in Ayub alias



Pappukhan Nawabkhan Pathan v. S.N. Sinha reported in (1990) 4 SCC 552.)

18. In the light of discussions made above, the petitioner cannot be put into category of habitual offender when two cases are said to have registered against him in two different years.

19. What follows from the above discussions is that in the case at hand, the District Magistrate has relied upon two cases to treat the petitioner as an anti-social element but none of the cases, so relied upon, make the petitioner an anti-social element within the meaning of Section 2(d) of Bihar Control of Crimes Act, 1981.

20. Coupled with above, cases which have been referred to and relied upon by the District Magistrate, Khagaria are of years 2021 and 2022. How the cases of the said years could become relevant in the year 2023, for passing order of externment, has not been explained or mentioned in the impugned order of externment nor is there any explanation discernible from the materials on record.

21. In the present case, notice has been served one day prior to order of externment which is prudently and pragmatically impracticable to reply the same. Basically, it only



reflects mere formality of the cardinal principle of natural justice. Learned counsel for the petitioner has already submitted that very action of the respondent authority is nothing but bias approach just to overcome the impact of natural justice. In the light of aforesaid submission, it is necessary to quote the relevant judgment of **Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner, New Delhi & Ors.** reported in **AIR 1978 SC 851** wherein it has been discussed by Hon'ble Supreme Court that the rules of natural justice are rooted in all legal systems and there must be a balance between the need for expedition and the need to give full opportunity to the defendant to see the material against him. There might be exceptional cases where to decide a case ex parte would be unfair and it would be the duty of the Tribunal to take appropriate steps to eliminate unfairness. Even so no doctrinaire approach is desirable but the court must be anxious to salvage the cardinal rule to the extent permissible in a given case. If the rule is sound and not negated by statute, we should not devalue it nor hesitate to hold every functionary who effects others' right to it. The audi alteram partem rule has a few facets two of which are (a) notice of the case to be met; and (b) opportunity to explain. Let us study how far the situation on hand can co-exist with



canons of natural justice. When natural justice is universally respected, the standards vary with situations, contracting into a brief, even post-decisional opportunity, or expanding into trial-type trappings. In **D.K. Yadav vs. J.M.A. Industries Ltd.** reported in **(1993) 3 SCC 258** the Hon'ble Supreme Court has discussed that there can be no distinction between quasi judicial function and an administrative function for the purpose of natural justice and the aim of both administrative inquiry as well as quasi judicial inquiry is the same i.e. to arrive at a just decision and if natural justice is calculated to secure justice or put it negatively to prevent miscarriage of justice. It is difficult to see what it should only apply to quasi judicial inquiry and not to administrative inquiry. It must logically apply to both and principle of natural justice are part of Article 14 of Constitution of India and procedure prescribed by law must be just fair and reasonable. The Hon'ble Supreme Court in the case of **Oryx Fisheries Private Limited vs. Union of India and Others** reported in **(2010) 13 SCC 427** observed that even quasi judicial authority must record reasons in support of its order. Same view has also been reiterated by the Hon'ble Supreme Court in the case of **Kranti Associates Pvt. Ltd. v. Masood Ahmed Khan** reported in **(2010) 9 SCC 496**. The Hon'ble Supreme Court in



the case of **Divisional Personnel Officer, Southern Railway & Anr. vs. T.R. Challappan** reported in **1975 AIR 2216** has discussed that the word 'consider' merely connotes that there could be active application of the mind by the disciplinary authority after considering the entire circumstances of the case in order to decide the nature and extent of the penalty to be imposed on the delinquent employee on his conviction on a criminal charge. In other words, the term 'consider' postulates consideration of all the aspects, the pros and cons of the matter after hearing the aggrieved person. Further, the Hon'ble Supreme Court in the case of **Rahmat Khan @ Rammu Bismillah Khan vs. Deputy Commissioner of Police** passed in Criminal Appeal No. 912 of 2021 [Special Leave Petition (Crl.) No. 1676 of 2021] in para 29 by citing decision of **Gazi Saduddin v. State of Maharashtra** reported in **(2003) 7 SCC 330** has held that in passing an order of externment, the authority passing the order must be satisfied of the expediency of passing the order. If the satisfaction recorded by the authority is objective and is based on material on record then the Court would not interfere with the order passed by the authority, only because another view can possibly be taken.

However, the satisfaction of the authority can be



interfered with if the satisfaction recorded is demonstrably perverse, based on no evidence, misleading evidence or no reasonable person could have, on the basis of the materials on record, been satisfied of the expediency/necessity of passing an order of externment.

22. In the light of aforesaid discussions made above, it is evident that in the present case principle of natural justice has been made a mere empty formality and such action of respondent no. 2 cannot be appreciated while making an order of externment.

23. Viewed, thus, from any angle, it becomes abundantly clear that petitioner cannot be made to fall within the definition of anti-social element as given by Section 2(d) of Bihar Control of Crimes Act, 1981, the power of directing petitioner's externment by invoking Section 3 of Bihar Control of Crimes Act, 1981, could not have been arisen.

24. Keeping in view all the aspects discussed in foregoing paragraphs, the conditions precedent for invoking a District Magistrate's jurisdiction under Section 3 of Bihar Control of Crimes Act, 1981, having not been satisfied in the present case, no order of externment could have been passed against the present petitioner.



25. Learned counsel for the petitioner, therefore, is not incorrect, when he submitted that impugned order of externment is nullity in the eye of law and the contention of respondent's counsel is not tenable in the light of discussion made above. We find that impugned order of externment is not sustainable and therefore, warrants interference.

26. In the result and for the reasons discussed above, this criminal writ petition succeeds. The order dated 22.10.2023, passed by respondent no. 2, namely, the District Magistrate, Khagaria in B.C.C.A Case No. 33 of 2023, which stands impugned in the present writ petition, is hereby set aside.

27. In terms of the above observations and directions, this writ petition stands allowed.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

shahzad/-

AFR/NAFR	AFR
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