

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Writ Jurisdiction Case No.181 of 2024**

Arising Out of PS. Case No.-28 Year-2003 Thana- SINGHESHWAR District- Madhepura

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Manoj Kumar Paswan Son of Bhubneshwar Paswan R/o village - Gauripur,  
P.S.- Singheshwar, District - Madhepura.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home Bihar, Patna. Bihar
2. The Principal Secretary, Department of Home Bihar, Patna. Bihar
3. The District Magistrate, District - Madhepura. Bihar
4. The Superintendent of Police, District - Madhepura. Bihar

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Pawan Kumar, Adv.  
For the Respondent/s : MR.GP.18

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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 : 21-03-2024**

This criminal writ petition has been filed by the petitioner against the order of externment dated 18.10.2023 passed by the respondent no. 3, namely, the District Magistrate, Madhepura in B.C.C.A. Case No. 59 of 2023 (wrongly mentioned as 60/2023 in impugned order dated 18.10.2023).

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

(i) For issuance of a writ in  
the nature of Certiorari thereby quashing the order



dated 18.10.2023 passed by the District Magistrate, Madhepura in B.C.C.A Case No. 60/2023 thereby passing the entrainment order directing the petitioner to leave, Madhepura District for six months and go and reside in Purnia District and report personally everyday from 9 AM to 11 AM and 5 PM to 8 PM before the Janki Nagar P.S. of Purnia District.

The true photocopy of order dt. 18.10.2023 passed by the DM, Madhepura is Annexure-P/1 to this Cr. writ petition.

(ii.) Any such other order or orders as your Lordships may deem fit and proper in facts and circumstances of this case may kindly be passed.

3. Briefly stated the facts of the case is that by notice dated 13.10.2023, issued, in the exercise of power under Section 3(3) of Bihar Control of Crimes Act, 1981, by respondent No. 3. namely, the District Magistrate, Madhepura, the present petitioner was directed to show cause, if any, as to why an order of externment be not passed against him on the ground that he (petitioner) was involved in a number of criminal activities, which made him an anti-social element.

4. In response to notice, no one appeared on behalf of petitioner and the District Magistrate, Madhepura



proceeded for ex party hearing. The District Magistrate, Madhepura expressing his satisfaction that present petitioner's externment was necessary, and therefore, directed that petitioner shall not enter into the district of Madhepura for the period of six months with effect from 18.10.2023. The said order of externment was passed by respondent no. 3 in B.C.A.A Case no. 59/2023 on 18.10.2023.

5. Learned counsel for the petitioner submits that the impugned order of externment suffers from denial of the principle of natural justice as petitioner did not receive any notice of externment and he was being denied of his basic rights of hearing and the order of externment passed by District Magistrate, Madhepura (Respondent No. 3) is a nullity in the eyes of law as petitioner is being deprived of having say before passing final order of externment i.e. 18.10.2023 and the said impugned order could be set aside on the solitary ground in not providing the petitioner with an opportunity to be heard. Learned counsel further submits that how the cases registered in the year 2003, 2008, 2010, 2021 and 2022 are relevant for passing the order of externment on 18.10.2023 or a live link



of nexus between date of offence, which the petitioner has allegedly committed and the date of order of externment. Learned counsel further submitted that impugned order suffers from reasoned decision. The respondent no. 3 has not assigned any reasons for satisfying himself in passing the impugned order on 18.10.2023 as the learned counsel has submitted that not even single case is/was registered in the year 2023 which may establish link for passing the impugned order but respondent no. 3 abruptly came to the conclusion without quoting any particular circumstance that the petitioner being anti-social element satisfying the ingredients of statutory provision in order to reach out the conclusion of order of externment. In this way, the impugned order is perverse, illegal, improper, baseless, arbitrary and with ulterior motive and petitioner's removal is not connected with the object of impugned order. Learned counsel further submitted that only six cases are said to have registered against the petitioner at a longer and varying interval of a particular year could not satisfy the test as defined in Section 2(d) of Bihar Control of Crimes Act, 1981. For the purpose of taking decision either in executive



side or quasi judicial side, the decision must be supported by the reason and cardinal principle of natural justice cannot be ignored but in the present case, the impugned order passed by respondent no. 3 lacks reasoned decision along with cardinal principle of natural justice. In the light of aforesaid submission, the order of District Magistrate is liable to be set aside and quashed.

6. Learned counsel for the respondents submitted that order of externment dated 18.10.2023 is based on the report of Superintendent of Police, Madhepura, Sub-divisional Police Officer, Madhepura and S.H.O., Singheshwar Police Station. He further submits that six cases are said to have registered against the petitioner and on the basis of six 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 of great relevance to note that in his order dated 18.10.2023 passed in B.C.C.A Case No. 59/2023, respondent no. 3, namely, District Magistrate, Madhepura, has taken into account six cases, which have been registered against the petitioner in order to treat the petitioner as anti-social



element. These six cases with relevant penal provisions, are reproduced below-

(i) Singheswar P.S. case. No. 28/03 dated 2.6.2003 u/s 341, 323, 506, 34 of the IPC.

(ii) Singheswar P.S. case no. 14/08 dated 8.2.2008 u/s 364, 34 of the IPC.

(iii) Singheswar P.S. case no. 118/08 dated 4.4.2008 u/s 467, 468, 471, 420, 417 of the IPC.

(iv) Singheswar P.S. case no. 106/10 dated 8.6.2010 u/s 413, 414, 420, 34 of the IPC.

(v) Singheswar P.S. case no. 224/21 dated 22.9.2021 u/s 302, 34 of the IPC.

(vi) Karjain(Supaul) P.S. case no. 120/22 dated 2.9.2022 u/s 399, 402, 420, 467, 468, 471, 413, 414 of the IPC and 25(1-B)A/26/35 of the Arms Act.

13. Out of six cases, one case has been registered in 2003, two cases in 2008, one case in 2010, one case in 2021 and one case in September, 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, though six cases have been registered against the petitioner in different years at varying interval but only one case i.e. Karjain (Supaul) P.S. Case No. 120 of 2022 has been registered against him under Sections 399, 402, 420, 467, 468, 471, 413, 414 of the IPC and Sections 25(1-B)A, 26, 35 of the Arms Act but the petitioner has yet been admittedly convicted. 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 six cases are said to have registered against him in different



years with long and varying interval.

19. What follows from the above discussions is that in the case at hand, the District Magistrate has relied upon six 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, Madhepura are of years 2003, 2008, 2010, 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. It needs to be borne in mind that requirement of giving notice of show cause to a person, who is sought to be externed, is not a mere formality. Learned counsel of the petitioner has already submitted that no notice has been served thereby petitioner is being deprived of his basic rights of hearing. 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.

22. In the light of aforesaid discussions made above, the denial of principle of natural justice, while making an order of externment, is palpable and cannot be ignored.

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 a nullity in the eyes 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 18.10.2023, passed by respondent no. 3, namely, the District Magistrate, Madhepura, 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/-

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