

Dr. Surjit Singh Vs. State of Bihar

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Court : Patna

Decided On : Feb-10-1994

Judge : Dharampal Sinha and G.C. Bharuka, JJ.

Appeal No. : Cr. W.J.C No. 130 of 1994

Appellant : Dr. Surjit Singh

Respondent : State of Bihar

Judgement :

Dharampal Singha and G.C. Bharuka, J.J.

1. This case was placed before us 'For Orders' requiring the petitioner to remove the defect as pointed out by the Stamp Reporter, which is as follows:

Particulars as required by Rule 4-A of Chapter XII of the Patna High Court Rules not stated in Para 2, it is stated in Para 15 of the petition.

2. Mr. Ashok Priyadarshi, learned Counsel appearing for the petitioner by inviting our attention to the aforesaid rule has submitted that the High Court Rules nowhere requires the said statements to be made under the above referred rule in a particular paragraph of the petition or application, there fore, if that statement is contained in Para 15, it cannot be treated as a defect. It was stated at the Bar that much confusion is prevailing in respect of the paragraph of the petition/application in which the aforesaid statements are required to be made, which is causing

unnecessary harassment to the petitioners apart from delay in placing of the cases for admission because if the aforesaid statement is not made in Para 2, the office, keeping in view the objection of the stamp reporter, treats the application to be defective.

3. Having heard learned Counsels at the Bar and keeping in view the inconvenience which is being caused to the litigants and the members of the Bar, we thought it proper to resolve the controversy by examining the relevant Rule of the Patna High Court Rules (hereinafter the Rules only).

4. Chapter XII of the rules deals with the procedure in criminal cases. Rules 4 and 4-A of the Rules provides thus:

4(i) In the case of a revision under Section 397 or 401 or in the case of petition under Section 482 of the Code of Criminal Procedure the application shall state whether an application on the same facts and against the same order or judgment had been previously filed before this Court on behalf of all or any of the petitioners and if so, with what results.

(ii) Every application for revision under Section 397 of the Code of Criminal Procedure shall state that none of the petitioners to the application has filed any application under that section to the Sessions Judge against the same order or judgment against which the application is sought to be filed.

4-A. Every petition for appeal, application shall contain full particulars of the case of the Court below including case number, Police Case Number, if any, name of the Sessions Judge, if any, and the name of the trying Magistrate or the name of the committing Magistrate as the case may be. Application for bail further state whether on the same facts or otherwise, a previous application for bail had been filed in the Court on behalf of any of the applicants for bail, and, if so, the number of the case. the date of disposal and result thereof.

Similarly Chapter XI-C of the Rules provides for procedure for applications under Articles 226 and 227 of the Constitution of India, The relevant parts of Rules 1 and 1-A are to the following effect :

(1)

It shall also state whether an application on the same facts had been previously filed before the Court, and if so, with what result.

1-A. Every application under Articles 226 and 227 of the Constitution of India for quashing of the investigation with prayer for stay of arrest during the pendency of such writ application or for grant of bail or anticipatory bail shall state whether the petitioner or any one of them have previously filed before this Court any person for bail or anticipatory bail and. If so, shall state the number of the case, the date of disposal and result thereof.

5. On a reading of the aforesaid rules, it is quite clear that making of statements regarding moving of this Court on the earlier occasion on the same facts and furnishing of other co-related informations are mandatory but the rules in terms do not specify the Paragraph number of the petition/ application in which the aforesaid statements are to be made. But of late, because of some undesirable practice having been noticed, which need not be discussed here. Standing order No. 6 of 1986, dated 21st April, 1986, was issued under the authority of this Court as a supplement to the said rule, which is in the following terms:

With a view to make the certificate required to be furnished more informative in an application for bail, as provided in Rule 4-A of Chapter XII of the Patna High Court Rules, it is hereby ordered that henceforth an application for bail shall also state the name of the Hon'ble Judge who disposed of the bail petition if such an application had been filed earlier.

The certificate as modified above, may, henceforth, be furnished in a separate paragraph numbered as Paragraph No. in a bail petition

6. Reading the rules along with the aforesaid standing order, makes it clear that in respect of bail application if the petitioner had moved this Court on earlier occasion then the desired informations are to be furnished in a separate paragraph numbered as paragraph No. 2 in the said petition.

7. It is true that except in respect of the bail petitioners in which the petitioners had moved the Court earlier the rules do not in term specify the paragraph in which the statements regarding moving of this Court has to be made as required in rules quoted above. But we can take judicial notice of the fact that in general the said statements were being made in the last paragraph of the petition/application. This being the practice of this Court, in order to attain certainty in this regard which will be to the benefit of the Bench and Bar both, in our opinion, that should be taken to be the rule of this Court. The Supreme Court by applying the maxim *cursus curiae est lex curiae* has taken the view that where the practice has existed, it is convenient to adhere to it because it is the practice. It has also been held that the practice of the Court is the law of the Court (see the case of *C.I.T. v. R.H. Pandit* AIR 1974 SC 2260/Para 6).

8. Accordingly, in our opinion, in the cases covered by the aforesaid standing order No. 6/86 the desired information should be made in Para 2 of the bail application and in all other cases such statements should be made in the last paragraph of the petition/application.

9. Let a copy of the order be sent to the Associations of the lawyers at Patna and at Ranchi as also respective sections of the Court :

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