

Dwarika Pd. Keshari Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Jul-07-2003

Judge : Ravi S. Dhavan, C.J. and R.N. Prasad, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 340

Appeal No. : L.P.A. No. 707 of 2002

Appellant : Dwarika Pd. Keshari

Respondent : The State of Bihar and ors.

Disposition : Appeal allowed

Judgement :

Ravi S. Dhavan, C.J. and R.N. Prasad, J.

1. Today, the events as are recorded on the basis of which the show cause was issued by the order dated 21-4-2003 are accepted. In the normal course, the Court should be issuing notice to the petitioner-respondent No. 7 Qazi Ahmad Azam under Section 340 of the Code of Criminal Procedure, 1973 for not having informed the Court that while an order was rendered on 9th May, 2002 the election to Dumraon Nagar Parishad had already taken place on 28th April, 2002. Thus, the Court was hardly at fault to examine academic issues whether the area concerned should be a Nagar Parishad or a part of a Municipality. But for the fact that counsel for respondent No. 7 Mr. Binod Kumar Singh straightaway

acknowledged that it is fact that election had taken place on 28th April, 2002 and this fact was not brought to the notice of the learned judge hearing the petition on 9th May, 2002, the Court would have issued notice to the respondent-petitioner for suppressing material information from the Court hearing the writ petition. Learned counsel's acceptance of the circumstances at the out set the Court is not taking this matter further.

2. The balance which remains is that not known to the Court the petitioner obtained a judgment from the High Court, in effect, by misrepresentation and this judgment is not binding on any party and will need to be set aside under Section 44

of the Evidence Act, 1872. It is set aside accordingly so that it creates no further complications.

3. The state of the fact is also that at about time when the case was being heard, election had already been announced and, in fact, had taken place for Dumraon Nagar Parishad.

4. It is unfortunate that a petition had been filed to take advantage of back hand politics. The appeal of Dwarika Prasad Keshari succeeds. It also needs to be recorded that the appellant Dwarika Pd. Keshari had not even been made a party in the writ petition. This is worse. This is further suppression of material circumstances for unlawful gain,

5. The appeal is allowed with cost throughout.

6. It needs to be recorded that the Counsel appearing for the respondent No. 7 today is not the counsel who had appeared for the petitioner when the matter was submitted on 9th May, 2002.