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SANJAY KUMAR

v

THE STATE OF BIHAR & ANR.

(Special Leave Petition (Crl.) No.9967 of 2011)

JANUARY 28, 2014

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**[DR. B.S. CHAUHAN, J. CHELAMESWAR AND  
M.Y. EQBAL, JJ.]**

**PLEADINGS:**

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*Complaint for offences punishable u/ss 406 and 420 IPC and s. 138 of Negotiable Instruments Act – Quashed by High Court – SLP by complainant – Notice to petitioner-complainant to show that the institution was a fake one as pleaded by him – Petitioner seeking to ignore such pleadings – Held: Pleadings have to be true to the knowledge of parties and in case a person takes such misleading pleadings, he can be refused not only any kind of indulgence by court but can also be tried for perjury — In case, pleading taken by petitioner is true, he cannot ask for ignoring the same — In case, it is false and as such statement had been made on oath, he is liable to be tried for perjury — More so, whether such a pleading is relevant or not is a matter to be decided by court and u/s 165 of the Evidence Act, 1872, court has a right to ask the party even relevant or irrelevant questions and parties or their counsel cannot raise any objection to any such question — Conduct of petitioner condemned – Code of Criminal Procedure, 1973 — s. 482 — Evidence Act, 1872 – s. 165.*

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**PRACTICE AND PROCEDURE:**

*Advocate-on-Record – Not appearing before Court in spite of directions – Held: In Re: Rameshwar Prasad Goyal, Court has held that in case AOR does not appear in Court,*

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*his conduct may tantamount to criminal contempt of Court – In the instant case, AOR, with impunity was disdainful towards the order of the Court directing him to appear in Court — He had also not filed any appearance for the counsel who had appeared, nor did the said counsel disclose his name — Court takes serious note of the conduct of AOR and warns him to behave in an appropriate manner befitting the conduct of an advocate and an AOR, otherwise Court will take action against him — His conduct will be under close watch of the Court.*

*In Re: Rameshwar Prasad Goyal (2014) 1 SCC 572 – relied on.*

**Case Law Reference:**

**(2014) 1 SCC 572            relied on            para 5**

**CRIMINAL APPELLATE JURISDICTION : Special Leave Petition (Criminal ) No. 9967 of 2011.**

**From the Judgment and Order dated 22.07.2011 of the High Court of Patna in CRLM No. 13116 of 2009.**

**Manu Shanker Mishra for the Appellant.**

**Gopal Singh, Chandan Kumar for the Respondents.**

**The following Order of the Court was delivered**

**O R D E R**

**1. This special leave petition has been filed against the impugned judgment and order dated 22.7.2011, passed by the High Court of Judicature at Patna in Criminal Misc. No.13116 of 2009 quashing the criminal proceedings against the respondent no.2 while allowing the application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.').**

A 2. Facts and circumstances giving rise to this petition are that:

B A. The petitioner claimed to have been appointed by the private respondent no.2 in a fake dental college as a Senior Lecturer for a period of one year and issued 12 post dated cheques for payment of his salary out of which 9 cheques had bounced. The complainant-petitioner sent legal notice to the respondent no.2 but without giving them sufficient time to file a reply, filed a complaint before the Magistrate at Danapur, Patna under Sections 34, 403, 404, 406, 408, 418, 420 and 504 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and under Section 138 of Negotiable Instrument Act, 1881 (hereinafter referred to as 'NI Act').

D B. Learned Magistrate, Danapur vide an order dated 12.5.2008 summoned the private respondent for appearance on 12.6.2008, being *prima facie* of the view that a case under Sections 406, 420 IPC and under Section 138 of NI Act was made out by the petitioner. The private respondent challenged the said order by filing the petition before the High Court which has been allowed vide impugned judgment and order on various grounds, *inter-alia* that there was an agreement between the parties for service for one year and one of the conditions in the agreement was that the petitioner would not resign from the institute till the completion of 3 years. More so, the petitioner did not even give sufficient time to the accused to respond to the legal notice as he filed the complaint within the close proximity of the date of the notice. The High Court also concluded that there was nothing on record to show that the notice had ever been served upon the private respondent and ultimately allowed the said petition on the ground that it was a case of civil nature as it was a matter of recovery of salary.

C. Aggrieved, the petitioner approached this Court making the averment in the petition that accused persons had been running a fake institution and offered the appointment to the

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petitioner on certain terms and in spite of working therein, he was not paid the salary.

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Hence, this petition.

3. In the instant case the counsel appearing in the court for the petitioner designated himself merely as a proxy counsel. The Advocate-on-record (for short 'AOR') had no courtesy to send, at least, a slip mentioning the name of the counsel who has to appear in the court. Thus, in such a fact-situation, we had no advantage even to know the name of the counsel who was appearing in the court.

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4. Earlier, this Court had issued notice to the petitioner himself to show cause that in case it was a fake institution, what was the reason or rationale for the petitioner to join the same and to continue to serve there for one year. In reply to the said show cause notice, the petitioner submitted that such pleadings be ignored and may not be taken into account for the purpose of disposal of the instant petition. We do not see any reason to allow a party to make a pleading in the petition and then make a submission to the court to ignore it as such an issue has no bearing on the merits of the case being totally irrelevant. Pleadings have to be true to the knowledge of the parties and in case a person takes such misleading pleadings, he can be refused not only any kind of indulgence by the court but can also be tried for perjury. In case, the pleading taken by the petitioner is true, he cannot ask for ignoring the same. In case, it is false and as such statement had been made on oath, he is liable to be tried for perjury. More so, whether such a pleading is relevant or not is a matter to be decided by the court and under Section 165 of the Indian Evidence Act, 1872, court has a right to ask the party even relevant or irrelevant questions and the parties or their counsel cannot raise any objection to any such question.

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5. In such a fact-situation, words fail us to condemn the audacity of the petitioner to tell the highest court of the land to ignore the pleadings taken by him.

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A Be that as it may, this Court had insisted at the time of first round of hearing of this case that AOR, Shri Manu Shanker Mishra should remain present in the Court at the time of arguments and also passed over the matter for his appearance. In the second round, it was informed to us that the AOR refused to come to the court. We take a very serious note of the conduct of this AOR, particularly, in view of the judgment of this Court *In Re: Rameshwar Prasad Goyal*, (2014) 1 SCC 572, wherein this Court has categorically held that in case the AOR does not appear in the court, his conduct may tantamount to criminal contempt of the court. In fact, a very few AsOR have spoiled the working system of the institution of AsOR who simply lend their signatures for petty amount. The AOR involved herein is living in a fool's paradise if he thinks that he can play hide and seek with any court of law.

D In such a chaotic situation, any "Arzi", "Farzi", half-baked lawyer under the label of "proxy counsel", a phrase not traceable under the Advocates Act, 1961 or under the Supreme Court Rules, 1966 etc., cannot be allowed to abuse and misuse the process of the court under a false impression that he has a right to waste public time without any authority to appear in the court, either from the litigant or from the AOR, as in the instant case. The AOR, with impunity was disdainful towards the order of this Court directing him to appear in the court. He had also not filed any appearance for the counsel who had appeared, nor the said counsel disclosed his name. The Court takes serious note of the conduct of the AOR, Shri Manu Shanker Mishra and warns him to behave in an appropriate manner befitting the conduct of an advocate and an AOR otherwise this Court will not hesitate to take action against him. His conduct will be under close watch of this Court.

6. With the aforesaid observations, the petition stands dismissed.

R.P.

SLP dismissed.

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