

Braj Kishore Prasad Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Dec-08-1997

Judge : S.J. Mukhopadhaya, J.

Appeal No. : Civil Writ Jurisdiction Case No. 7329 of 1997

Appellant : Braj Kishore Prasad

Respondent : The State of Bihar and ors.

Disposition : Petition Allowed

Judgement :

S.J. Mukhopadhaya, J.

1. This case relates to appointment of respondent (No. 3) Mr. Dhruv Lal Yadav as Special Public Prosecutor at Patna to conduct the Weight and Measurements cases and cases relating to Food Adulteration Act.

2. The brief facts of the case lies in a narrow compass.

Admittedly, the respondent No. 3 was enrolled as an Advocate on 20.11.87 and is a practising lawyer at Patna. He has been appointed as Special Public Prosecutor to conduct the Weight and Measurements Cases at Patna by a letter dated 24.12.1996. By another letter dated 27.5.1997, the said respondent No. 3 has been appointed as Special Public Prosecutor to conduct the cases at Patna

relating to Food Adulteration Act.

According to the petitioner, appointment of respondent No. 3 as Special Public Prosecutor made by impugned orders dated 24.12.96 (Annexure-2) and 27.5.1997 are illegal, he having not completed ten years of practice as an Advocate. The Counsel relied on Sub-section (8) of Section 24 of the Cr.P.C. He also relied on a Division Bench decision of this Court in the case of Shankar Sinha v. The State of Bihar 1994 (1) PLJR 516.

3. According to the respondent State, the respondent No. 3 has been appointed by the order of the then Law Minister and apart from the order of the Law Minister, there was no material on record to verify the requisite tenure of practice of respondent No. 3. Later on, when some of the respondents intimated respondent No. 1 that the respondent No. 3 had not completed ten years of practice, which is the requisite qualification for appointment of Special Public Prosecutor envisaged under Section 24(8) of the Cr.P.C., respondent No. 1 has written letter to the Collector, as well as, learned District and Sessions Judge by letter No.2 214 dated 30.5.97 to send a report whether respondent No. 3 had requisite qualification for appointment as Special Public Prosecutor or not. Reminder has also been given to the Collector, Patna by letter No. 3034 dated 9.8.97. It is further stated that in pursuance of interim order of this Court, appointment has been stayed by letter dated 13.9.97. The respondent-State and its authorities have not denied the fact that the respondent No. 3 has no requisite ten years of practice/experience as a lawyer.

4. According to the respondent No. 3, ten years of experience as a lawyer is not required for appointment of Public Prosecutor to conduct the cases under Food Adulteration Act and/or Weight and Measurements Act. As aforesaid cases are triable by Magistrate, the appointment comes within the purview of Section 25(1) of the Cr.P.C. To conduct the cases under the Special Act triable by Special Court is for all practical purposes amounts to appointment of

Public Prosecutor in terms with Section 24(3) of the Cr.P.C. It is stated that for appointment of Public Prosecutor, a person requires experience/practice as lawyer for only seven years which he fulfils in terms with Section 24(7) of the Cr.P.C.

5. From the pleading made by the parties, it is clear that the appointment of respondent No. 3 has been made as 'Special Public Prosecutor', as distinct from 'Public Prosecutor or Additional Public Prosecutor'. The respondent No. 1, who has issued the impugned orders dated 24.12.96 (Annexure-2) and 27.5.97 (Annexure-1) in his counter-affidavit has accepted that the appointment of respondent No. 3 has been made as a Special Public Prosecutor under Section 24(8) of Cr.P.C. Therefore, it is not open to the respondent No. 3 to give some other explanation to justify the impugned order, as stated to be made under Section 25 and/or Section 24(3) and/or Section 24(7) of the Cr.P.C.

6. While Section 24(3) relates to appointment of Public Prosecutor and Additional Public Prosecutor, Section 24(7) deals with experience/practice as an Advocate require for such appointment. It has nothing to do with appointment of 'Special Public Prosecutor.'

Similarly, Section 25 relates to appointment of Assistant Public Prosecutor as distinct from Special Public Prosecutor which is to be made under Section 24(8) of the Cr.P.C.

In the case of Shankar Sinha (supra) a Division Bench of this Court held that the appointment of Public Prosecutor or Additional Public Prosecutor, is to be made either in consultation with the High Court or on the recommendation of District Magistrate in consultation with the Sessions Judge, depending on the Court for which appointed. It further held that for appointment as Special Public Prosecutor for any case or class of cases, no consultation is required and the Central Government or the State Government is empowered to appoint any one having the requisite qualification.

7. As the present case does not relates to appointment of Public Prosecutor or Additional Public Prosecutor, so no consultation was made in this case, nor it was made on the recommendation of the District Magistrate. It is the respondent No. 1, who has appointed the respondent No. 3 as Special Public Prosecutor though he does not fulfil ten years of practice as an Advocate on the date of appointment.

8. Accordingly, I hold that the appointment of respondent No. 3 made vide impugned letters dated 24.12.96 (Annexure-2) and 27.5.97 (Annexure-1) are illegal, being violative of Section 24(8) of the Cr.P.C.

9. In the result, the writ petition is allowed and the impugned Annexure-1 and 2 are set aside.

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