

(1980) 11 PAT CK 0003

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 965 of 1977

Lakhan Lal

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-11-1980

Acts Referred:

Bihar Police Manual, 1978 — Rule 824
Criminal Procedure Code, 1973 (CrPC) — Section 25, 25(2), 25(3)
Police Act, 1861 — Section 8

Citation : (1992) 2 PLJR 340

Hon'ble Judges : C.S. Sinha, J;B.P. Jha, J

Bench : Division Bench

Advocate : J.N.P. Verma, Vijayeshwar Prasad and Amreshwar Lall, in CWJC 965/1977 and Prabha Shankar Mishra and Janardan Pd. Singh II in CWJC 226/1978, for the Appellant; Daman Kant Jha and Rukmini Kant Choudhary, in CWJC 965/1977 and Zamilur Rahman in CWJC 226/1978, for the Respondent

Final Decision : Allowed

Judgement

B.P. Jha, J.—I shall dispose of these two writ applications by a common judgment as common point arises for consideration in both these writ applications. The common point for consideration in both these applications is whether in view of Section 25 of the Code of Criminal Procedure, 1973, the Inspector-General of Police should control the administration of the Assistant Public Prosecutors or not. It is relevant to quote Section 25 of the Code which runs as follows:

25. (1) The State Government shall appoint in every district one or more Assistant Public Prosecutors for conducting prosecutions in the Courts of Magistrates.

(2) Save as otherwise provided in Sub-section (3), no police officer shall be eligible to be appointed as an Assistant Public Prosecutor.

(3) Where no Assistant Public Prosecutor is available for the purposes of any particular case, the District Magistrate may appoint any other person to be the

Assistant Public Prosecutor in charge of that case:

Provided that a police officer shall not be so appointed-

(a) if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted; or

(b) if he is below the rank of Inspector.

3. On a perusal of Section 25 it is clear that no police officer shall be eligible to be appointed as an Assistant Public Prosecutor. It is also clear that the Assistant Public Prosecutor shall be appointed by the State Government for conducting prosecution in every district. This fact is also clear on reading of Annexure 5 in both the writ applications. Annexure 5 in C.W.J.C. No. 226 of 1978 clearly suggests that the State Government appoints Assistant Public Prosecutors in accordance with Section 25 of the Code of Criminal Procedure. If it is so, these Assistant Public Prosecutors have ceased to be police officers and as such they should not be controlled by the officers of the Police.

4. The Superintendent of Police (vide Annexure 3) has given a black mark to the Petitioner in C.W.J.C. No. 965 of 1977 *Lakhan Lal v. The State of Bihar and Ors.* This can be done only under Rule 824 of the Bihar and Orissa Police Manual, 1978. Since the Petitioner has ceased to be a police officer, the Superintendent of Police had no jurisdiction to give such black mark. Hence, I quash Annexure 3. The State Government will be at liberty to proceed against the Petitioner (in C.W.J.C. No. 965 of 1977) in accordance with law.

5. In view of Section 25 of the Code of Criminal Procedure as well as in view of the observation made by me, the State Government should select any other authority for controlling the Assistant Public Prosecutors other than the Inspector-General of Police. The State Government must appoint the person to control the Assistant Public Prosecutors within three months from the date of receipt of this order. Let a copy of this order be sent to the Inspector-General of Police as well as to the Chief Secretary. During the pendency of appointment of such a person, the Inspector-General of Police will continue to supervise the work of the Assistant Public Prosecutors. The Assistant Public Prosecutors shall only be given the work of conducting the prosecution and the works connected therewith. The case of the Petitioner in C.W.J.C. No. 965 of 1977 for promotion may also be considered by the authorities.

6. In the result, both the writ applications are allowed and I issue a writ of mandamus directing the State Government to appoint a person other than the Inspector-General of Police to control the Assistant Public Prosecutors within three months from the date of receipt of this order. Annexure 3 in C.W.J.C. No. 965 of 1977 is hereby quashed. The case of the Petitioner in C.W.J.C. No. 965 of 1977 for promotion may also be considered by the authorities. Parties shall bear their own costs.

Choudhary Sia Saran Sinha, J. Even prior to the coming into force of the Code of

Criminal Procedure, 1973, on the 1st of April, 1974, there existed a prosecution machinery in the shape of Senior District Prosecutors, District Prosecutors and Assistant District Prosecutors, who were police officers, Section 8 of the Police Act, 1861, being applicable to them. One of the basic ideas behind the enactment of the new Code (Code of Criminal Procedure, 1973) was fair administration of criminal justice. The Code, therefore, envisaged, inter alia, separation of the Executive from the Judiciary as also dissociation of the prosecution agency from the police cadre. Sub-section (1) of Section 25 of the new Code, therefore, envisaged in clear terms that the State Government shall be the appointing authority of the Assistant Public Prosecutors appointed for conducting prosecution in the Court of Magistrates. Whatever might have been the practice in the past, the Parliament laid it down in clear terms in Sub-section (2) of Section 25 of the new Code that save as otherwise provided in Sub-section (3), no police officer shall be eligible to be appointed as an Assistant Public Prosecutor.

8. On the 15th of March, 1978, the State Government in the Home Department, therefore, came out with the instructions as contained in Annexure 5 to the writ application in C.W.J.C. No. 965 of 1977. It laid down clearly that Section 8 of the Police Act, 1861, will not apply to the prosecuting agency as contemplated u/s 25 of the new Code, although as a temporary arrangement it envisaged that such prosecution agency shall be under the administrative control of the Inspector-General of Police. Paragraph six of this letter contemplated of a notification and came out in the shape of Annexure 5 to the writ application in C.W.J.C. No. 226 of 1978, which shows the appointment of the Petitioners as also Ors. mentioned therein as having been made by the State Government. Thus, whatever position was held by the prosecuting agency earlier, the matter assumed altogether a different shape with the coming into force of the new Code and the issue of the notification Annexure 5 to the writ application in C.W.J.C. No. 226 of 1978.

9. The prayer made in C.W.J.C. No. 965 of 1977 was for quashing of Annexure 3 and for issue of necessary directions for considering the case of the Petitioner for his due promotion. One of the punishments to be awarded in appropriate circumstances under Rule 824 of the Bihar and Orissa Police Manual was recording of a black mark, a punishment which has been imposed on the Petitioner in C.W.J.C. No. 965 of 1977. The rules which have been made applicable to the prosecuting agency, as mentioned in Annexure 8 to the writ application do not contain any provision for the recording of any such punishment. This being the position, the punishment recorded against the Petitioner of C.W.J.C. No. 965 of 1977 as contained in Annexure 3, particularly, when it has been passed by the Superintendent of Police, cannot be supported. I, therefore, agree with my learned Brother that Annexure 3 be quashed. Since the allegations made against the Petitioner of C.W.J.C. No. 965 of 1977 are of a somewhat serious nature, as was submitted by learned Government Advocate, the State Government or the competent authority shall be at liberty to take appropriate action against the Petitioner for the alleged lapses, in accordance

with law. The State Government shall, however, consider the case of the Petitioner for promotion in due course, if he deserves it, in accordance with law.

10. Coming to the two Petitioners of C.W.J.C. No. 226 of 1978 and the stand taken by the learned Government Advocate himself, the prayer made by these Petitioners for a direction to the Respondents to fully implement the provisions of Section 25 of the new Code has to be allowed and the same is allowed. Consequently, the State Government shall pass appropriate orders freeing the Petitioners and other prosecuting agencies similarly placed as the Petitioners from the administrative control of the Inspector-General of Police by appointing some other competent authority to exercise administrative control over them, within a period of three months from the date of receipt by the State Government of the directions of this Court as given in this judgment. Till then, the existing arrangement for the prosecuting agencies including the Petitioners being under the administrative control of the Inspector-General of Police shall continue. In view of the observations made above, it is not considered necessary to quash Annexures 4, 7 and 11 at this stage, in C.W.J.C. No. 226 of 1978.

11. The two writ applications are disposed of accordingly.