
(2005) 07 JH CK 0055
In the Jharkhand High Court
Case No : LPA No. 467 of 2005

Pradip Kumar Tiwari and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 26-07-2005

Acts Referred:

Citation : (2005) 3 BLJR 1835 : (2005) 4 JCR 147

Hon'ble Judges : Altamas Kabir, C.J.; R.K. Merathia, J

Bench : Division Bench

Advocate : A. Allam, M. Sohail Anwar, Afasque Ahmad and Altaf Hussain, Sameer Saurav, for informant's son, for the Appellant; M.K. Laik, for the Respondent

Judgement

1. This appeal is directed against the judgment and order of the learned single Judge dated 14.06.2005 dismissing the writ application filed by the appellants herein on the ground that the writ petitioners had no legal right to conduct the proceedings as public Prosecutors.

2. As will appear from, the materials on record the appellants herein were appointed as Special Public Prosecutors to conduct Sessions Trial No. 117/2002 which was initially pending in the Court of Sessions Judge, Siwan and was transferred by the Hon'ble Supreme Court to Ranchi for trial.

3. It appears that an application had been filed by the son of the informant in the Supreme Court for appointment of different Special Public Prosecutors, but the said application was dismissed on 20th December, 2002 on the ground that it had been made in a disposed of transfer application. The son of the informant, thereafter, filed another petition in this Court being WP (Cri) No. 34/2003 which was dismissed on the concession made on behalf of writ petitioner that he had no grievance regarding the manner in which the case was being conducted by the Special Public Prosecutors appointed by the State of Bihar. Claiming that no such instruction had been given to the learned Advocate for making such submission the son of the informant filed a review petition being LA. No.

184/2004 in the disposed of Cr. Writ Petition which was disposed of on 16th April, 2004 with a direction that the order dated 16th January, 2004 by which earlier writ application had been dismissed could not be reviewed nor modified but if the writ petitioner had any grievance against the Special Public Prosecutors who were conducting the case, he could move the lower Court itself which could seek instruction from the State of Jharkhand for doing the needful.

4. Pursuant to such liberty an application appears to have been made before the learned trial Court which referred the matter to the State of Jharkhand in terms of the liberty granted by this Court and the State of Jharkhand, in its turn, removed the writ petitioners/appellants from further conducting the trial and appointed other Special Public Prosecutors in their place. It is the said ordered dated 4th March, 2005 issued under the signature of the learned Secretary, Law Department, Government of Jharkhand which was the subject matter of the writ petition filed by the appellants herein and which the appellants contended was beyond jurisdiction and was liable to be quashed.

5. As indicated herein-above, the learned single Judge was swayed by the fact that the Hon'ble Supreme Court in its order dated 11th February, 2002 passed in Transfer Petition (Cri) No. 394-98/2001 had observed that a different Public Prosecutor should be nominated by the Government. On the basis of the above, the learned single Judge observed that for conducting a fair trial if the Government of Jharkhand appoints a Public Prosecutor and the informant has no objection to the said appointment, then the writ petitioners, who were appointed as Public Prosecutors when the case was pending at Siwan, could not claim as a matter of right to continue as Public Prosecutors for conducting the said case at Ranchi. On the basis of the above, the learned single Judge dismissed the writ application as being devoid of merit.

6. Appearing in support of the appellants, Mr. M.S. Anwar, learned Sr. Advocate firstly urged that when the Hon'ble Supreme Court had been pleased to reject the prayer made on behalf of the informant's son for change of the Public Prosecutors, it was not open either to this Court or to the trial Court to change the Special Public Prosecutors without giving any proper reason for the same. It was also contended by Mr. Anwar that the appellants had been entrusted with three of the five Sessions Trials which were transferred from Siwan to be tried in Ranchi and that the writ petitioners/appellants were continuing to conduct the trial in two of the cases while this matter was pending for judgment. Mr. Anwar submitted that the change of the learned Special Public Prosecutors was at a stage when evidence was being taken and at the present moment the matter was pending for judgment.

7. Mr. Anwar submitted that although the writ petitioners/appellants had no right to claim that they must be allowed to continue with the trial, at the same time, it was not open for the State of Jharkhand to take any action in the matter since the Public Prosecutors were of the State of Bihar.

8. On behalf of the informant's son it was sought to be urged that as far as the matter before the Supreme Court is concerned, the same was dismissed since it had been made in a disposed of transfer petition and not on merit and subsequently this Court granted liberty to the trial Court to refer the matter to the State of Jharkhand, if the allegations made by the informant's son had any element of truth. It was also submitted that application have also been made in other pending trials for removal of the Special Public Prosecutors and that orders were still to be passed on the said application.

9. Mr. Laik who appeared for the State of Jharkhand contended that the State of Jharkhand had acted in consonance with the directions given by this Court in the review petition filed in respect of LA. No. 184/04 filed in W.P. (Cri) No. 34/2003. Mr. Laik was not however, able to satisfy us that the Government of Jharkhand had taken any decision on the merits of the application filed by the son of the informant.

10. Mr. Allam who appeared for the State of Bihar supported the appointment of the writ petitioners/appellants herein which had been made by the State of Bihar and contended that since the State of Bihar was the prosecuting agency the State of Jharkhand ought not to have taken steps to remove the Special Public Prosecutors appointed by the State of Bihar.

11. We have carefully considered the submissions made on behalf of the respective parties, and we are of the view that since the trial has almost been concluded and only judgment is awaited, the interest of justice would be served if the writ petitioners/appellants were allowed to remain associated with the Sessions Trial notwithstanding the order which has been passed by the State of Jharkhand appointing other Special Public Prosecutors in their place.

12. We accordingly direct that the order passed by the learned Secretary, Law Department, Government of Jharkhand dated 4th March, 2005 be modified and the writ petitioners/appellants shall remain in the panel of the Special Public Prosecutors appointed for the said trial.

13. As far as remaining two trials are concerned where applications have also been made by the son of the informant for removal of the Special Public Prosecutors, we reiterate that it would be open to the learned trial Court to take a decision in the matter and if he/she is satisfied as to the contents of the petition filed by the son of the informant, he/she would be at liberty to refer to the Government of Bihar for taking steps in keeping with the allegations made by the son of the informant.

14. We make it clear that we have not gone into nor have decided the question of the competence or otherwise of the appellants/writ petitioners in conducting the Sessions Trial and it would be entirely for the State of Bihar and the son of the informant to take such steps as they may be advised.

15. The judgment and the order of the learned single Judge is modified to the

aforesaid extent. The appeal is disposed of with the aforesaid observations. There will be no order as to costs.