

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22325 of 2014

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1. The Union Of India through the Secretary, Ministry of Information and Broad Casting, Govt. of India, A Wing Shastri Bhawan, Sansad Marg, New Delhi-1.
 2. The Director general, Prasar Bharti Broad Casting Corporation of India, All India Radio, Akashvani Bhawan, Sansad Marg, New Delhi.
 3. The Director General, Prasar Bharti, Broad Casting Corporation of India, Doordarshan Bhawan, Coperniens Marg, New Delhi.
 4. The Director, Prasar Bharti, Broad Casting Corporation of India, Doordarshan Kendra, Chhajubag, Patna-1.

.... Petitioner/s

Versus

1. Shashi Bhushan Mukesh Son of Late Upendra Narayan Sinha, Station Engineer, Prashar Bharti Broad Casting Corporation of India, Doordarshan Kendra, Chhaju Bagh, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Assistant Solicitor General

For the Respondent/s : Mr.Bindhya Keshri Kumar, Sr. Adv. & Mr. S.N.Singh

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 26-11-2015

The present writ application has been preferred by

Union of India in the Ministry of Information and

Broadcasting against the judgment and order dated

06.12.2012 passed by the Central Administrative Tribunal,

Patna Bench, Patna in O.A. No. 07 of 2011, as preferred by

the sole contesting respondent Shashi Bhusan Mukesh. I.A.

No. 8030 of 2015 has been filed on behalf of the petitioner-

Union of India for stay of the judgment and order of the Tribunal. As the sole contesting respondent has appeared and filed a comprehensive counter-affidavit, with consent of parties, we have heard them at length for disposal of the writ application finally.

2.The applicant before the Tribunal (hereinafter referred to as the 'employee') was an Engineer in Doordarshan of Patna. In 1997 a criminal complaint bearing Complaint Case No. 399 (C) of 1997 was filed by one U.K. Sharan, inter alia, alleging that the employee had been married to his daughter, and they had conspired and killed her in the year 1994, but the complaint apparently was in relation to some small altercation that had taken place and not with regard to causing death or any such case. It was a warrant case on the basis of report other than police case. Upon cognizance being taken, warrants were issued and police arrested the employee. As the employee remained in custody for more than 48 hours, he was suspended. Upon his release, his suspension was then revoked. The criminal case



was kept pending for the evidence of the complainant/ prosecution prior to charge. In the meantime, the employee was considered for promotion. The D.P.C. considered the matter and considering that a criminal prosecution was pending against the petitioner, having considered the merits of promotion followed the seal cover procedure and sealed their recommendation to be opened upon conclusion of the criminal proceeding. Thereafter, again the employee became entitled to yet another promotion along with his colleagues. Again, this time sealed cover procedure was followed.

3. In the meantime, in the criminal complaint the complainant, Sri U.K. Sharan, was given repeated opportunities by the court to produce witnesses in support of the prosecution, before charge. In spite of opportunities granted and in spite of undertaking given to the court, no witness was produced by the complainant and accordingly on 1-12-2014 the learned Magistrate, before whom the complaint was pending, closed the prosecution evidence before charge. Having done so, he should have then



proceeded with the matter- either to pass order in terms of Section 245 of the Code of Criminal Procedure, discharging the employee because of lack of evidence, or if he could lay hands on any evidence, justifying framing of charge, then he ought to have proceeded to frame charge and proceed with the trial. He did nothing. The complainant, it appears, then filed a Criminal Revision before the Sessions Court against this order of closure to prosecution evidence before charge. Learned Additional Sessions Judge, who heard the matter, noticing the facts aforesaid, held that the Magistrate was fully justified in closing the prosecution evidence and dismissed the Criminal Revision. Against this, the complainant came to the High Court in an application under section 482 of the Code of Criminal Procedure for setting aside the orders of the learned Magistrate and the learned Addl. Sessions Judge. This Court, again, noticed the aforesaid facts and refused to interfere in the matter. Not deterred, the complainant then approached the Apex Court by filing Criminal Appeal No. 155 of 2008 . The Apex Court



by judgment and order dated 19th March, 2013 clearly held that no case was made out for interference with the order of the learned Magistrate or the learned Addl. Sessions Judge or the High Court and, accordingly, dismissed the Criminal Appeal, noting the fact that the Magistrate had only closed the prosecution evidence. It remitted the records for further proceedings before the Magistrate.

4. In the meantime, the employee having been deprived of his legitimate promotion, moved the Central Administrative Tribunal for, inter alia, a direction to Doordarshan to open the sealed covers and pass appropriate orders granting promotion to him from the date when his immediate juniors were granted promotion. The Central Administrative Tribunal, noticing that, as prosecution evidence had been closed, before charge, no order could be passed in terms of Section 246 of the Code of Criminal Procedure and held that there was no prosecution pending for any criminal charge, as charge had not been framed. It, thus, held that, that being the situation, the employee, who

was the applicant before it, had to be granted promotion after opening the sealed cover. It is this that has brought the Union of India to this Court.

5. On behalf of the Union of India, Sri Sanjay Kumar, Assistant Solicitor General, submits that the Tribunal was wrong in holding, in the facts noticed above, that there was no criminal prosecution pending. Mr. Bindhya Keshri Kumar, learned senior counsel appearing for the employee, the sole contesting respondent, submits that the criminal complaint has been pending since 1997, we are in 2015, and not a single prosecution witness has been examined in support of the criminal complaint. The order of the Magistrate, closing the prosecution evidence, has attained finality by orders of the Apex Court. What more is left? Therefore, we should not interfere with the orders of the Tribunal.

6. Having considered the matter, in our view, Sri Sanjay Kumar, learned counsel for the Union of India, is correct. Closing the evidence of the prosecution is one thing;



closing the case is another. In this case the facts have shown that what has been closed is right of the prosecution to deal the evidence, but the case is still surviving for the final rites to be performed in terms of section 245 of the Code of Criminal Procedure. In case the Magistrate finds that there is no legal evidence available to proceed in the matter ,then in terms of section 245 of the Code of Criminal Procedure, he will have to pass the final orders completing the final the final ceremony of closing the case by an order of discharge. Else, if he has on record the legal evidence to frame charge ,he has the liberty to proceed on the basis of legal evidence to frame charge in terms of Section 246 of the Code of Criminal Procedure,, and proceed with the trial. But, surely it is high time that the Magistrate takes an action in this regard. Sri .Bindhya Keshri Kumar, learned senior counsel appearing for the employee submits that he himself appeared before the trial court on several occasions to persuade the trial court to complete the closing ceremony, but for one reason or the other, the trial court is reluctant to pass final orders. We are



surprised. The Magistrate at this stage has hardly any option. If there is legal evidence to proceed with the trial, then he must frame charge and proceed, and if there is no legal evidence to proceed with the trial, then he must discharge. There is no third option available, as the order closing prosecution evidence has attained finality. We fail to see that why for this small issue the matter is pending for over a decade now.

7. But, the fact remains that the criminal prosecution is pending. If that be so, then, in our view, the Tribunal was not correct in holding that by virtue of order dated 01.12.2004, the prosecution would be deemed to have concluded. Thus, we have no hesitation in setting aside the order of the Tribunal, but while doing so, it would be our duty and in the interest of justice, to direct the learned Judicial Magistrate 1st Class, Patna, before whom the aforesaid criminal complaint is pending, to immediately proceed in accordance with law and pass orders appropriate to the facts of the case, as per the provisions of the Code of

Criminal Procedure preferably within one month of production of a copy of this order before him. In case, there is no court available, it would be the duty of the learned District and Sessions Judge to see that the case is assigned to a working court for further proceedings, as indicated above.

8. With these observations and directions, this writ petition stands allowed.

(Navaniti Prasad Singh, J)

B.K.Roy/-A.F.R.

(Nilu Agrawal, J)

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