

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.899 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 3405 of 2014
Along with
Interlocutory Application No.3766 of 2015**

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Suresh Kumar Sharan @ Suresh Pd. Yadav, son of Sri Nageshwar Prasad, resident of village- Mahesh Chhapra, P.S.- Maker, District- Saran.

.... Petitioner-Appellant/s

Versus

1. The State of Bihar.
2. The Secretary, Dept. of Law, Govt. of Bihar, Patna.
3. The Joint Secretary, Department of Law, Govt. of Bihar, Patna.
4. The District & Session Judge, Chhapra (Bihar).
5. The District Magistrate, Saran, Chhapra (Bihar).
6. The Superintendent of Police, Chhapra.
7. Sri Ravindra Prasad Mandal, Son of Kameshwar Pd. Rai, resident of village- Mahesh Chhapra, P.O. - Baghakoal, P.S.- Maker, District- Saran, Chapra.

.... Respondents- Respondent/s

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Appearance :

For the Appellant : Mr. Dhananjay Mishra, Advocate

For the Respondents-State : Mr. H. S. Roy, A.C. to P.A.A.G-1

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 17-08-2016

Re.: Interlocutory Application No.3766 of 2015

The application is for condonation of delay of 12 days in filing of the present Letters Patent Appeal.

2. For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, we condone the delay in filing of the present Letters

Patent Appeal.

3. Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No.899 of 2015

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 7th of January, 2015 whereby, the challenge to the communication dated 29th of January, 2014 cancelling the appointment of the appellant as Special Public Prosecutor remained unsuccessful.

2. The appellant applied for appointment as Special Public Prosecutor and in his bio-data, he did not disclose that he is an accused in any criminal case, though there was a requirement to disclose pendency of criminal cases and, if pending, to give the details.

3. Admittedly, the appellant stands acquitted vide judgment dated 01.06.2007. It is on the said basis, the assertion of the appellant is that he correctly answered in negative while responding to column no.8 in the application form that he is not involved in any criminal case.

4. Learned Single Bench dismissed the writ petition for the reason that in response to a question in the application form, the appellant has not given a correct information which amounts to suppression of material facts. Therefore, the impugned order does not suffer from any infirmity and warrants no interference.

5. The column no.8 in the application form is as to whether



there was any criminal case instituted against the applicant and, if any, to give the details. Therefore, the information required was not only of a pending case, but of involvement in any criminal case at any point of time. Since the appellant has not disclosed the material particulars in the application form, therefore, the cancellation of the appointment of the appellant as Special Public Prosecutor is in public interest. A person, who was involved in a criminal case and does not disclose such fact and suppresses the material facts, is not entitled to be Public Prosecutor and thus any relief from equitable jurisdiction of this Court.

6. The appellant is not a lay man. He is a trained member of the Bar. As an advocate aspiring to be a Special Public Prosecutor, he cannot be permitted to say that he has not understood the import of the requirements in the application form. He is guilty of suppression of material facts.

7. Learned counsel for the appellant refers to Supreme Court judgment reported as Commissioner of Police vs. Sandeep Kumar, 2011 (2) PLJR 196 (SC).

8. The said judgment has no applicability to the facts of the present case as the Supreme Court was seized of an appointment as constable whereas the appointment of the appellant is not against a civil post, but on a contractual employment to represent the State as a Special Public Prosecutor. The contractual employment does not have

an enforceable right at par with a person claiming appointment to a civil post. Therefore, on the basis of the aforesaid judgment; the appellant cannot claim any right to work as Special Public Prosecutor.

9. Consequently, we do not find any error in the order of the learned Single Bench which may warrant interference in the Letters Patent Appeal. The same is, therefore, dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

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