

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11318 of 2016

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Bimal Kumar Mandal, S/o Late Fuldeo Mandal, R/o Mohalla- Shastri Nagar, PS-K. Hat, District- Purnea.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary to the Govt., Law Department, Govt. of Bihar, Patna.
2. The Joint Secretary, Law Department, Govt. of Bihar, Patna.
3. The District Magistrate, Purnea.
4. Maharana Pratap Singh 'Kuswaha', Incharge Public Prosecutor, Purnea.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mukesh Kumar Jha, Adv.

For the Respondent/s : Mr. Jitendra Kumar Roy-1, SC-13
Mr. Hitesh Kumar, AC to SC-13

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 11-05-2018

The petitioner has prayed for issuance of an appropriate writ, order or direction for quashing the order bearing Memo No.3971 dated 28.6.2016 issued under the signature of the Joint Secretary, Law Department, Government of Bihar, a copy of which is impugned at Annexure 4, whereby the petitioner has been removed from the post of Public Prosecutor, Civil Court, Purnea.

While it is argued by Mr. Mukesh Kumar Jha, learned counsel appearing for the petitioner that in a manner similar to that as adopted in the case of **Manzer Hassan Khan**, Public Prosecutor, Nalanda and **Gajendra Prasad**, Public Prosecutor, Patna that the petitioner has also been removed, as per learned State Counsel, the petitioner failed to effectively oppose the bail of one Awadhesh



Mandal because he had appeared for the said accused as a private practitioner and thus he should not have appeared in the case as a Public Prosecutor.

Learned counsel for the petitioner has relied upon the opinion expressed by this Court in the case of **Manzer Hassan Khan** arising from **CWJC No.10661 of 2017** and in the case of **Gajendra Prasad** arising from **CWJC No.13876 of 2017** which two matters were disposed of by a common judgment dated 26.2.2018 and a copy of which was placed on record through I.A. No.2894 of 2018.

According to Mr. Jha, learned counsel appearing for the petitioner, the case of the petitioner is squarely covered by the judgment of this Court in the case of **Manzer Hassan Khan** (supra) as in a similar manner and simply because, despite opposition of the petitioner, the learned Sessions Judge granted bail to Awadhesh Mandal that the petitioner has been sacked from the post of Public Prosecutor.

It is taking note of the contentions advanced by Mr. Jha and while observing that a failure or success in a judicial proceeding cannot be a yardstick for retention/termination of a Public Prosecutor that the Law Secretary and the District Magistrate, Purnea were directed to individually file their affidavit and which



has since been filed.

It is in reference to the affidavit that Mr. Jitendra Kumar Roy, learned Standing Counsel No.13 has submitted that the case of the present petitioner is distinct from the case of **Manzer Hassan Khan** (supra) and **Gajendra Prasad** (supra) inasmuch as it is taking note of the numerous complaints of collusion and misuse of the post by the petitioner that the District Magistrate, Purnea was constrained to take this extreme step. Mr. Roy while accepting that a success or failure in a judicial proceeding cannot influence such decision submits that the case of the petitioner is very serious for the recommendation of the District Magistrate contains the reason for the extreme action so taken.

I have heard learned counsel for the parties and I have perused the records and I would be fair enough to record that initially this Court got swayed by the submissions of Mr. Jha, learned counsel appearing for the petitioner to direct the Law Secretary and the District Magistrate, Purnea to file their individual affidavits and perhaps it was in the right direction because it is only on the filing of the affidavits by the two authorities that the seriousness of the allegation which otherwise appear innocuous has surfaced. The two authorities i.e. the Law Secretary as well as the District Magistrate, Purnea being conscious of the opinion



expressed by this Court in the case of **Manzer Hassan Khan** (supra) have demonstrated that the case of the petitioner is on a completely different pedestal inasmuch as there are several instances reported of the misuse of the post of Public Prosecutor by the petitioner. It is reported that while in the case of **Manzer Hassan Khan** (supra) and **Gajendra Prasad** (supra), the two Public Prosecutors have given explanation to the charge, no amount of explanation can dilute of the seriousness of the charges faced by the petitioner.

The pleadings on record would transpire that the petitioner had defended Awadhesh Mandal in a series of criminal cases as a private lawyer and thus the objection by the State is well taken that propriety demanded the petitioner, not to appear in the case of the said accused rather to transfer the matter to the Additional Public Prosecutor. The details of the cases in which the petitioner appeared in support of Awadhesh Mandal have been given at paragraph 6 of the supplementary counter affidavit filed on behalf of the respondent nos.1 and 2 and which confirms that the petitioner had appeared for the said accused Awadhesh Mandal in Bhawanipur P.S. Case No.31 of 2000, Bhawanipur P.S. Case No.63 of 2000, Bhawanipur P.S. Case No.30 of 2000, Sessions Trial No.1430 of 2006 and Sessions Trial No.1131 of 2007. Thus in not less than five



cases that the petitioner had appeared for the said accused Awadhesh Mandal.

The details of the cases defended by the petitioner lends credence to the opinion formed by the respondent-State that the petitioner should have transferred the matter to the Additional Public Prosecutor for even if the discretion is of the court concerned whether or not to grant bail to the accused, the conduct of the lawyer concerned has to be above board and transparent which relevant facet is missing in the present case.

The other aspect of the matter is a complaint by One Sonia Devi, informant in Bhawanipur P.S. Case No.51 of 2005 which case was instituted for the murder of her husband Chanchal Paswan. A specific charge has been made by the informant Sonia Devi that at the instance of the petitioner, the prosecution witnesses were being harassed and tortured. A copy of the complaint is at Annexure 'A' to the counter affidavit of the District Magistrate, Purnea.

The third aspect of the matter is the complaint by the Additional Public Prosecutor, Pushplata Kumari as regarding the partial conduct of the petitioner.

The last of the document which persuades this Court not to interfere with the decision put to challenge, is the recommendation



of the District Magistrate, Purnea as contained in letter no.1792 dated 8.6.2016 at Annexure 5 and which is self contained to put an end to the challenge by the petitioner to the impugned order for it succinctly discusses the reasons for the order of removal which are sound and justifiable.

A cursory glance to the discussions of the District Magistrate as present in his letter dated 8.6.2016 at Annexure 5 would confirm that there is absolutely no connection in between the issue raised herein and the issues which was subject matter of the decisions in **Manzar Hassan Khan** (supra) and **Gajendra Prasad** (supra) for the removal herein is on sound reasons which can neither be held arbitrary nor an intrusion in the independence of the profession.

The writ petition is dismissed. The interlocutory applications are disposed of.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
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