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CRA-D-820-2019 (O&M)

PATIALA JATINDER SINGH @ SONU
V/S
STATE OF PUNJAB

Present: Mr. Rana Gurtej Singh, Advocate (Amicus Curiae).

Mr. H.S.Deol, Sr. DAG, Punjab.

Mr. Sharan Sethi, Addl. A.G.Haryana.

On the last occasion, the case was adjourned so that the States may assist the Court through public prosecutor in terms of Section 24 Cr.P.C. (now Section 18 of the BNSS Act, 2023). However, today counsel appearing on behalf of the Advocate General, Punjab expressed inability to assist in terms of Section 18 of the BNSS Act, 2023, as there is no notification issued till date. The learned counsel appearing for the State of Haryana states that a list of counsel is being prepared by the Advocate General, Haryana for being notified as public prosecutor and Additional Public Prosecutor under Section 18 of the BNSS Act, 2023.

Section 18 of the BNSS Act, 2023 Act provides as under:-

“18. (1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or the State Government, as the case may be:

Provided that for National Capital Territory of Delhi, the Central Government shall, after consultation with the High Court of Delhi, appoint the Public Prosecutor or Additional Public Prosecutors for the purposes of this sub-section.

(2) *The Central Government may appoint one or more Public Prosecutors for the purpose of conducting any case in any district or local area.*

(3) *For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district:*

Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.

(4) *The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district.*

(5) *No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under sub-section (4).*

(6) *Notwithstanding anything contained in sub-section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre:*

Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment, that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub-section (4).

(7) *A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub-section (1) or sub-section (2) or*

sub-section (3) or sub-section (6), only if he has been in practice as an advocate for not less than seven years.

(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor:

Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section.

(9) For the purposes of sub-section (7) and sub-section (8), the period during which a person has been in practice as a pleader, or has rendered (whether before or after the commencement of this Sanhita) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an advocate.”

From the perusal of the concerned provisions of the Act, it is apparent that in the absence of notification and nomination in terms of the aforesaid Section, no counsel can appear and argue criminal cases especially appeals which are in continuation of trial. The criminal appeals would therefore be adjourned till counsel are duly notified in terms of Section 18 of the BNSS Act, 2023.

Copy of this order be sent to the Registry to not list criminal appeals before the Court till list of counsel appearing for State of Punjab is notified. It is pointed out by the counsel appearing for the State of Haryana that there are total 11 Advocates who have been notified as public prosecutors. However based on the said notified list of Advocates, DAG Haryana states that he is ready to assist this Court.

Registry is directed to supply copy of this order to the O/o Advocate General, Haryana to list all the criminal appeals of State of

Haryana, which can be taken up for hearing or for suspension of sentence application.

It is expected that steps shall be taken by the State of Punjab to notify the public prosecutors in terms of Section 18 of the BNSS Act, 2023 as soon as possible, as the same is halting the adjudication of the criminal appeals.

(SANJEEV PRAKASH SHARMA)
JUDGE

25.09.2024
Simranjeet

(SANJAY VASHISTH)
JUDGE