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**(2002) 08 JH CK 0052**

**Jharkhand High Court**

**Case No:** LPA No. 150 of 2000 (R)

State of Bihar and Others

APPELLANT

Vs

Javed Shaukat

RESPONDENT

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**Date of Decision:** Aug. 14, 2002

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 120, 363, 366A, 376

**Hon'ble Judges:** S.J. Mukhopadhaya, J; Lakshman Uraon, J

**Bench:** Division Bench

**Advocate:** R.R. Mishra, for the Appellant; Sheela Prasad, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

1. The writ petitioner-Javed Shaukat was in the services of the appellant-State of Bihar as a literate constable. During the relevant time, in the year 1993 he was assigned the job of bodyguard of Additional Chief Judicial Magistrate, Khunti, On 13th October, 1993, one FIR was lodged against him at the Gumla Police Station by one Shailesh Kumar Singh alleging, inter alia, that his sister, namely, Anita Kumari was kidnapped by one Umer Khan, a driver of the bus. In course of the investigation, it was found that an offence u/s 376, IPC was committed and the involvement of petitioner Javed Shaukat also came to light. The petitioner was charge-sheeted under Sections 363, 366-A and 376/120-B of the Indian Penal Code.

2. The petitioner requested to stay the departmental proceeding, as for the same set of charge and on the basis of same evidence, criminal case was instituted and pending before a competent criminal Court. However, such prayer was not accepted. The departmental proceeding held in respect of criminal offence, i.e. charge under Sections 363, 366-A, 376/120-B, IPC and on the basis of enquiry report the petitioner was dismissed from service vide District Order No. 1069/97 dated 14th May, 1997/ 4th June, 1997.

3. In the criminal case, for same set of charges under the IPC and on the basis of same set of evidence, the petitioner was acquitted vide judgment dated 10th July, 1997 passed by the learned Additional Sessions Judge, Gumla in S.T. No. 1/95.
4. The petitioner-Javed Shaukat preferred appeal and brought to the notice of the authorities that he was punished in the departmental proceeding in respect to criminal offence under Sections 363, 366-A, 376/120-B, IPC, with respect of which he has been acquitted by competent Court of criminal jurisdiction vide judgment dated 10th July, 1997. The appeal was dismissed vide order dated 13th May, 1997 followed by rejection of revision application, as was preferred by him, vide order dated 27th March, 1999.
5. The question relating to simultaneous continuance of departmental enquiry vis-a-vis criminal proceeding for same set of offence/charges fell for consideration before the Supreme Court in [Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another](#), . In the said case the Court held that the scope of two proceedings being different, they can be continued independently. However, taking into consideration the fact that both the proceedings were for same charges based on same set of facts which were sought to be proved by the same evidence, the Supreme Court held that the finding recorded against the said appellant in the departmental enquiry could not be sustained, he having been acquitted by a competent Court of law on the same set of evidence.
6. In the present case, the charges in the department proceeding related to criminal offence under Sections 363, 366-A, 376/120-B, IPC. It was based on the evidence such as the FIR in Gumla P.S. Case No. 231/93, statement of one Sumita u/s 164, Cr PC, the letter of S.P. Gumla contained in Memo No. 247 dated 7th February, 1994 and the report of Inspector Rajendra Kumar Das dated 13th January, 1994 as were cited in the charge-sheet. Complainant Sumita was not examined, but on the basis of FIR, statement u/s 164, Cr PC and letters and report, the petitioner was held guilty. For the same charges as a criminal proceeding was pending before a competent Court of law, it would have been desirable for the disciplinary authority to await the decision of the Court. In any case, the accused petitioner-Javed Shaukat having been acquitted in the criminal case for same set of charges, the appellate/revisional authority should have recalled the order of punishment.
7. The learned single Judge taking into consideration aforesaid facts and the decision of the Supreme Court aforesaid, having allowed the writ petition, we find no reason to differ with the finding.
8. The letters patent appeal is, accordingly, dismissed. However, in the facts and circumstances of the case, there shall be no order, as to costs.