

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2130 OF 2014

Umaima K. Chitawala

..Petitioner

v/s.

The State of Maharashtra & Ors.

..Respondents

Mr. A.P.Mundargi, Sr. Advocate a/w. Mr. Prakash Naik I/b. Ganesh Bhujbal for the Petitioner.

Mr.S.K.Shinde, APP a/w. J.P.Yagnik, APP for the Respondent/State.

Mr.Mahesh Jethmlani a/w. Chaitra Pawar, Jagdish Choudhary, Krishna Raja, Hriday Khurana, Ranveer Shereawat i/b. L.J.Law for the Respondent No.2

CORAM : RANJIT MORE &

SMT. ANUJA PRABHUDESSAI,JJ.

DATED : FEBUARY 4, 2015.

P.C.

1. Heard Mr.Mundargi learned Counsel for the petitioner, Mr. Jethmalani, for the respondent no.2 and Mr. Shinde, PP for the State.

2. This petition under Article 226 is filed challenging the appointment of respondent no.4 as Special Public Prosecutor for appearing in Special Case No. 193 of 2009, pending before the Sessions Court at Mumbai. The said sessions case arises out of C.R.No.125 of 2007 and the said C.R. is filed against the petitioner

for the offence punishable under Section 304(ii) 337 and 288 of IPC.

3. Mr.Mundargi challenges the order impugned mainly on two grounds. Firstly, the respondent no.2 at whose instance the Spl. Public Prosecutor is appointed is the witness and not a aggrieved party, and secondly that the respondent no.4 previously appeared in civil proceeding on behalf of the respondent no.2. Therefore, he is not an independent person.

4. Mr. Jethmalani, learned Senior Counsel and Mr. Shinde, learned PP on the contrary opposed the petition vehemently. It was submitted that the petitioner being an accused has no locus to challenge the appointment of the respondent no.4 as Special Public Prosecutor. They relied upon the decision of Apex Court in State of Maharashtra vs. Prakash Pralhad Patil & Ors. (2009) 12 SCC 159 and the Division Bench decision of this Court in Writ petition No.1061 of 2014. In this regard it was also submitted that the fact that the respondent no.4 earlier appeared on behalf of the respondent no.2 is not a ground to question his appointment as Special Public Prosecutor. In the last they submitted that the respondent no.2 is victim, inasmuch as he is owner of the property

and he has sustained loss because of the falling of the building in question.

5. Having considered the rival submissions and having gone through the impugned order along with the decision cited at bar, we are not inclined to interfere into this petition . In the case of Prakash Pralhad Patil (supra) the Apex Court considered the scope of judicial review in the matter of appointment of Special Public Prosecutor. In para 5 the Apex Court has held thus:

“ 5. The scope for judicial review has been examined by this court in several cases. It has been consistently held that the power of the judicial review is not intended to assume a supervisory role or don the robes of the omnipresent. The power is not intended either to review governance under the rule of law nor do the courts step into the areas exclusively reserved by the *suprema lex* to other organs of the State. A mere wrong decision, without anything more, in most of the cases will not be sufficient to attract the power of judicial review. The supervisory jurisdiction conferred upon a court is limited to see that the authority concerned functions within its limits of its authority and that its decisions do not occasion miscarriage of justice.”

The Apex Court in para 7 held that the appointment of Special Public Prosecutor to conduct a proceeding does not any way cause prejudice to the accused in the facts and circumstances of that case.

6. A similar question was arisen before the Division Bench of this court in Writ Petition No.1061 of 2014. In this case also appointment of Special Public Prosecutor was challenged. The Division Bench of this Court relied upon the decision of the Apex Court in case of Prakash Pralhad Patil (Supra) and especially the observations made in para 7 therein and dismissed the petition.

7. As regards petitioner's contention that the respondent no.4 previously appeared for respondent no.2 is concerned, the same is also devoid of any substance in the light of observations of the Division Bench of this Court in Omprakash Baheti vs. State of Maharashtra & Ors. 2006 ALL MR (Cri.)1339. Arguments similar to the present case was advanced and while refuting the argument the Division Bench held in para 18 thus :

“18. The next argument advanced by Mr.Madkholkar is regarding the appearance of Advocate Gupta on behalf of the complainant even prior to his appointment as Special Public Prosecutor. In our opinion, the mere fact that Advocate Gupta had appeared on behalf of the complainant prior to his appointment to assist the public prosecutor does not bar respondent no.1 from appointing him as Special Public Prosecutor in the case. The records disclose that there has been application of mind by respondent no.1 before appointing Advocate Gupta as Special

Public Prosecutor and therefore, it cannot be said that respondent no.1 has appointed Advocate Gupta as Special Public Prosecutor mechanically at the request of the complainant. No doubt it is expected of Advocate Gupta who has been appointed as Special Public Prosecutor in the case to discharge his duties in the true spirit and in the manner expected of the Special Public Prosecutor.” ..

We are fully in agreement with the view expressed by the Division Bench in the case of Omprakash Baheti.

8. Mr.Mundargi learned Counsel for the petitioner could not point out anything to show that the interest of the petitioner who is an accused in the above referred CR is prejudiced by appointment of Respondent no.4 as Special Public Prosecutor. We expect that the respondent no.4 will discharge his duty in the true spirit in the manner expected of a Special Public Prosecutor.

9. In the light of the above discussion we find no merit in the petition. Same is dismissed.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)