

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

CRIMINAL WRIT PETITION NO. 4297 OF 2014

Sou. Anuradha Sunil Varma

.. Petitioner

v/s.

The State of Maharashtra & Ors.

..Respondents

Mr. V. M. Thorat i/b S.B. Thorat for the petitioner

Mr. S.K. Shinde, PP a/w Mr. K.V. Saste, APP for the
respondent State

**CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED : 11th FEBRUARY, 2015.

P.C.

1. Heard Mr. Thorat, learned Counsel for the petitioner and Mr. Saste, learned APP for the respondent State. Rule. Rule made returnable forthwith. By consent, petition is taken up for final hearing.

2. By this petition under Article 226 of the Constitution of India, petitioner seeks to challenge the order, dated 14th October, 2014 passed by the respondent no.2, whereby the petitioner's application for appointment of the Special Public

Prosecutor in Sessions Case No.543 of 2008, pending on the file of learned Sessions Court at Pune has been rejected.

3. The petitioner who is the complainant and the mother of the deceased Indrajit alias Jeevan, had made an application for appointment of Special Public Prosecutor. She had proposed the name of Advocate B.A. Aloor, to be appointed as Special Public Prosecutor. The respondent no.3, the Desk Officer in Law and Judiciary Department had directed the petitioner to obtain the consent of the advocate and submit his fee structure. The petitioner was also required to state whether she was willing to pay the legal fees. The petitioner had conveyed to the Respondent no.3 that Shri. B.A. Aloor had given his consent and that she was willing to bear the expenses of the Special Public Prosecutor. The Government subsequently rejected the application by the impugned order on the ground that in view of the principles laid down by the Apex Court in the case of ***Mukul Dalal and Ors. Vs. Union of India & Ors. (1988) 3 SCC 144***, the case was not fit for appointment of Special Public Prosecutor.

4. Learned Counsel for the petitioner has urged before us that the accused Laxman Ghadge is a Senior Advocate from Pune Bar and at the relevant time, he was the President of Pune Bar Association. Relying on the observations made by the learned Single Judge of this court in Criminal Revision Application No.280 of 2010, he has submitted that the accused Laxman Ghadge was discharge by the learned Sessions Judge, Pune as the learned APP, who was entrusted with the case, had not brought the relevant facts to the notice of the Judge. Learned Counsel for the petitioner has further submitted before us that the charge was framed against Laxman Ghadge in his absence and that the public prosecutor was not aware of the said fact, till the next date of hearing. Learned Counsel for the petitioner, therefore, submits that considering the position of the accused, the petitioner apprehends that the public prosecutor may not discharge the duties properly and that she would not get justice.

5. Shri. Saste, learned APP has submitted that the provisions of Rule 22 of the Maharashtra Law Officers (Appointment, Conditions of Service and Remuneration)

Rules, 1984, do not cover the present case. He has further submitted that the case does not invoke public interest and the nature of the crime does not warrant appointment of Special Public Prosecutor. Referring to the affidavit of Mr. V. G. Bist, Legal Advisor-cum-Joint Secretary to Government, Law and Judiciary Department, Mantralaya, Mumbai, learned APP has submitted that Advocate Shri. B.A. Aloor, whose name was proposed by the petitioner for appointment of Special Public Prosecutor, usually represents the accused in criminal cases and that it would not be proper to appoint him as a Special Public Prosecutor.

6. The facts of the present case reveal that the petitioner herein is the mother of the deceased Indrajit alias Jeevan. She had lodged the FIR alleging that her son, who was a student of XII standard, was in love with the daughter of the accused Laxman. The accused Laxman did not approve of the said relationship and threatened her son to sever his relationship with his daughter. The son of the petitioner did not return home on 02/7/2002 and subsequently his body was found in some bushes on 11/7/2002.

7. The petitioner apprehended that the accused Laxman had hatched a criminal conspiracy to murder her son. She therefore lodged a complaint against the accused Laxman and other unknown accused for committing murder of her son. Pursuant to the said FIR, Crime No. 67 of 2007 under sections 302, 201 and 120-B IPC came to be registered against the accused and other unknown persons. In the course of the investigation, the accused Laxman and other accused involved in the crime were arrested. Upon completion of the investigation, charge-sheet was filed and the case was subsequently committed to the Sessions Court, Pune.

8. The Petitioner vide application dated 19.05.2015 filed before the Principal Secretary, Law and Judiciary, Mantralaya, Mumbai requested to engage Advocate B.A. Aloor as a Special Public Prosecutor to prosecute the Sessions Case No.543 of 2008. The petitioner had alleged that the accused were on bail and that Laxman Ghadge, who is an advocate of Pune Bar and the ex-President of Pune Bar Association, was in

position to influence to investigating agency.

9. The petitioner had alleged that the investigating agency through the Public Prosecutor had helped Laxman Ghadge to get an order of discharge. She had brought to the notice of the Principal Secretary that the learned Single Judge of this Court had held that the investigation was misdirected and had set aside the said order of discharge. She had further alleged that the accused are influential persons and had expressed apprehension that she would not get a fair trial and justice. She had therefore, requested to engage advocate B.A. Aloor, as a Special Public Prosecutor. In compliance with the instructions, she had given the consent letter of Advocate B.A. Aloor, and had further agreed to bear the expenses.

10. The request of the petitioner was rejected by the impugned order dated 14th October, 2014 mainly on the ground that the request does not fit in the guidelines laid down by the Apex court in the case of ***Mukul Dalal & Ors. Vs. Union of India & Ors. (1988) 3 SCC 144***, Mukul Dalal. In the said case the Apex Court, while holding Rule 22 of

Maharashtra Law Officers (Appointment, Conditions of Services and Remunerations) Rules 1984 as bad and directing the State to modify the same, has held that “ ... When an application for the services of a Special Public Prosecutor or an Assistant Public Prosecutor is made in a given case the power would be vested in him (remembrance of legal affairs) to examine the facts and take decision as to whether the case merits the appointment of a Special Public Prosecutor or an Assistant Public Prosecutor. It would not be appropriate to accept the position that whenever an application is made it should be allowed and the Special Public Prosecutor should be appointed; this would be contrary to the spirit of the scheme of code. ... We are inclined to observe that the request for appointment of the Special Public Prosecutor should be properly examined by the Remembrance of Legal Affairs and only when he is satisfied that the case deserves the support of a Public Prosecutor or a Special Public Prosecutor that such a person should be appointed to be in charge of the case.The Remembrancer of Legal Affairs should scrutinize every request, keeping a prescribed guideline in view and decide in which cases such

request should be accepted, keeping the facts of such case in view.”

11. In keeping with the conclusions of the Apex Court in the said case, the State of Maharashtra amended the said Rule and Rule 22 as applicable today reads thus :-

"22. Engagement of Special Public Prosecutor.-(1) The Government in the Law and Judiciary Department, either suo motu, or on the request of any aggrieved party or the concerned Department in the Government, may, engage an Advocate who has been in practice as an Advocate for not less than ten years, and having regard to his general repute, legal acumen and suitability, by appointing him, as a Special Public Prosecutor in any criminal case or class of cases, as the case may be:

Provided that, no order under this sub-rule regarding appointment of a Special Public Prosecutor shall be made unless, for the reasons to be recorded in writing, the Remembrancer of Legal Affairs is satisfied, having regard to the nature of the case, gravity of the matter and public interest involved in the matter that such appointment is necessary.

(2) On the request of a private complainant not being the aggrieved party, the Government in the Law and Judiciary Department may, appoint any of the Public Prosecutor or Additional Public Prosecutor as a Special Public Prosecutor in accordance with the provisions of sub-rule (1), for conducting any such case.

(3) Fees for such Special Public Prosecutor, appointed under sub-rule (1) or (2), may be borne by the Government or the aggrieved party or the private complainant, as may be directed by the Remembrancer of Legal Affairs;

Provided that, in cases where the aggrieved party is, a Bank or an Institution or Trust or the like, the fees shall be borne by such aggrieved party;

Provided further that, the amount of the fees to be paid to such Special Public Prosecutor, shall be deposited with the Government in the Law and Judiciary Department first, and the same shall be paid by it to such Special Public Prosecutor on completion of the trial, unless directed otherwise by the Remembrance of Legal Affairs."

12. A bare reading of the said rule makes it clear that the State is empowered to engage, either suo motu or on an application of any aggrieved party, an advocate with not less than ten years practice as a special public prosecutor having

regard to his general reputation, legal acumen and suitability. Proviso to this rule as well as the dictum in the case of Mukul Dalals requires the Remembrancer to examine the facts of the case and record his reasons in writing about his satisfaction on the necessity of such appointment; having regard to the nature of the case, the gravity of the matter and public interest involved in the matter.

13. In the instant case, the impugned order is bereft of reasons. It does not indicate that the Remembrancer of Legal Affairs had examined the facts of the case or that he had considered the allegations made by the petitioner. In short the Remembrancer of Legal Affairs had not complied with the mandate of the Apex court and had perfunctorily rejected the application stating that the same does not meet the guidelines laid down by the Apex court, without pointing out as to which of the guidelines are not met.

14. Be that as it may, in the affidavit in reply Mr.V.G. Bist, Legal Advisor-cum-Joint, Secretary to Government, has stated that on receipt of the said application, the petitioner was

requested to inform whether Advocate B.A. Aloor is having experience of criminal cases or otherwise. The Legal Advisor-cum-Joint Secretary to Government had also called for a report from the Public Prosecutor as regards the appointment of a Special public prosecutor as well as the nature and status of the case. It is stated that the Public Prosecutor had reported that the matter was at the stage of trial and had opined that it would not be appropriate to engage Advocate B.A. Aloor as a Special Public Prosecutor as he usually conducts cases on behalf of the accused.

15. The Legal Advisor has further stated in his affidavit that the matter does not involve public interest and the nature of the case does not warrant appointment of Special public prosecutor. It is stated that the Special Public Prosecutor cannot be appointed for mere asking or on a mere apprehension that the public prosecutor may support the accused or because the petitioner is ready to pay the fees of the Special Public Prosecutor.

16. We are conscious of the fact that the request of

appointment of Special Public Prosecutor cannot be granted as a rule and that such request can only be entertained in exceptional cases, having regard to the nature of case, gravity of the matter, and the public interest involved. It was therefore necessary for the respondent no.3 to first examine the facts and decide whether the case merits the appointment of a Special Public Prosecutor and if so satisfied, to decide about the suitability of the advocate to be engaged as a Special Public Prosecutor, having regard to the years of practice, his reputation and legal acumen.

17. In the present case, the petitioner is the mother of the deceased. Pursuant to the complaint lodged by her crime was registered against the accused for the offences punishable under Sections 302, 201 and 120-B of the IPC. The case cannot be categorized as a 'private or personal dispute' merely because the petitioner is the mother of the deceased. Murder, which is an offence punishable under 302 IPC is a crime against the society and when not properly investigated and tried, has the potentiality of posing serious threat to law and order and the security of the State and society at large.

Shoddy or lackadaisical investigation and mock trial of such cases therefore do involve an element of public interest.

18. It is not in dispute that one of the accused is a senior advocate of Pune Bar and at the relevant time, he was the President of Pune Bar Association. The petitioner had expressed apprehension that in view of the high position of the accused, the Public Prosecutor may not discharge the duties properly and that she may not get justice. The petitioner had also stated that the observations made by the learned Single Judge in Revision Application No. 280 of 2010 disclosed that the accused Laxman was discharged as the learned Counsel for the applicant had not brought all the material to the notice of the learned Sessions Judge.

19. The petitioner has produced the copy of the order dated 15/10/2010 passed by the learned single judge of this court in Criminal Revision No.280/2010. A perusal of the said order reveals that the Sessions judge had allowed the discharge application filed by the accused Laxman mainly on the ground that the prosecution had not produced the call

details pertaining to the communication immediately before or after the events. While setting aside the order of the trial court the learned Single Judge had observed that the said finding was nothing but a surmise, as such contact details were available on record. The observations made by the learned Single Judge in the said order indicate that the entire material on record, more particularly, the material as regards the call details were not brought to the notice of the learned Sessions Judge while dealing with the application for discharge. The learned Single Judge has also observed, "In the instant case, undefended shattered mother was trying pillar to post for justice. The investigation was misdirected and whenever benefit could be given to accused no.1, it was so extended." These observations indicate that the apprehensions of the petitioner were not baseless.

20. The affidavit filed by the respondent no.3 does not indicate that he had examined the facts of the case and considered the seriousness and the gravity of the offence. The respondent had also not considered the allegations made by the petitioner and the findings of the learned single judge.

The respondent no. 3 did not decide whether there was any merit in the allegations made by the petitioner especially in view of the observations made by the learned single judge of this court. In short, the Respondent no. 3 did not consider the relevant factors necessary to decide whether the case merits appointment of a special prosecutor but rejected the request mainly based on the adverse report given by the Public prosecutor on the suitability of the advocate who was proposed to be engaged as a special public prosecutor. Suffice it to say that the rules do not contemplate calling for such report. Consequently, request of the petitioner could not have been rejected on the basis of the adverse report of the public prosecutor. The order therefore reflects total non-application of mind.

21. The offence was committed in the year 2002 and it would not be in the fitness of things to remit the matter to the RLA for examining the request of the petitioner afresh. We have examined the facts, and in our considered view, the nature and gravity of the crime, the position of the accused, allegations made by the petitioner warrant appointment of

special public prosecutor. Furthermore, the observations made by the learned single judge of this court reflect that the investigating and prosecuting agency has exhibited total apathy towards the victim.

22. The petitioner has stated that even after the order of the learned Single Judge, the charge was not framed against the accused Laxman Ghadge for almost a period of six months. She has stated that on 13.06.2013, at about 3.00 p.m. the accused had come to the Court and had gone out after talking to his advocate. She has stated that neither the accused nor the Public Prosecutor was present when the matter was called out. On the next date, when the petitioner brought to the notice of the Court that matter was being delayed, she was informed that the charge was already framed. The petitioner had placed on record a copy of the Roznama dated 13.06.2013. The said Roznama entry does not show the presence of the learned APP on the day the charge was framed and explained to the accused no.1. This fact also supports the contention of the petitioner that the charge was framed and explained to the accused Laxman in the absence

of the learned APP and that the APP was not even aware of the framing of charge on 13.06.2012. Considering the manner in which the trial has been conducted, it is necessary to appoint a Special Public Prosecutor in Sessions Case No. 543 of 2008 to ensure a fair trial and to inspire confidence in the petitioner and the public at large in the criminal justice system.

23. The petitioner had proposed the name of Advocate B.A.Aloor to be engaged as a Special Public Prosecutor. Learned Advocate Aloor has practiced for more than 10 years. There is no dispute about his legal acumen or competency. The only shortcoming according to the respondent no.3 was that the learned advocate Aloor was representing the accused in most of the cases. Admittedly Learned advocate Aloor has not represented the accused in Sessions Case No. 543 of 2008 in any other proceedings. The fact that he is practicing mainly on the criminal side and has been representing the accused in other cases cannot be a disadvantageous factor to disqualify him as a Special Public Prosecutor. On the contrary, his vast experience in criminal

law is an added qualification and an advantageous factor to appoint him as a Special Public Prosecutor.

24. Under the circumstances and in the above circumstances, the petition is allowed by passing following order.

ORDER

(a) The impugned order is quashed and set aside.

(b) The respondent no. 3 is directed to appoint Mr. B.A.Aloor, advocate as a Special Public Prosecutor to conduct the trial in Sessions Case No.543 of 2008.

(c) The petitioner shall bear the professional fees of Advocate B.A.Aloor and shall deposit the same with the Government in the Law and Judiciary Department.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)