

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 21ST DAY OF APRIL 2015/1ST VAISAKHA, 1937

WP(C).No. 12588 of 2015 (W)

PETITIONER(S):

SANTHOSH M.A. AGED 35 YEARS
S/O AGASTHY, MATTATHIL VEEDU, CHERUPUZHA VILLAGE
KASARGOD DISTRICT.

BY ADV. SRI.V.JOHN SEBASTIAN RALPH

RESPONDENT(S):

1. ADDITIONAL CHIEF SECRETARY TO GOVERNMENT
HOME DEPARTMENT, GOVERNMENT OF KERALA, SECRETARIAT
THIRUVANANTHAPURAM-695001.
2. SECRETARY TO HOME DEPARTMENT,
HOME DEPARTMENT, GOVERNMENT OF KERALA, SECRETARIAT
THIRUVANANTHAPURAM-695001.
3. DISTRICT POLICE CHIEF
KASARGOD DISTRICT-671001.
4. P.RAJEEV
ADVOCATE, ARCHANA, NADAKKAVU CROSS ROAD
CALICUT-673011.
5. ARAVINDAN MANIKOTH
LATEST PRINTING AND PUBLISHING PVT. LTD.
POST BOX NO.40, KANHANGAD, KASARGOD-671315.
6. STATE OF KERALA
THROUGH THE C.I. OF POLICE, HOSDURG POLICE STATION
IN CRIME NO.204/2002
REPRESENTED BY ITS PUBLIC PROSECUTOR
HIGH COURT OF KERALA.

BY DIRECTOR GENERAL OF PROSECUTION SRI.ASIF ALI
BY GOVERNMENT PLEADER SRI.T.R.RAJESH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
21-04-015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 12588 of 2015 (W)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT P1: ORDER DATED 26.2.2015 PASSED BY THE FIRST RESPONDENT.

RESPONDENT(S)' EXHIBITS:NIL

//TRUE COPY//

P.A.TO JUDGE

C.T. RAVIKUMAR, J.

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W.P.(C) No.12588 OF 2015

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Dated this the 21st day of April, 2015

JUDGMENT

The petitioner is one of the accused in S.C.No.16 of 2007 on the files of the Court of Additional Sessions Court (Ad hoc-I), Kasaragod. He is indicted therein for offences punishable under sections 304, 307 read with 34 IPC. The captioned writ petition has been filed challenging Ext.P1 whereby Sri.P.Rajeev, Advocate, (Enrollment No.K/244/1989) was appointed as Special Public Prosecutor to conduct the prosecution in the aforesaid Sessions Case. Various contentions have been raised by the petitioner to assail Ext.P1. Firstly it is contended that it is a non-speaking order and therefore, it goes against the dictum laid down by this Court in **Tera Chinnappa Reddy v. Government of Andhra Pradesh & others [2014 KHC 2753]**. That apart, it is contended that in the light of the decisions in **Abdul**

Khader v. Government of Kerala [1992 (2) KLT 948], Mrs.Mary Joosa v. State of Kerala [1997 KHC 296] and Narayanankutty v. State of Kerala & others [1982 KLT 605], such appointments shall be effected only if public interest is involved. It is the further contention of the petitioner that under normal circumstances, going by the provisions of the Code of Criminal Procedure, the sessions trial shall be conducted only by the prosecutor appointed by the Government and therefore, a deviation from the general rule is possible and permissible only in circumstances where public interest is involved.

2. I have heard the learned counsel for the petitioner and also the learned Director General of Prosecution. The learned Director General of Prosecution submitted that even at the crime stage (Crime No.208 of Hosdurg Police Station), the Government appointed Sri.A.M.Viswanathan as Special Public Prosecutor. Later, he

requested for appointment of another Special Public Prosecutor stating his inability to continue as Special Public Prosecutor owing to his ill-health. Consequently, the Government issued G.O.(Rt) No.2239/2013/Home dated 16.8.2013 appointing Sri.P.Kumarankutty, Advocate, Roll No.K/183/73 in place of Sri.A.M.Viswanathan as the Special Public Prosecutor in the aforesaid Sessions Case. After conducting the investigation, final report was laid in the said crime and after its committal, in accordance with law, now it is pending as S.C.No.16 of 2007. Adv. Sri.P.Kumarankutty who was appointed as Special Public Prosecutor subsequently got elected as a member in one of the Local Self Government Institutions. It was in such circumstances that the Government was constrained to effect appointment of Sri.P.Rajeev as per Ext.P1, it is submitted by the learned Director General of Prosecution. The learned Director General of Prosecution furnished copies of the Government Orders revealing the appointment of Sri.A.M.Viswanathan and

Sri.P.Kumarankutty. There is nothing on record to show that the appointment of Sri.A.M.Viswanathan and subsequent appointment of Sri.P.Kumarankutty were challenged successfully either by the petitioner as also any of the accused in the aforesaid crime. The learned DGP further submitted that in fact, the accused cannot have any locus standi to challenge the appointment of the Special Public Prosecutor. Though this position is disputed by the learned counsel for the petitioner I do not think that this Court should go into such details or to consider the contentions raised by the petitioner based on the decisions referred (supra) in view of the admitted position that he did not challenge either the appointment of Sri.A.M.Viswanathan or subsequent appointment of Sri.P.Kumarankutty as Special Public Prosecutor in the aforesaid Sessions Case. The petitioner has not raised any special circumstances disentitling Sri.P.Rajeev to function as the Special Public Prosecutor, in the aforesaid Sessions Case. He has raised only the general points, as aforesaid, which in view of the

admitted position pale into insignificance having regard to the aforesaid factual position obtained in this case. In such circumstances, there is no reason to interfere with Ext.P1. This writ petition is liable to fail and accordingly, it is dismissed.

**Sd/-
C.T. RAVIKUMAR
(JUDGE)**

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010

