

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 27TH DAY OF NOVEMBER 2015/6TH AGRAHAYANA, 1937

WP(C).No. 34786 of 2015 (W)

CC 617/2001 of JUDICIAL FIRST CLASS MAGISTRATE'S COURT-I,
NEYYATTINKARA

PETITIONERS:

1. RADHAKRISHNAN, AGED 48 YEARS,
S/O.MADHAVAN PILLAI, VALIYAMEDAYIL VEEDU, FORT WARD,
NEYYATTINKARA P.O., PIN-695121.

2. S.VIJAYALEKSHMI,
W/O.RADHAKRISHNAN, RESIDING -DO-.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS:

1. ANILKUMAR,
S/O.VELAYUDHAN PILLAI, THIRUMANGALAM VEEDU,
KADAVATTAROM DESOM, NEYYATTINKARA VILLAGE-695121.

2. SUB INSPECTOR OF POLICE,
NEYYATTINKARA POLICE STATION-695121.

3. STATE OF KERALA
REPRESENTED BY SECRETARY, HOME DEPARTMENT, SECRETARIATE
THIRUVANANTHAPURAM-695001.

4. N.RADHAKRISHNAN NAIR,
ADVOCATE, SRI.MOOKAMBIKA BUILDINGS,
EAST OF DISTRICT COURT BUILDINGS, VANCHIYOOR,
THIRUVANANTHAPURAM-695035.

R2 & R3 BY GOVERNMENT PLEADER SMT.SAREENA GEORGE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 27-11-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

WP(C) .No. 34786 of 2015 (W)

APPENDIX

PETITIONER'S EXHIBITS:

P1 COPY OF THE ORDER IN CRL.M.C.178/12 OF THIS HONOURABLE COURT.

P2 COPY OF THE ORDER IN CRL.R.P.NO.2050 OF 2014 OF THIS HONOURABLE COURT.

P3 COPY OF THE GAZETTE NOTIFICATION PUBLISHED IN THE GAZETTE DATED 08.10.2015.

RESPONDENTS' EXHIBITS:

NIL

// True Copy //

P.A. To Judge

DSV/28/11/15

[CR]

B. KEMAL PASHA, J.

.....
W.P.(C) No. 34786 of 2015
.....

Dated this the 27th day of November, 2015

J U D G M E N T

Can the prosecution in a case before the Court of a Magistrate be conducted by a Special Public Prosecutor appointed by the Government for the said case?

2. The Government has appointed an Advocate as a Special Public Prosecutor under Section 24(8) Cr.P.C., for conducting the prosecution in C.C.No.617/2001 of the Judicial First Class Magistrate's Court-I, Neyyattinkara. The same is under challenge here.

3. According to the learned counsel for the petitioners, the appointment has been made as a 'Special Public Prosecutor' and not as a 'Special Assistant Public Prosecutor' and therefore, he cannot conduct the prosecution before a Magistrate's Court.

4. Section 24(3) Cr.P.C. says:

“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.”

5. When such an appointment of a Public Prosecutor is for a district, it cannot be said that such a Prosecutor cannot conduct a prosecution in a case before a Court of a Magistrate. At the same time, going by the

scheme of the Code, it can be said that an Assistant Public Prosecutor cannot conduct a prosecution in a Sessions case before the Sessions Court.

6. As per Section 25(1) Cr.P.C. the State Government shall appoint in every district one or more Assistant Public Prosecutors for conducting prosecutions in the Courts of Magistrates. It does not mean that a Public Prosecutor, who is appointed by the Government, cannot conduct a prosecution in a case before a Court of a Magistrate. There cannot be an appointment of a Special Assistant Public Prosecutor as per the Code. What is permitted as per Section 24(8) of Cr.P.C. is the appointment of a Special Public Prosecutor.

7. As per Section 302(1) Cr.P.C. any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than police officer below the rank of Inspector; but no person, other than the Advocate-General or Government Advocate or a Public

Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission. Therefore, it is evident that when the Advocate-General or Government Advocate or Public Prosecutor or Assistant Public Prosecutor, is appearing before a Court of a Magistrate for conducting a prosecution, any permission from the Court of a Magistrate is not required. Only in cases wherein persons other than the aforesaid persons are appearing before a Court of a Magistrate for conducting a prosecution, such permission is required. That provision clearly shows that a Public Prosecutor also can conduct a prosecution before a Court of a Magistrate and in such case, even the permission of the Court of a Magistrate is not required. Matters being so, there is no merit in the present arguments resorted to by the learned counsel for the petitioners. Therefore, this Writ Petition is devoid of merits and it is only to be dismissed, and I do so.

In the result, this Writ Petition is dismissed. Being an

old case, the court below shall expedite the proceedings and see that the matter is disposed of expeditiously.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge