

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-09-2015

CORAM:

THE HON'BLE MR.JUSTICE M.JAICHANDREN

W.P. No.34147 of 2012

A.Selvi

...Petitioner

Versus

1. State of Tamilnadu
Rep. By its Home Secretary,
Fort St. George,
Chennai-600 009.

2. The District Collector,
Cuddalore District,
Cuddalore.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus, directing the 1st respondent to pass appropriate orders appointing a Special Public Prosecutor to conduct the trial in C.C.No.2 of 2011 on the file of the Judicial Magistrate No.1, Virudhachalam on the basis of the petitioner's representation dated 13.2.2012.

For petitioner : Mr.S.Sathia Chandran

For respondents : Mr.R.Ravichandran
Additional Government Pleader

ORDER

Heard the learned counsel appearing for the petitioner, as well as the learned counsel appearing on behalf of the respondents.

2. This Writ Petition has been filed praying that this court may be pleased to issue a Writ of Mandamus to direct the first respondent

to pass appropriate orders appointing a Special Public Prosecutor to conduct the trial, in C.C.No.2 of 2011, on the file of the Judicial Magistrate No.1, Virudhachalam, on the basis of the petitioner's representation, dated 13.2.2012.

3. It has been stated that the petitioner is a widow having three children. Her husband, namely, Annadurai, who was the bread winner of the family, had been done to death, while in police custody, on 8.11.2004. It has been stated that, on 7.11.2004, at 6.30 p.m, when the petitioner's husband was waiting at the Virudhachalam bus stand, he has been taken into police custody, by one P.Babu, the Sub Inspector of Police, along with three other constables attached to the Virudhachalam police station. The husband of the petitioner had been badly beaten, with lathi, by the police and serious injuries had been caused all over his body. He had been kicked in the stomach by P.Babu, the Sub Inspector of Police. The petitioner's husband had died, on 8.11.2004, due to the brutal physical assault inflicted on him, by the police, while he had been detained in the police lockup.

4. It has been further stated that the petitioner had preferred a complaint before the Inspector of Police, Virudhachalam, narrating the incidents leading to the death of the petitioner's husband. She had also filed a Criminal Original Petition before this court, in CrI.O.P.No.6536 of 2005. Subsequently, a case had been registered, under Section 174 of the Criminal Procedure Code, 1973, in Crime No.466 of 2004. Recording the same, the Criminal Original Petition had been disposed of by this court. Thereafter, the Revenue Divisional Officer had conducted an enquiry, pursuant to the filing of the First Information Report. As the copy of the report had not been furnished to the petitioner she had preferred a Criminal Original petition before this court, in CrI.O.P.No.34652 of 2005. Only thereafter, a copy of the report had been given to the petitioner, on 17.4.2006. Even though it had been stated in the report of the Revenue Divisional Officer, Cuddalore, that the husband of the petitioner had been brutally assaulted, the cause of the death had not been attributed to the injuries caused by the police.

5. It has been further stated that, on 22.11.2004, the petitioner had preferred a complaint before the State Human Rights Commission, Tamilnadu. After a detailed enquiry the Commission had concluded, on 2.4.2007, that the petitioner's husband had been brutally attacked by the police, while he was in custody, on 7.11.2004. Consequently, the State Human Rights Commission had recommended that the government should pay a sum of Rs.1,00,000/- lakh to be recovered from P.Babu, the Sub Inspector of Police and the State government must pay a

further sum of Rs.50,000/- to the legal heirs of the deceased husband of the petitioner. In such circumstances, the petitioner had preferred a Writ Petition before this court, in W.P.No.31102 of 2007. On receipt of the notice issued by this Court, a Government Order, in G.O.Ms.No.1573, dated 26.9.2007, had been issued, sanctioning the said amounts. Therefore, the Writ Petition filed by the petitioner had been disposed of. Further, a Criminal Original Petition had been filed by the petitioner, in CrI.O.P.No.4812 of 2008, seeking a direction to the Additional Director General of Police, CBCID, to conduct a fresh investigation of the case, in Crime No.466 of 2004, on the file of the Inspector of Police, Virudhachalam Police Station. By an order, dated 26.3.2008, the case had been transferred to the CBCID for investigation and a direction had been issued to proceed further in the matter, as per law. Thereafter, on 6.11.2009, the Deputy Superintendent of Police had filed a final report before the Court of Judicial Magistrate No.1, Virudhachalam, in Crime No.466 of 2004, under Sections 323, 352 and 218 of the Indian Penal Code. Thereafter, the Judicial Magistrate No.1, Virudhachalam, had taken cognizance of the case, as C.C.No.2 of 2011, and it had been listed for trial, on 24.1.2012. Even though the petitioner had asked for copies of the records relating to the case there was no response from the office of the Public Prosecutor. In such circumstances, the petitioner has prayed for the appointment of a Special Public Prosecutor to conduct the case of the petitioner in a fair and proper manner. In such circumstances, the petitioner has preferred the present Writ Petition before this court, under Article 226 of the Constitution of India.

6. A counter had been filed on behalf of the second respondent denying the allegations made by the petitioner in the Writ Petition filed by her, in W.P.No.34147 of 2012. It had been stated that a copy of the report of the Revenue Divisional Officer had been furnished to the petitioner. The compensation payable to her, as ordered by the State Human Rights Commission, had been paid by the respondents, vide G.O.Ms.No.1573, dated 26.9.2007.

7. It had been further stated that the petitioner had made a representation, dated 13.2.2012, for the appointment of a Special Public Prosecutor to conduct the case, in C.C.No.2 of 2011. On receipt of the said report, a reply had been sent to her by the District Collector, Cuddalore, vide C4/37345/2011, dated 24.3.2012. In the said letter, the petitioner had been directed to approach the Free Legal Aid Centre for the engagement of a lawyer of her choice to assist the prosecution. The only reason stated by the petitioner for the appointment of a Special Public Prosecutor to conduct the case is

that the allegations had been made by the petitioner against the police personnel and that she is under the apprehension that the case would not be conducted by the Public Prosecutor in a proper manner.

8. It has been further stated that the apprehension of the petitioner is baseless and it is devoid of merits. It has also been stated that the appointment of a Special Public Prosecutor is governed by Section 24(8) of the Criminal Procedure Code. A Special Public Prosecutor is appointed by the State and the Central Governments, for specific cases which are sensitive in nature, as per the directions issued by the High Court. In the present case, the petitioner has not shown acceptable reasons for the appointment of a Special Public Prosecutor for conducting the case, in C.C.No.2 of 2011. Therefore, the Writ Petition is liable to be dismissed, as it is devoid of merits.

9. The learned counsel appearing for the petitioner had submitted that the Public Prosecutor conducting the case would not conduct the case, in C.C.No.2 of 2011, in a proper manner, as the case is against the police personnel. The petitioner is under a serious apprehension that proper materials and other evidence could not be placed before the court concerned for fixing the liability on the police personnel, who had been involved in the death of the petitioner's husband, while he was in police custody. Therefore, it would be proper for this court to direct the first respondent to appoint a Special Public Prosecutor for conducting the case, in C.C.No.2 of 2011, as prayed for by the petitioner in the present Writ Petition.

10. The learned counsel appearing on behalf of the petitioner had placed before this court the following decisions in support of his contentions.

10.1. In M/s.Pepsi Foods Ltd. Vs. Special Judicial Magistrate, 1998 Supreme Court 128, the Supreme Court had held that the High Court could exercise its power of Judicial Review in criminal matters. The nomenclature under which the petition is filed is not quite relevant and that it does not debar the court from exercising its jurisdiction, which otherwise it possesses, unless there is a special procedure prescribed, which is of a mandatory nature.

10.2. In R.Thirugnanasambandtham Vs. Central Bureau of Investigation, CDJ 2007 MHC 5171, this court has held that if a case falls under any of the time tested parameters laid down, in State of Haryana Vs. Bhajan Lal, AIR 1992 Supreme Court 604, the proceedings pending before a criminal Court can be quashed in order to prevent the abuse of process of any Court, or otherwise to secure the ends of justice.

10.3 In a judgment of the Kerala High Court, dated 14.7.2014, (Yousuf K.M. Vs. State of Kerala), it has been held that the discretion in the appointment of a Special Public Prosecutor is only that of the Government and the criteria for such appointment is the existence of a public interest and the importance of the case and its impact on the society.

11. In view of the submissions made by the learned counsels appearing on behalf of the parties concerned, and the decisions relied on by the learned counsel appearing on behalf of the petitioner, this Court is of the view that the ratio laid down in the said decisions would not apply to the facts of the present case. In the present case, the petitioner is seeking a direction from this Court, by way of a Writ of Mandamus, for the appointment of a Special Public Prosecutor to conduct the case, in C.C.No.2 of 2011, on the file of the Judicial Magistrate No.1, Virudhachalam, relating to the death of her husband in police custody. However, there are no materials to show that the Public Prosecutor conducting the case is incompetent or biased towards the accused police personnel. Even otherwise, the petitioner is not in a position to show the existence of a legal right for the appointment of a Special Public Prosecutor to conduct the case in question, as per the procedures established by law, including the provisions of the Criminal Procedure Code, 1973. However, it would be open to the petitioner to make a request before the Court concerned for the appointment of a counsel to aid the Public Prosecutor conducting the case, under the relevant provisions of the Criminal Procedure Code, 1973. As such, this Court is of the considered view that the relief prayed for by the petitioner, in the present Writ Petition, cannot be granted by this Court, invoking its jurisdiction, under Article 226 of the Constitution of India and therefore, the present Writ Petition is liable to be dismissed. Hence, it is dismissed. However, it goes without saying that it may be open to the petitioner to seek the remedies that may be available to her, before the appropriate Court, in the manner known to law. No costs. Connected M.P.No.1 of 2013 is closed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

csH

To

1. The Home Secretary,
State of Tamilnadu
Fort St.George,
Chennai-600 0009.

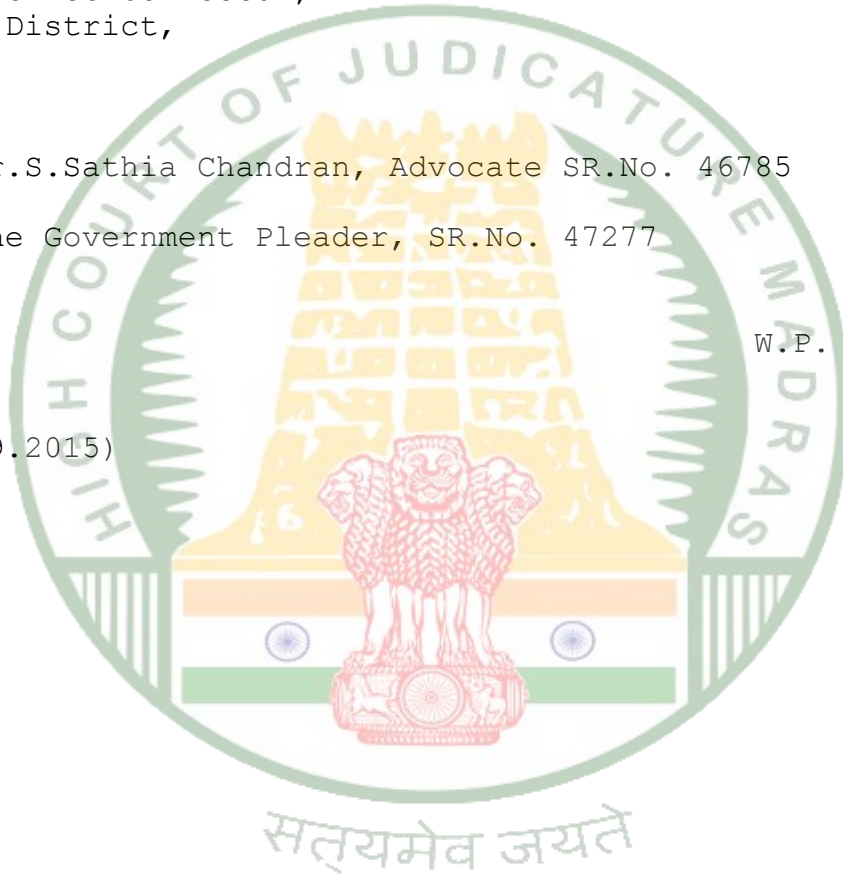
2. The District Collector,
Cuddalore District,
Cuddalore.

1 CC to Mr.S.Sathia Chandran, Advocate SR.No. 46785

1 CC to the Government Pleader, SR.No. 47277

W.P. No.34147 of 2012

NM (CO)
PSI (22.09.2015)



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