

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.8179 of 2015

ORDER:

The challenge in the present writ petition is to the orders of the first respondent/State Government vide G.O.Rt.No.284, Home (Courts.A) Department, dated 11.03.2015, appointing the fourth respondent herein as Special Public Prosecutor in S.C.No.102/2014, on the file of the Court of the Assistant Sessions Judge, Proddatur, Kadapa District.

2. The petitioner is accused No.1 in S.C.No.102/2014, on the file of the Court of the Assistant Sessions Judge, Proddatur, Kadapa District, wherein the petitioner is facing charges under Sections 147, 148, 324, 326, 307 read with 149 I.P.C. The *de facto* complainant/the third respondent herein submitted a representation to the State Government, requesting to appoint the fourth respondent as Special Public Prosecutor in the case while stating that the present in-charge public prosecutor is a relative of the accused. Thereafter, the State Government vide G.O.Rt.No.284, Home (Courts.A) Department, dated 11.03.2015, appointed the fourth respondent as special public prosecutor under Section 24 (8) of the Code of Criminal Procedure.

3. Calling in question, the validity and the legal sustainability of the said orders, the present writ petition has been filed.

4. This Court, on 26.03.2015, granted interim stay of all further proceedings in S.C.No.102/2014, on the file of the Court of the Assistant Sessions Judge, Proddatur, Kadapa District initially for a period of two weeks and thereafter the same was extended till 10.04.2015.

5. Respondents 1 and 2 have filed a counter and a counter affidavit has also been filed by the third respondent/*de facto* complainant, denying the averments and the allegations made in the affidavit and in the direction of justifying the impugned action.

6. Heard Sri B.Sarvotham Reddy, learned counsel for the petitioner and the learned Government Pleader for Home for the respondents 1 and 2 and Sri O.Manohar Reddy, learned counsel for the third respondent/*de facto* complainant apart from perusing the material available before the Court.

7. Submissions/contentions of the learned counsel for the petitioner:

7.1. The orders of the State Government which are under challenge in the present writ petition are highly illegal, arbitrary, unreasonable and violative of Article 14 of the Constitution of India and opposed to the very spirit and object of the provisions of Section 24 (8) of the Code of Civil Procedure.

7.2. The allegations of the *de facto* complainant/third respondent herein with regard to the relationship of the accused with the existing public prosecutor is fallacious and far from truth.

7.3. The State Government, without conducting any enquiry and without confirming the allegation of the said relationship and without calling for remarks from the regular public prosecutor, directly appointed the fourth respondent herein as Special Public Prosecutor.

7.4. The Government acted mechanically without scrutinising the factual matrix of the proposals.

7.5. The first respondent grossly erred in failing to assign any reasons in the impugned orders for appointing the Special Public Prosecutor.

7.6. In the event the Government comes to a conclusion that the regular Public Prosecutor is related to the accused, the Government can entrust the case to the another regular public prosecutor, but not to the fourth respondent.

Learned counsel for the petitioner places reliance on the judgment of this Court in the case of **DR. TERA CHINNAPA REDDY v. GOVERNMENT OF ANDHRA PRADESH**^[1].

8. Submissions/contentions of the learned Government Pleader for Home for the respondents 1 and 2:

8.1. There is no illegality nor there is any procedural infirmity in the

impugned action, as such, the present writ petition is not maintainable and the petitioner is not entitled for any relief from this Court under Article 226 of the Constitution of India.

- 8.2. The accused has no right to question the appointment of the fourth respondent herein as Special Public Prosecutor and the same is the prerogative of the State.
- 8.3. There is absolutely no challenge as to the mode of appointment and in the interest of the victim no reasons need be recorded.

Learned Government Pleader relies on the decision of this Court in **THARALA VEERABHADRAM AND OTHERS v. GOVERNMENT OF ANDHRA PRADESH AND OTHERS**^[2].

9. Submissions/contentions of the learned counsel for the respondent No.3:

- 9.1. The orders of the first respondent/State are strictly in accordance with the provisions of Section 24 (8) of the Code of Civil Procedure, as such, the same are not amenable for any judicial review of this Court under Article 226 of the Constitution of India.
- 9.2. The orders impugned are only discretionary and there is also no dispute with regard to the competence of the fourth respondent, as such, the same cannot be questioned.
- 9.3. The State Government only after calling for remarks from the second respondent, issued the impugned G.O.Rt.No.284, Home (Courts.A) Department, dated 11.03.2015, as such, it cannot be contended that the Government did not apply its mind.
- 9.4. There is no specific denial of relationship of the regular public prosecutor with the accused in the writ affidavit.
- 9.5. Since the first respondent appointed the fourth respondent strictly in accordance with Section 24 (8) of the Code of Criminal Procedure and as the fourth respondent fulfils the necessary eligibility as contemplated under Section 24 (8) of the Code of Criminal Procedure, the order impugned warrants no interference of this Court.
- 9.6. There are no *mala fides* attributed against the impugned action and on this ground also the present writ petition deserves to fail.

To bolster his submissions and contentions, the learned counsel for the third respondent places reliance on the judgment in the case of

STATE OF MAHARASHTRA v. PRAKASH PRAHLAD PATIL^[3] and

BHARAJU RAMBABU v. STATE OF ANDHRA PRADESH^[4].

10. In the above background, now the issue which this Court is called upon to answer is:

“Whether the order under challenge issued by the State Government vide G.O.Rt.No.284, Home (Courts.A) Department, dated 11.03.2015 appointing the fourth respondent as the Special Public Prosecutor is in accordance with law or whether the same warrants any interference of this Court under Article 226 of the Constitution of India?

11. The provision of law which is germane and relevant for the purpose of consideration and adjudication of the issue in the present writ petition is sub-Section (8) of Section 24 of the Code of Criminal Procedure, which reads as under:

“24. ¹ Public Prosecutors.

(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor.”

12. A plain reading of the above provision of law makes it abundantly clear that the State is empowered to appoint the Special Public Prosecutor for the purpose of any case or class of cases and the condition required to be adhered to is that such advocate should have standing of not less than ten years at the Bar. It is also significant to note that the proviso to Section 24 (8) which came into being with effect from 31.12.2009 by virtue of Code of Criminal Procedure (Amendment) Act, 2008, provides for permission to the victim to engage advocate of his choice to assist the prosecution. In the instant case, the *de facto* complainant/third respondent herein submitted an application to the State, requesting to appoint the fourth respondent as Public Prosecutor while alleging that the existing Public Prosecutor is

related to the accused in the case. Responding to the same, the State Government, in exercise of the powers conferred under Section 24 (8) of the Code of Criminal Procedure appointed the fourth respondent as the Special Public Prosecutor for the case.

13. The essence of the submissions and contentions advanced on behalf of the petitioner is that the State Government appointed the fourth respondent as Special Public Prosecutor simply based on the request of the third respondent without verifying the veracity of the allegations made by the third respondent/*de facto* complainant and without assigning any reasons.

14. On the contrary, it is the case of the learned Government Pleader as well as the learned counsel for the *de facto* complainant/third respondent herein that the power conferred on the State under Section 24 (8) of the Act is discretionary and is the prerogative of the State to appoint the Special Public Prosecutor and absolutely not open for any challenge on the ground of lack of reasons in the impugned order in the absence of any allegations of incompetence of the said person and in the absence of any *mala fides*.

15. In order to arrive at a just, correct and appropriate conclusion in the matter, it is highly essential to examine the issue in the light of the law laid down in various pronouncements of this Court and the Hon'ble apex Court.

16. In the case of **DR. TERA CHINNAPA REDDY** (*supra* 1), this Court at paragraphs 7, 10, 12, 13, 16, 20, 21 and 36 held as under:

“7. Sri P. Venugopal, Learned Counsel appearing on behalf of the petitioner, would submit that, in the matter of appointment of Special Public Prosecutors, the provisions of Section 24 Cr.P.C. should be read as a whole, and not sub-section (8) in isolation; even in the matter of appointment to the posts of Special Public Prosecutors, the procedure contemplated under Section 24(4) and (5) Cr.P.C. has to be followed in its letter and spirit; as the State did not follow the procedure contemplated under sub-clauses (4) and (5) of Section 24 Cr.P.C., in appointing Respondent No. 4 as a Special Public Prosecutor,

the Government is not justified in issuing the impugned G.O. appointing Respondent No. 4 as the Special Public Prosecutor.

10. Sri P. Venugopal, Learned Counsel appearing on behalf of the petitioner, would submit that respondent No. 4 was appointed as a Special Public Prosecutor only at the behest of Respondent No. 3; a Special Public Prosecutor can be appointed only when public interest demands, and not to vindicate the grievance of private individuals; the impugned G.O. is arbitrary, illegal and in violation of Section [24\(8\)](#) Cr.P.C.; there is no public interest in respondent No. 4 being appointed as a Special Public Prosecutor in a case where his client, i.e. Respondent No. 3, is the defacto complainant; the office of the Public Prosecutor cannot be controlled by private individuals; it would not be open to any complainant to name a person of his choice for such appointment; the State cannot surrender its discretion to the choice of the complainant, as the Special Public Prosecutor represents the State alone and not private individuals; and, in any event, the State has not assigned reasons for appointing Respondent No. 4 as a Special Public Prosecutor except to state that Respondent No. 3 had recommended his name.

12. The State, while appointing a public prosecutor, must bear in mind that, for the purpose of upholding the rule of law, good administration of justice is imperative. (State of U.P. v. Johri Mal : AIR 2004 SC 3800). The expression "Special Public Prosecutor", used in Section [24\(8\)](#) Cr.P.C., is not defined. (Margadarsi Financiers³). The definition of "Public Prosecutor", under Section [2\(u\)](#) Cr.P.C., takes within its fold a Special Public Prosecutor appointed under Section [24\(8\)](#) Cr.P.C. also. (P.V. Antony v. State of Kerala : 1989 Cri. L.J. 2482). A Special Public Prosecutor, appointed under Section [24\(8\)](#) Cr.P.C., would be a Public Prosecutor for all purposes under the Act. (Assistant Commissioner of Central Excise v. Sabnife Power Systems Ltd. : (2002) 9 SCC 389). As the powers conferred are wide and unfettered, it is evident that Parliament reposed confidence of great magnitude in the office a Public Prosecutor. (Abdul Khader Musliar v. Government of Kerala¹ : 993 Cri. L.J. 1249 (Kerala HC)). Section [24\(8\)](#) is a special provision which is in contra-distinction with, and an exception to, the provisions of general appointment of a public prosecutor. (Modugula Mallikarjuna Reddy v. Government of A.P. : 2004(6) ALT 229). This power can be exercised to appoint a person having the prescribed qualifications. (Jayendra Saraswati Swamigal v. State of Tamil Nadu : (2008) 10 SCC 180). The expression "Special" is used as an adjunct to the words "Public Prosecutor", and such appointment being permitted for the purpose of any case, or class of cases, emphasizes the distinction. In the exigencies of a given situation the Government may, in their discretion and wherever necessary and expedient, appoint any Advocate with ten years standing as a Special Public Prosecutor. This appointment is in addition to the regular public prosecutors functioning in the

respective Courts. (Margadarsi Financiers : 009 (2) ALD (Cri) 300). The philosophy discernable from Section [24\(8\)](#) CrPC is that there should be special circumstances for making such appointment. Though circumstances may vary, the very idea behind conferment of the power is to meet special situations. In other words, a Special Public Prosecutor is not to be appointed in ordinary circumstances. The legislative policy underlying Section [24\(8\)](#) Cr.P.C. is to preserve the interest of the State and to protect public interest in individual cases or class of cases. Power is vested in the government to appoint a special public prosecutor where public interest demands, and not to vindicate the grievance of a private person. (Narayanankutty v. State of Kerala : 1982 Ker LT 605 : (1982 Cri. L.J. 2085; Rajendra Nigam v. State of M.P. : (1998 Cri. L.J. 998 (MP) and Abdul Khader⁸). The discretionary power vested in the government, (Johri Mal⁵), is not to be exercised on the mere asking of the complainant, (Poonamchand Jain v. State of M.P.: 2001 CRL. L.J. 3113; Abdul Kadir : 1993 Cri. L.J. 1249 (Kerala HC); Deveneni Seshagiri Rao v. The Govt. of A.P. : 2004 Cri. L.J. 52), as the primacy given to the Public Prosecutor, under the scheme of the Code, has a social purpose and would be lost thereby. The facts should be examined and a decision taken whether the case merits the appointment of a Special Public Prosecutor. (Mukul Dalal v. Union Of India : (1988) 3 SCC 144). It is not necessary that, whenever an application is made, it should be allowed and a Special Public Prosecutor should be appointed as that would run contrary to the spirit of the scheme of the Code. There may be cases where a powerful complainant may have begun a proceeding to victimize his opponent. It would be a travesty of justice if, in such a case, the State concedes to the request for the appointment of a Special Public Prosecutor. The primacy given to the Public Prosecutor, under the scheme of the Code, would be defeated if the services of a Special Public Prosecutor are made available to a private complainant as a rule or for the mere asking. The request should be properly examined and, only if the case deserves such support, should a Special Public Prosecutor be appointed. (Mukul Dalal : (1988) 3 SCC 144); K.C. Sud v. S.G. Gudimani : (1981) 2 Cri. L.J. 1779 (Delhi HC); Omprakash Baheti v. State of Maharashtra : 006 CRL. L.J. 3105). The office of the Public Prosecutor is unique in its nature and status, and cannot be permitted to be controlled by, or slip into the hands of, private individuals. The request of the complainant for appointment of a Special Public Prosecutor cannot, therefore, be acceded to as a matter of course. (Deveneni Seshagiri Rao : 2004 Cri. L.J. 52).

13. While an accused, in a criminal case, cannot dictate who should prosecute him on behalf of the State, the complainant/defacto-complainant, likewise, has no right to claim that a person of his choice should be appointed as a Special Public Prosecutor to prosecute the accused. While the

complainant can, in a given case, request that a Special Public Prosecutor be appointed, it may not be open to him to name a person of his choice for such appointment. (Devineni Seshagiri Rao : 2004 Cri. L.J. 52). The interests of the State and the complainant are not always the same. Private parties often wish to further their own private ends and criminal proceedings are not primarily designed to serve such a purpose. It is not desirable to allow private passions and prejudices to creep into the conduct of a criminal trial when it can be avoided. (Babu v. State of Kerala : 1984 CRL. L.J. 499; Kartikram v Emperor : AIR 1937 Nag 123 : 38 Cri LJ 433). When a Special Public Prosecutor is appointed there is ouster of the regular public prosecutor. While the State Government enjoys authority to appoint a Special Public Prosecutor, it must do so after objectively assessing the facts and circumstances, and ascribing reasons. It cannot act in a mechanical manner without scrutinising the factual matrix of the proposal. It must be borne out from the record that the regular public prosecutor, in charge of the case, is not competent to conduct trial or there were other aspects which disqualified him from fulfilling his duties. The duly appointed public prosecutor should not be dislodged lightly or for specious reasons unless special circumstances exist for the appointment of a Special Public Prosecutor. (Poonamchand Jain : 2001 CRL. L.J. 3113). There must be special reasons, which should be recorded in writing, as to why deviation from the general Rule is made in appointing a Special Public Prosecutor. The application has to be properly examined by the authority and it is only on being satisfied, on the basis of the material on record, can a Special Public Prosecutor be appointed. If an order is passed, without application of mind, it would result in arbitrariness. Such an appointment can be made only and only when public interest so demands. (Madho Singh v. State of Rajasthan : 2002 CRL. L.J. 1694).

16. While the Government is not accountable to the Courts for the choice made, it is accountable in respect of the legality of the decisions impugned under the judicial review jurisdiction. (Centre for PIL v. Union of India : (2011) 4 SCC 1). The High Court, exercising its jurisdiction under Article [226](#) of the Constitution, has the power to issue a mandamus where the government has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or has exercised such discretion malafide or on irrelevant considerations or by ignoring relevant considerations and materials or has acted in such a manner as to frustrate the object for which such discretion is conferred. In all such cases the High Court can compel performance, of the discretion conferred upon the government, in a proper and lawful manner. (The Comptroller & Auditor General v. K.S. Jagannathan : AIR 1987 SC 537).

20. The principles of administrative law, such as surrender of discretion and abdication of duty vitiating the decision, would apply in case of exercise of power conferred by a statute or

rules made thereunder or instruments which are statutory in character. (Irrigation Development Employees Association v. Govt. of A.P. : 2004(2) ALD 599 (DB)). Exercise of statutory power partakes a quasi-judicial complexion. In the exercise of such power, the authority cannot permit its decision to be influenced by the dictation of others as this would amount to abdication and surrender of its discretion. It would then not be the authority's discretion that is exercised, but someone else's. If an authority "hands over its discretion to another body it acts ultra vires". Such interference by a person or body extraneous to the power is contrary to the nature of the power conferred on the authority. (State of U.P. v. Maharaja Dharmender Prasad Singh : AIR 1989 SC 997). An authority entrusted with a discretion must not, in the purported exercise of its discretion, act under the dictation of another body or person. It is enough to show that a decision, which ought to have been based on the exercise of independent judgment, was dictated by those not entrusted with the power to decide. Authorities directly entrusted with a statutory discretion are not absolved from their duty to exercise their personal judgment in individual cases, unless explicit statutory provision has been made for them to be given binding instructions by a superior. (DE Smith's Judicial Review (Seventh Edition). The State cannot surrender its discretion, to appoint a Special Public Prosecutor, to the choice of an individual. The exercise, and the conclusion arrived at in this regard, must to be evident from the order of appointment itself, and cannot be inferred from silence or supported by remarks in the note files. (Deveneni Seshagiri Rao : 2004 Cri. L.J. 52).

21. The 1st respondent did not apply its mind to the question whether the case necessitated appointment of a Special Public Prosecutor; why the case, which was hitherto entrusted to the regular public prosecutor, should not be prosecuted by him; and whether appointment of the 4th respondent, who had issued a legal notice in the very same case on behalf of the 3rd respondent to the petitioner and to several daily newspapers, was in the public interest of ensuring a fair and impartial trial. While the 3rd respondent sought appointment of the 4th respondent as a Special Public Prosecutor on the ground that the regular public prosecutor was overburdened with work, no independent exercise was undertaken by the 1st respondent to ascertain whether or not the regular public prosecutor was so overburdened with other work as to render him incapable of handling this case entrusted to him earlier. It is evident, therefore, that the 1st respondent has abdicated its duty to independently examine whether it was necessary for a Special Public Prosecutor to be appointed for the case and, if so, whether the 4th respondent or someone else should be appointed as the Special Public Prosecutor. The very fact that such an appointment was made, only because the 3rd respondent had so requested, goes to show that the 1st respondent had surrendered its discretion to appoint a Special

Public Prosecutor, had failed to exercise its mind independently, and had acted solely at the dictates of the 3rd respondent.

36. In *Mukul Dalal*: (1988) 3 SCC 144 the Supreme Court examined the scope of Section [24\(8\)](#) Cr.P.C. and, while rejecting the conclusions of the Bombay High Court that an aggrieved person's right to be heard implies a right to be effectively represented at the hearing and he has, therefore, the right to engage an advocate to be appointed as a Special Public Prosecutor, held that a Public Prosecutor has a special status and is conferred a primary position under the Cr.P.C.; and it was not a proper exercise of power by the State Government to appoint a Special Public Prosecutor for the mere asking or to support a private transaction. The ratio, in *Mukul Dalal* : (1988) 3 SCC 144, squarely applies to the facts of the present case and the law declared therein is binding on this Court.”

17. In the case of **THARALA VEERABHADRAM AND OTHERS**

(*supra* 2) this Court at paragraphs 5, 6, 7 and 8, held as under:

“5. However, to my mind, this contention canvassed by the learned counsel for the writ petitioners does not get attracted to a situation where the State Government appoints a Special Public Prosecutor for conducting trial of a particular case or a class of cases. The contention canvassed by the learned counsel for the writ petitioners is essentially based upon the mandatory requirements enshrined in subsections (4) and (5) of Section 24 of the Code. However, sub-section (8) thereof confers power on the State to appoint, for the purpose of any case or class of cases, any person, who has been in practice as an Advocate for not less than ten years, as a Special Public Prosecutor. This is a special feature and provision contained in the Code. Sub-section (8) reads as follows:

“ **Section 24(8):** The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor.”

When the contents of sub-section (8) are contrasted with the contents of sub-section (7), it becomes imminently clear that in the matter of appointment of a Special Public Prosecutor by the State, different criteria and yardsticks will be adopted. It is pertinent to extract subsection (7) of Section 24 of the Code, which reads as under:

“**Section 24(7):** A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (6), only if he has been in practice as an advocate for not less

than seven years.”

This provision made it very clear that a person to be appointed as a Public Prosecutor or as an Additional Public Prosecutor under subsections (1), (2), (3) or (6) of Section 24, such person is required to be in practice as an Advocate for not less than seven years. Therefore, the statute has recognized a clear-cut distinction between the method and manner of making appointment of Public Prosecutor with that of the appointment procedure of Special Public Prosecutor. As was already noticed supra, the State is mandatorily required to appoint a Public Prosecutor for every District in the State. It is also empowered to appoint as many Additional Public Prosecutors as it may consider necessary and expedient to do so, but when it comes to the question of appointment of Special Public Prosecutors, the power is liable to be exercised in that regard, either by the Central Government or by the State Government as the case may be. There are no other conditions attached for exercise of this power by the State. The State is therefore, at liberty to choose an appropriate person, who has been in practice as an Advocate for not less than 10 years, to be appointed as a Special Public Prosecutor for conducting a particular case or a class of cases. It goes without saying that the power conferred by sub-section (8) of Section 24 is required to be exercised carefully, sparingly and cautiously. Several factors and circumstances might compel or require the State to appoint a Special Public Prosecutor, while, at the same time care has to be taken to see that no such measure in any way reflects on the competence and impartiality of the Public Prosecutor appointed for the District. It will not be very difficult to imagine that certain types of crimes committed might require expertise in a particular area or field of law. Further, certain types of offences might compellingly require the wiser counsel to be available to the State in the matter of conducting the prosecution against the accused. That is the reason why a different yardstick has been chosen to be employed, by the Parliament when it comes to the question of appointing a Special Public Prosecutor. The matter calls for noticing the role of a Public Prosecutor in carrying out the prosecution. He does not represent any one party or take a particular side of a litigation, as the role of an Advocate is normally understood in a conventional mould. A Public Prosecutor does not represent the Police but represents the State, which is not unduly bothered to secure conviction for every offence and to every offender. The State's endeavor is essentially to uphold the majesty of law made by it and a strict adherence thereto by the society. The State is ever anxious to secure justice to all its citizens and hence, depends on the impartial advice of the Public Prosecutor, even while dealing with an accused person. Hence, the Public Prosecutor dons essentially the role of establisher of truth by adopting absolutely fair means and a clinically transparent procedure.

The Public Prosecutor, if required to do so, has to bring out quite openly and frankly that material which might go to establish the innocence of the accused. In that respect, the Court regards him as an officer of the Court, as the main purpose of the Court's functioning is riveted around exposing the truth of the matter. I, therefore, do not have any hesitation to reject the contention canvassed by Sri A. Prabhakara Rao in this regard. To my mind, the State is at liberty to choose an appropriate person, who enjoys a clean reputation in the society, to act as a Special Public Prosecutor.

6. The very nature of appointment of a Special Public Prosecutor connotes great significance. It is not merely a professional challenge for the person so chosen to act as a Special Public Prosecutor, but it also connotes a significant trust that is reposed in the sense of impartiality and fairness in carrying on the prosecution on the part of the chosen individual. I, therefore, do not have any hesitation to repel the apprehensions entertained by the writ petitioners as mere apprehensions without carrying any conviction or without any basis.

7. While the Code and various other provisions and principles of law, including the fundamentally guarantee right to life, have all been uniformly recognizing the need and necessity to adhere to the value based human rights towards the accused, it is apt to remember that even the victims have got certain rights. Every victim of violation of any of his assured rights or the dependants or the kith and kin of the victims have also got every right to seek for justice to be done to the cause of the victim. The cause of the victim cannot be completely ignored or thrown to winds, in one's anxiety to protect the rights of the accused. Protection of rights of the accused and the obligation to hold the scales even in favour of the accused does not necessarily render the rights of the victims to be completely forgotten, compromised or ignored. The rights of the victims are equally important, inasmuch as they are also essentially citizens of this nation. Every human being carries with him a sense of dignity and a sacred purpose of his life. He is entitled to lead a life of his own and on honorable terms of his own, so long as they do not come in conflict with the rights of yet another individual. In a free society, where liberty is one of the hallmarks of such society, every citizen is entitled to carry on his life on terms, which are best suitable to him, so long as such actions do not come in conflict with any prescriptions of law or the rights of the fellow human beings. Hence, every victim of the outrage of his rights or his dependants or kith and kin are as much entitled to seek protection from law, as the accused persons are entitled to. Therefore, even a victim is entitled to seek and compel the State to carry on the

prosecution fairly, objectively and impartially. There is nothing wrong, therefore, if the kith and kin of a victim solicit the State and request it to appoint a particular person, who enjoys a clean reputation and is known for his professional acumen and knowledge of law to be appointed as a Special Public Prosecutor.

8. To my mind, sub-section (8) of Section 24 recognizes this inherent right of the victim or his kith and kin and hence, it enables the State to appoint a person, who is considered by it as suitable for carrying on prosecution of a particular case or class of cases. The State is bound to verify the credentials of any individual, both professional and personal, before narrowing down its choice. After all, it has to make sure that he has the requisite 10 years of standing at the Bar. Therefore, I have no hesitation to hold that the request made by the wife of the deceased Komuraiah is not a factor to disentitle the State from appointing Sri P. Sadasiva Rao as a Special Public Prosecutor. The learned Government Pleader for Home, in support of his contention, relied upon a judgment rendered by the Division Bench in **State of Andhra Pradesh v. Margdarsi Financiers**: 2009(3) ALT 1 (D.B.).”

18. In the case of **STATE OF MAHARASHTRA** (*supra* 3), the Hon’ble Apex Court, at paragraphs 5, 6 and 7, held as under:

“5. The scope for judicial review has been examined by this Court in several cases. It has been consistently held that the power of judicial review is not intended to assume a supervisory role or don the robes of 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 supreme 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.

6. The courts cannot be called upon to undertake governmental duties and functions. Courts should not ordinarily interfere with a policy decision of the State. While exercising power of judicial review the court is more concerned with the decision making process than the merit of the decision itself.

7. In the instant case, acting on a petition filed by close relatives of a victim decisions have been taken at various levels. The High Court was not justified to pick up stray sentences from the records to conclude that there was non-application of mind. In any event, the appointment of a Special Public Prosecutor to conduct a proceeding does not in any way cause prejudice to the accused. In that sense the writ

petition before the High Court was wholly misconceived. The impugned judgment of the High Court is set aside. Since the trial appears to have been held up, we direct that the trial court shall make all possible endeavours to see that the trial is completed expeditiously and in any event not later than by the end of October, 2009. The appeal is, accordingly, allowed. Criminal Miscellaneous Petition No. 4051 of 2009 also stands disposed of.”

19. In the case of **BHARAJU RAMBABU** (*supra* 4), this Court at paragraph 22, held as under:

“22.. Therefore, it must be understood that the request made by a party for appointment of a Special Public Prosecutor is not to be frowned upon and any appointment of a Special Public Prosecutor in that regard should not be invalidated merely on the ground that it was solicited. Onus lies heavily on the person who mounts a challenge thereto, as to how any such appointment is legally vitiated.”

20. In the case of **STATE OF U.P. AND ANOTHER v. JOHRIMAL**^[5], the Hon’ble Apex Court at paragraph 28, held as under:

“28. The Scope and extent of power of the judicial review of the High Court contained in Article [226](#) of the Constitution of India would vary from case to case, the nature of the order the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi judicial or administrative. The power of judicial review is not intended to assume a supervisory role or done the robes of 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 supreme lex to the other organs of the State. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review court. The limited scope of judicial review succinctly put, is:

- (i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies:
- (ii) A petition for a judicial review would lie only on certain well-defined grounds.
- (iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.
- (iv) A mere wrong decision without anything more is

not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a Court is limited to seeing that Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice.

(v) The Courts cannot be called upon to undertake the Government duties and functions. The Court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a Judge should not be invoked as a substitute for the judgment of the legislative bodies. **(See *Ira Munn v. State of Illinois* 1876 (94) US (SR) 113)**”

21. While dealing with the provisions of Section 24 of the Code of Criminal Procedure, in the case of **HARPAL SINGH CHAUHAN AND OTHERS**^[6], the Hon’ble Apex Court at paragraph 17, held that the Court cannot substitute its own judgment over the final decision in respect of the selection of the persons.

22. On the direction of this Court, the learned Government Pleader has placed the records before this Court and it is evident from the same that the State Government, after calling for the necessary information from the second respondent, appointed the fourth respondent as Special Public Prosecutor and it is also very much vivid from the material available on record that there is absolutely no controversy on the competence of the fourth respondent and there is also no element of *mala fide*.

23. In view of the above referred judgments and the principles laid down therein, the contention of the learned counsel for the petitioner with regard to absence of reasons in the impugned order does not merit any consideration. The basis for the representation of the *de facto* complainant is the alleged relationship between the existing public prosecutor and the accused. A reading of the affidavit filed in support of the writ petition shows clearly that the affidavit does not specifically deny the said specific allegation also. In the facts and circumstances of the case and in view of the law laid down by the Hon’ble Apex Court in the above referred judgments, the Judgment of this Court in the case of **DR.**

TERA CHINNAPA REDDY (*supra* 1), would not render any assistance to the case of the petitioner as in the instant case the State after calling for the necessary information from the second respondent, issued the impugned order. The power of judicial review under Article 226 of the Constitution of India cannot be extended to the cases of this nature and in view of the law laid down in the above referred judgments of the Hon'ble Apex Court and this Court, this Court finds no infringement of either statutory or constitutional rights of the petitioner.

24. In these circumstances, this Court, has absolutely no scintilla of hesitation nor any traces of doubt to come to a conclusion that the petitioner herein has failed in making out any case warranting interference of this Court under Article 226 of the Constitution of India.

25. For the aforesaid reasons, writ petition is dismissed. As a sequel, pending miscellaneous petitions, if any, shall stand closed. No costs.

A.V.SESHA SAI, J

Date:19.08.2015
grk

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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

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W.P.No.8179 of 2015

Dated 19th August, 2015

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THE HON’BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.8179 of 2015

Date:19th August, 2015

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Between:

Rachamallu Siva Prasad Reddy,
S/o. Shankar Reddy, aged 48 years,

Member of Legislative Assembly,
Proddatur, YSR District.

... Petitioner

and

The State of Andhra Pradesh,
Represented by its Secretary to Government (FAC),
Home (Courts.A) Department, Secretariat,
Hyderabad and three others.

... Respondents

DATE OF JUDGMENT PRONOUNCED: 19th August, 2015

SUBMITTED FOR APPROVAL: 19th August, 2015

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THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

1. Whether Reporters of Local Newspapers
May be allowed to see the Judgment?

Yes/No
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals?

Yes/No
3. Whether Their Lordship wish to see the
Fair copy of the judgment?

Yes/No

[\[1\]](#) 2014 (2) ALT (CrI.) 299 (A.P.)
[\[2\]](#) 2011 (1) ALD (CrI.) 90 (AP)
[\[3\]](#) (2009) 12 SCC 159
[\[4\]](#) 2014 (2) ALT (CrI.) 64 (A.P.)
[\[5\]](#) (2004) 4 SCC 714
[\[6\]](#) (1993) 3 SCC 552