

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 108 OF 2016

NAGARAJ RAMA KALE.

... Petitioner

Versus

STATE OF GOA THROUGH CHIEF
SECRETARY AND 5 ORS.

... Respondents

Mr. Arjun F. Naik, Advocate for the petitioner.

Mr. Pravin N. Faldessai, Additional Public Prosecutor for the
respondents.

Coram:- SMT. R. P. SONDURBALDOTA &
C. V. BHADANG, JJ.

Date:- 1st December, 2016

P.C.:

This petition is filed by the complainant in Special Case (SC/ST) No.02/2015 before the Court of Special Judge, South Goa, Margao. The two substantive reliefs sought therein at prayers (a) and (d) read as under :

"(a) For writ or any other appropriate writ, direction or order in the nature of mandamus be issued commanding Respondent 3 for conducting proper inquiries in the present case and file fresh charge sheet or supplementary charge sheet if found necessary.

(d) For writ or any other appropriate writ, direction or order in the nature of mandamus be issued commanding Respondent No.4 to appoint Shri Vinoj

Denial, an Advocate having requisite knowledge and expertise to be appointed as the Public Prosecutor in the present case."

Prayer clauses (b) and (c) are undisputedly consequential to prayer clauses (a) and (d).

2. Mr. Naik, learned Counsel for the petitioner states that the only grievance that remains, as on today, of the petitioner as regards the investigation is that the Investing Officer has not recorded statement of a person who is seen in the video recording. According to the petitioner, statement of that person would be material. Section 311 CrPC. empowers the Court to summon any person as a witness at any stage of inquiry, trial or other proceedings and/or to summon or examine any person though not summoned as a witness by the prosecution. Therefore, we are not inclined to consider the relief at prayer (a).

3. By prayer clause (d), the petitioner seeks a writ of mandamus, directing respondent No.4, Director of Prosecution to appoint Shri Vinoj Danial, as a Public Prosecutor in the case. The learned Counsel relies upon Rule 4(5) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 to support the prayer in the application. Bare reading of the Rule is sufficient to note that respondent No.4 is not authorised

to appoint a Public Prosecutor and the authority vests with the District Magistrate or with the Sub-Divisional Magistrate. Respondent No.4 has already forwarded the application of the petitioner to the District Magistrate, Sough Goa, Margao by his letter drafted 10th November, 2016, which means that the application is under consideration of the District Magistrate. In the circumstance, nothing remains for consideration in prayer clause (d).

4. The petition stands dismissed.

C. V. BHADANG, J. SMT. R. P. SONDURBALDOTA, J.

ssm.