

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.04.2016

CORAM

THE HONOURABLE MS. JUSTICE R.MALA

W.P. No.12653 of 2016  
and WMP.No.11009 of 2016

M.Ravikumar

.. Petitioner

Vs.

1.The District Collector  
Coimbatore District  
Coimbatore.

2.The Inspector of Police  
P.N.Palayam police station  
Coimbatore.  
Crime No.315/2008

.. Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarifi calling for records pertaining to the order passed by the first respondent in Letter No.20889/2015/E1 dated 09.02.2016 and quash the same and consequentially direct the first respondent to change the Public Prosecutor who look after S.C.No.255/13 on the file of the Mahila Court at Coimbatore and appoint an Advocate to conduct the prosecution case in S.C.No.255/13 by considering petitioner's representation dated 23.11.2015.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondents : Mr.P.Sanjay Gandhi  
(Addl. Govt. Pleader)

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O R D E R

The Writ Petition is filed for quashing the proceedings passed by the first respondent in Letter No.20889/2015/E1 dated 09.02.2016 and consequentially direct the first respondent to change the Public Prosecutor, who look after S.C.No.255/13 on the file of the Mahila Court at Coimbatore and appoint an Advocate to conduct the prosecution case in S.C.No.255/13 by considering petitioner's representation dated 23.11.2015.

2.Learned counsel for the petitioner submits that the petitioner's sister committed suicide on 27.06.2008 and hence, he lodged a complaint before the second respondent. On that basis, a case has been registered in Crime No.315/2008 for an offence under Section 174 Cr.P.C. During investigation, offence has been altered to Section 306 IPC. Thereafter, charge sheet has been filed against the accused, which was taken as S.C.No.255 of 2013 and the same has been pending before the Mahila Court, Coimbatore. He further submits that in the final report, his sister's in-laws names were left out by the prosecution. Therefore, the petitioner filed a petition in CrI.O.P.No.31277 of 2014 for impleading them as accused and this Court ordered to approach the trial Court by way of protest application. So the petitioner has filed the protest application, but the trial Court after considering the counter statement filed by the Public Prosecutor dismissed the application. Therefore, the petitioner has given a representation dated 23.11.2015 before the first respondent and made request to appoint senior Advocate from Bhavani as Public Prosecutor to conduct the case. The first respondent by order dated 09.02.2016 rejected the same. Hence, the petitioner has come forward with this petition for the above stated relief.

3.It is further submitted by the learned counsel for the petitioner that the accused persons are influential persons in the ruling party and the Public Prosecutor is also in the same ruling party and hence, he has acted in favour of the accused. Therefore, the petitioner sought for appointment of new Public Prosecutor to conduct the case in S.C.No.255 of 2013. But the first respondent/District Collector without affording an opportunity to the petitioner, dismissed the same. Hence, he prays for quashing the impugned order.

4.Heard the learned counsel for the petitioner as well as learned Additional Government Pleader for the respondents.

5.As per Section 24 Cr.P.C., for every District, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the District. It is appropriate to incorporate Section 24 Cr.P.C., which runs as follows:

"24.Public Prosecutors.- (1)For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central or State Government, as the case may be.

(2) The Central Government may appoint one or more Public Prosecutors, for the purpose of conducting any case or class of cases in any district or local area.

(3) 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.

(4) The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion, fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district.

(5) No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under sub-section (4).

(6) Notwithstanding anything contained in sub-section (5), where in a State there exists a regular cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre:

Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub-section (4). "

6. In the case on hand, the petitioner sought for appointment of new Public Prosecutor to put forth his defence in S.C.No.255 of 2013, for which, he has given a representation dated 23.11.2015 to the District Collector.

7. A perusal of impugned order passed by the District Collector/first respondent dated 09.02.2016 reveals that as per Section 24 of Cr.P.C., the witness in a criminal case cannot choose the Public Prosecutor and the Special Public Prosecutor to his choice. Therefore, the request of the petitioner is outside the purview of Section 24 Cr.P.C. If any person wants to assist the existing Public Prosecutor, he can do so by filing an appropriate petition to get the permission of the Court to assist the prosecution.

8.Considering the aforesaid facts and circumstances of the case, if the petitioner has any grievance, he can very well file a petition under Section 302 Cr.P.C. to get permission for conducting prosecution. But the petitioner instead of filing such petition, has given the representation before the first respondent. Hence, I do not find any reason to quash the impugned order passed by the first respondent. However, the petitioner has every right to assist the Public Prosecutor. Therefore, the Writ Petition is dismissed with a liberty to the petitioner that if he intends to assist the Public Prosecutor, he can very well file a petition before the trial Court by invoking Section 302 Cr.P.C. to get permission for appointing a counsel to assist the Public Prosecutor for prosecuting the case. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The District Collector  
Coimbatore District  
Coimbatore.

2.The Inspector of Police  
P.N.Palayam police station  
Coimbatore.

+1 cc to Mr.R.Marudhachalamurthy Advocate sr.23055  
+1 cc to the Government Pleader High Court Madras  
sr 22747

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