

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.1.2016

CORAM

THE HON'BLE Mr. JUSTICE M.M.SUNDRESH

W.P.No.36835 of 2015 and
MP.No.1 of 2015

S.Sujatha

.. Petitioner

v.

1 The District Collector,
Villupuram District,
Villupuram.

2 The Deputy Superintendent of Police,
Crime Branch C.I.D.
Villupuram & District
(Investigation Officer in
Cr.No.159 of 2007)
On the file of the Brammadesam
Police Station,
Villupuram District.

3 Govindasamy
4. Arivoli
5. Vijayakumar
6. Ezhumalai
7. Dhanushu
8. Murugaiyan
9. Rajaram @ Raja

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the entire records connected with the order in O.Mu.(C1)/21844/15 dated 06.11.2015 of the 1st respondent, quash the same and consequently, directing the 1st respondent to forthwith appoint Mr.M.R.Sheriff, Advocate, Villupuram as Special Public Prosecutor to conduct the trial of the case in S.C.No.172 of 2015 on the file of the Principal District and Sessions Court, (the Special Court constituted under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Villupuram as per rule 4(5) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 on the basis of the petitioner's representations dated 14.07.2014, 15.06.2015 and 04.11.2015 within a time frame to be fixed by the Court.

For Petitioner : Mr.S.Sathia Chandran
For R1 & R2 : Mrs.P.Rajalakshmi
Govt. Advocate
For R3 to R9 : Ms. C.V.Charanya

ORDER

The petitioner, being the sister of the deceased, has preferred a complaint which was registered in Cr.No.159/07 for the alleged offences under Sections 147, 364, 302 I.P.C r/w Section 3(ii) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The case is pending trial before the Principal District and Sessions Judge in S.C.No.172 of 2015. To conduct the trial, the petitioner has sought for an appointment of Special Public Prosecutor in terms of Rule 4(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995. By order impugned, the said request was rejected on the ground that there is already a regular Public Prosecutor appointed for the Court to conduct the trial.

3. Placing reliance upon the order passed by this Court in Somalaiappan V.Palanisamy and others reported in (2013) 4 MLJ (Cr1) 237, the learned counsel for the petitioner submitted that as a victim, the petitioner is entitled to have a prosecutor on her own as a matter of her right. Paragraph 27 of the order is extracted hereunder:

"27. In view of the foregoings, whether the prosecution is being conducted by a Senior Public Prosecutor or whether there was any allegation as against the Prosecutor, when the victim of the atrocity wishes that an eminent Senior Advocate shall be engaged to conduct the prosecution case then the District Magistrate has to engage such an Advocate to conduct the prosecution in the Special Court. The District Collector cannot avoid such a request of the victim of the atrocity."

4. The learned counsel also submitted that the order impugned has not been passed by the respondent but some one else on his behalf. Reliance has also been placed on the subsequent order passed by the very same authority dated 10.1.2016 [separate sheet K/K/(rp1) 25275/2015. dated 10.01.2016.

5. The learned Government Pleader submitted that since there is already a prosecutor, there is no necessity to appoint another one. 6. The Act and Rules have got their own object. They are meant to implement above the said object. Rule 4(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 clearly gives a right to the victim to

seek from the 1st respondent for appointment of a Special Public Prosecutor. When the said provision is for the betterment of the victim, the prosecutor on whom she has got confidence will have to be appointed. It is not as if the Prosecutor dealing the case is not competent. Mainly because, there is another Prosecutor available, her request cannot be rejected. Therefore, the order impugned is not in consonance with Rule 4(5).

7. Accordingly, the order impugned is set aside, particularly, taking into consideration of the subsequent order dated 10.1.2016. Consequently, the 1st respondent is directed to appoint M.R.Sheriff as a Special Public Prosecutor to conduct S.C.No.172 of 2015 within a period of four weeks from the date of receipt of a copy of this order.

8. The learned counsel for respondents 3 to 9 prays for expeditious trial. Hence, the learned Principal District and Sessions Judge, Villupuram is directed to dispose of S.C.No.172 of 2015 within a period of six months.

The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

- 1 The District Collector,
Villupuram District,
Villupuram.
- 2 The Deputy Superintendent of Police,
Crime Branch C.I.D.
Villupuram & District
(Investigation Officer in Cr.No.159 of 2007)
On the file of the Brammadesam Police Station,
Villupuram District.
3. The Principal District Sessions Judge,
Villupuram.(within a direction to dispose of SC.No.172/15
pending on the file of Principal District and Sessions Judge,
Villupuram within a period of Six months)

+ 1cc to M/s. K. Kannan, Advocate SR.5783

W.P.No.36835 of 2015

RSK(CO)
Eu 10.02.16