

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.17236 of 2016

ORDER:

Appointment of Special Public Prosecutor for trial of case in Crime No.14 of 2013 of Alamuru Police Station, East Godavari District, is the subject matter of challenge in the present Writ Petition.

2. A charge-sheet came to be filed against the petitioner/accused for the offences punishable under Sections 302 and 307 of the Indian Penal Code. The gist of the prosecution case is as under :-

One B.Usha Rani, who is an M.L.A., of Palakollu is the wife of L.W.4 by name Bangaru Manikyam. They had two sons and the eldest son by name Madan was living by doing Rice Mill business. The deceased, who was the second son, was in for adoption to L.W.12. About six years prior, the deceased married L.W.11 and out of their wedlock they begotten one son. The deceased who was doing sanitary-ware business took Tata India Vista Car on rent @ Rs.18,000/- per month and was using the same for his business purpose. L.W.1 was working as Supervisor under the deceased in Anu PVC Pipes Industry at Dowleswaram. The accused and the deceased, who were running the business jointly, developed some financial disputes between them. The allegations in the charge-sheet disclose that on 17.01.2013 L.W.1 and deceased went to PVC industries at Dowleswaram in the Car belonging to the deceased. At about 7.00 p.m., the accused telephoned to the deceased stating that he kept the money ready and asked him to come to his house. The deceased along with L.W.1 went to the house of the accused. The accused told his wife that he is going to Hyderabad on some work, left the house with a bag and boarded the Car of the deceased in which L.W.1 was present. L.W.16 and L.W.17 are alleged to have

witnessed the accused, deceased and L.W.1 starting from Ravulapalem. It is said that on the way, all the three inmates of the Car got down to pass urine. Thereafter when the Car reached near Mulasthanam, on National Highway 16, all of sudden the accused is alleged to have put a rope around the neck of the deceased and tightened the same. The deceased, who was driving the Car, applied sudden brakes, stopped the Car by the side of the road, opened the doors and ran towards Rajahmundry. Then the accused chased the deceased with a knife and stabbed him indiscriminately all over the body. When L.W.1 tried to stop the accused, the accused threatened L.W.1 on point of knife. Later the accused pushed the deceased by the side of the road. At that point of time L.W.1 is alleged to have brought L.Ws.7 to 10 and on seeing them the accused left the place. Basing on these allegations a charge-sheet came to be filed.

3. Initially the case was taken on file as P.R.C. No.37 of 2013 on the file of the Additional Judicial First Class Magistrate, Alamuru, which on committal came to be numbered as S.C. No.24 of 2015 on the file of Principal Sessions Judge, East Godavari District, Rajahmundry. After framing the charges, the learned Judge fixed the schedule from 06.06.2016.

4. While things stood thus, the mother of the deceased by name B.Usha Rani, who is an M.L.A., of Palakollu Assembly Constituency submitted a representation dated 18.04.2013 for appointment of a Special Public Prosecutor. After considering the facts and circumstances of the case, the Government issued G.O.Rt.No.888 dated 02.05.2013 appointing Sri S.Kumar, Advocate as a Special Public Prosecutor to conduct the above case. Challenging the appointment of the Special Public Prosecutor made in the year 2013, the present Writ Petition is filed in the month of June 2016.

5. The learned counsel for the petitioner mainly submits that the said G.O., was issued at the instance of M.L.A., of Palakollu

Assembly Constituency and that the circumstances of the case do not warrant appointment of Special Public Prosecutor. According to him, even before filing of the charge-sheet the Special Public Prosecutor came to be appointed, which clearly indicates the vengeance with which the prosecution wants to proceed with the trial. Finally, the learned counsel for the petitioner submits that the Special Public Prosecutor is having close association with the family of the deceased and his appointment would cause grave prejudice to the accused as the chance of a fair trial being remote.

6. The question that falls for consideration is “Whether the respondent No.1 was right in issuing the G.O., appointing the 3rd respondent as a Special Public Prosecutor?”

7. In order to appreciate the same, it may be necessary to refer to Section 24 (8) of the code of Criminal Procedure, which reads as under :-

“24. 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.

(“Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section.”)

8. A reading of the said provision makes it clear that the Central Government or the State Government can appoint any person who has been practicing as an Advocate for not less than ten years as a Special Public Prosecutor for any case or any class of cases. The proviso to the said clause also states that the court may permit the victim to engage an Advocate of his choice to assist the prosecution. Section 24(8) of Cr.P.C., does not prescribe any special conditions for appointment of Special Public Prosecutor except to the extent that the said Special Public Prosecutor should be in practice as an Advocate for not less than 10 years.

9. The scope, power and authority of the Government in appointment of Special Public Prosecutor came up for consideration before a Divisional Bench of this Court in **State of Andhra Pradesh, Department of Legislative Affairs and Justice and another v. Margadarsi Financiers rep.by Ramoji Rao and others**^[1]. Dealing with the said aspect, the said Division Bench observed as under :-

“The expression used “Special” adjacent to “Public Prosecutor” and the reasons required for such appointment as mentioned therein viz., for the purpose of any case or class of cases, necessarily shows it stands apart. In a given situation and facts and circumstances, as the exigencies may arise, the concerned Government may appoint an individual person as a Special Public Prosecutor at their choice and discretion. This appointment, naturally will be in addition to the regular Public Prosecutors functioning in the respective Courts, and for the reasons as the Government may feel necessary to appoint such Special Public Prosecutors. It is not necessary to dwell into or lay down any specific reasons for such appointment, since they may vary from case to case and facts to facts. Therefore, where it felt necessary, the option is left to the Government for appointing a Special Public Officer in respect of a special case or class of cases. Thus, this provision independently stands on its own and cannot and does not have any similarity with appointments to the offices as provided for in the preceding sub clauses. Apparently, the consultation and panel as prescribed for the purpose of District is not provided for. It shows that such procedure is not necessary for making an appointment to the post of Special Public Prosecutor. The discretion apparently is a total and absolute one with a complete option on the part of the State Government to virtually pick and choose.”

10. A reading of the above said judgment makes it clear that the State or Central Government has got the absolute power to pick or choose an Advocate who has been practicing for not less than 10 years as a Special Public Prosecutor. Further, the grievance of the petitioner appears to be that the Government has exercised the power in appointing the Special Public Prosecutor at the instance of a M.L.A., who has nothing to do with the case and that grave prejudice would be caused to the accused by the appointment of the Special Public Prosecutor. I am afraid, the said argument cannot be accepted for the reason that the person who gave the representation for an appointment of a Special Public Prosecutor, though is a M.L.A., but she is none other than mother of the deceased. Definitely she being an aggrieved person can always make a request for appointment of

an efficient person or an Advocate of her choice as a Special Public Prosecutor to defend the case. The said act of the Government in appointing third respondent as a Special Public Prosecutor would by no means cause any prejudice to the petitioner since the petitioner/accused, has to defend the case against him the case basing on the evidence adduced by the prosecution. Though an averment is made that the Special Public Prosecutor is closely associated in dealing with legal matters of the deceased and his mother but no iota of material is placed to substantiate the same. Even otherwise, the same may not cause any prejudice to the accused since he proviso to Section 24(8) gives a right to the aggrieved person to engage an Advocate of their choice to assist the Public Prosecutor.

11. Further, the learned counsel for the petitioner found fault with the Government in appointing the Special Public Prosecutor during the stage of investigation but there is no averment in the affidavit filed in support of this Writ that the said Special Public Prosecutor has influenced the investigating agency leading to file of the present charge-sheet. In fact, in **Delta Car Pvt. Ltd. V. Sanjiv Shah and another**^[2] a learned Single Judge of this Court held that Counsel appointed under the proviso to Section 24(8) of Cr.P.C., will also have a right of audience. Hence, I see no merits in the Writ Petition and the same is liable to be dismissed.

12. Accordingly, the Writ Petition is dismissed at the admission stage. No order as to costs. Miscellaneous Petitions pending if any, in this Writ Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:06.06.2016
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[\[1\]](#) 2009(3) ALT 1 (D.B.)

[\[2\]](#) 2015(2) ALT (Cri.) 216 (A.P.)