

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.42142 of 2017

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioners to declare the action of the 2nd respondent in not considering the representation, dated 30.10.2017, of the petitioners seeking appointment of Special Public Prosecutor and Assistant Public Prosecutor for conducting prosecution in S.C.No.96 of 2017 on the file of the XI Additional Sessions Court-cum-Special Court under the SC & ST (Prevention of Atrocities) Act, 1989, [‘the Act’, for short] Visakhapatnam, as unconstitutional, arbitrary and in violation of the provisions of the Act and to consequentially direct the 2nd respondent to forthwith consider and act upon the afore-said representation.

2. I have heard the submissions of Ms. Vasudha Nagaraj, learned counsel appearing for the petitioners, and of the learned Government Pleaders appearing for the respondents. I have perused the material record.

3. The primary facts, in brief, are as follows:

Initially, on the complaint of the petitioners, a case in Crime No.86 of 2007 was registered by the S.H.O., Paderu Police Station for the offence punishable under Section 376(ii)(g) IPC and Section 3(ii)(v) of the Act. Eventually, the said case was closed by the investigating agency by filing a final report, dated 14.12.2007, *inter alia*, stating as follows: - ‘Though each circumstance/discrepancy alone is not fatal to occurrence of rape, the circumstances in totality, coupled with medical opinion made the version of the commission of rape improbable/unbelievable.’ Later the petitioners filed a

protest petition before the learned Judicial First Class Magistrate, Paderu. The said learned Magistrate, by order, dated 27.08.2008, took cognizance of the case as PRC.No.19 of 2008 against 21 accused policemen for the offences punishable under Section 376(ii)(g) read with 149 IPC and Section 3(1)(x) and 3(2)(v) of the Act and issued process to the said accused. Thereafter, the said accused moved this Court by filing CrI.P.No.5988 of 2008 to quash the proceedings against them in the said PRC. By order, dated 26.04.2012, the said Criminal Petition was partly allowed holding that criminal proceedings ought to continue against 13 police personnel; however, the case was quashed against the other eight accused. Thereafter the 13 accused policemen filed SLP.No.6221 of 2012 before the Supreme Court. On 01.09.2017, the Supreme Court dismissed the SLP and directed the trial Court to expedite and complete the trial in the case within six months. Thereafter, the case was committed to the sessions Division and is taken on file of the XI Additional Sessions Court-cum-Special Court under SC & ST (POA) Act and was numbered as S.C.No.96 of 2017.

4. In this backdrop, the case of the petitioners, as stated by the 1st petitioner in the affidavit filed in support of the writ petition, in brief, is this:

“The petitioners are *de facto* complainants in the afore-stated Sessions Case. They are from a remote village and are completely ignorant of the ways of the world, more so of the Courts. They belong to Kondh tribe, which was classified as a Particularly Vulnerable Tribal Group [PVTG] by the Government. They live in a remote hamlet called Vakapalli in the agency area of Visakhapatnam, which has a population of less than 250 people. Agriculture is their main source of livelihood. Most of the villagers are illiterates. Very few people are conversant with the language of the petitioners,

their diction and ways of life. Among them, very few lawyers would understand the plight of the petitioners. Therefore, the petitioners sought for appointment of Dr.Palla Trinadha Rao, who has thirty years of work experience in the Courts at East and West Godavari Districts, and extensive knowledge of tribal lives in the agency areas of East and West Godavari Districts, as the Spl. Public Prosecutor. The petitioners also sought appointment of Ms. Jahara, a lawyer who has been working on women's issues and is known to have considerable experience in criminal Courts, as Assistant Public Prosecutor. On the strength of Rule 4 (5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, the petitioners submitted the representation, dated 30.10.2017, to the District Collector, Visakhapatnam-2nd respondent, for appointment of the above said persons as Special Public Prosecutor and Assistant Public Prosecutor. There is no response from the 2nd respondent so far. While so, the Sessions Case has been posted for framing of charges and soon the trial will be commenced. The accused in the case are Greyhounds policemen. There is much at stake in the trial. There are well publicized allegations against the petitioners that they have made a false complaint and lied about the sexual assault only to protect the so called Maoists in their village. The petitioners have suffered negligence & marginalisation and a half hearted and biased investigation took place in the case. The bodily integrity and dignity of the petitioners have been ruthlessly violated. It has taken ten years for the trial in the case to commence and every attempt was being made at every stage to thwart the petitioners' fight for justice. Therefore, the petitioners apprehend that unless they exercise abundant caution and care, their interests may be compromised in the trial too'.

5. At the hearing, learned counsel for the petitioners re-iterated the pleaded case of the petitioners. She relied upon the following decisions:

1. Smt. Satki Devi v. Tikam Singh and others¹
2. R. Kandasamy v. District collector, Salem District²
3. Modugula Mallikarjuna Reddy v. Government of A.P³
4. N. Subburaj v. District Collector and others⁴

I have gone through the cited decisions.

6. Learned Government Pleader for Home appearing for the 3rd respondent, on written instructions, submitted as follows:

The representation, dated 30.10.2017, of the petitioners was received in the Office of the Principal Secretary to Government, Home Department-3rd respondent, on 26.12.2017. The XI Additional Sessions Court-cum-Special Court for trial of SC & ST (POA) Act Cases is already having a Special Public Prosecutor. On 29.12.2017, during vehicle checking, Sri Palla Trinadha Rao was found in possession of 14 photographs of accused police personnel. In that view of the matter, the matter was examined also from the point of view of reasonable apprehension of bias, as the Spl. Public Prosecutor has to act impartially and dispassionately. Therefore, the Government have decided to call for a panel of three advocates from the District Collector, Visakhapatnam, so that, one among them can be chosen by the victims/writ petitioners for being appointed as Spl. Public Prosecutor to conduct prosecution in S.C.No.96 of 2017. Accordingly, directions were issued to the 2nd respondent *vide* memo, dated 28.12.2017, to prepare a panel of three advocates, who have been in

¹ 2006 Cri.L.J.4721

² 2013(2) LW (Cri)711

³ 2004(6) ALT 229

⁴ 2016(2) LW 588

practice for not less than seven years and to forward the same to the Government before 01.01.2018. Report of the 2nd respondent with a panel of three advocates was received by the Government, on 01.01.2018. Thereafter, when the Sub-collector, Paderu, was deputed to Vakapalli for selection of Spl. Public Prosecutor by the writ petitioners from the panel, none of the victims/writ petitioners were available in the village; hence, selection could not be done. Government has also no objection for appointment of any one of the advocates proposed by the Principal Sessions Judge, Visakhapatnam & District Collector, Visakhapatnam, as Spl. Public Prosecutor. Further action in regard to appointment of Spl. Public Prosecutor will be taken by the Government after receipt of the name of the candidate selected by the victims from the 2nd respondent.

7. I have given earnest consideration to the facts, submissions and events.
8. The chronological events that lead eventually to the committal of the case to the Additional sessions Court-cum-Special Court as stated by the petitioners and the submissions of both sides make it manifest that this a fit case for granting the request of the petitioners and engage an eminent senior Advocate as desired by the victims/writ petitioners for conducting the case in the special Court. However, the short question is as to whether the advocate chosen by the Victims/writ petitioners shall be engaged or in the alternative the petitioners shall be required to choose an advocate from the panel of three advocates prepared by the District Collector.

It is to be noted that Rule 4(5) of the Rules reads as under:

‘Notwithstanding anything contained in sub-rule (1) the District Magistrate or the Sub-Divisional Magistrate may, if deemed necessary

or if so desired by the victims of atrocity engage an eminent Senior Advocate for conducting cases in the Special Courts or Exclusive Special Courts on such payment of fee as he may consider appropriate.'

9. Be it first noted that there is no command of law that the victims shall choose a lawyer only from the panel. The three advocates in the panel prepared by the District Collector/2nd respondent are – (i) Sri U. Raju Siva Rama Murthy, having 37 years of experience having worked as Addl. PP for II & III Addl. Courts, as PP in the District Court, and as Special PP for CID & CBI agencies; (ii) Sri K. Krishna Mohan, having 37 years of experience is a practicing Advocate at Visakhapatnam; and (iii) Sri K. Rama Krishna, with 10 years standing as advocate and 15 years past experience as Special PP and presently Legal Adviser-cum-Special PP, ACB since 15 years having joined in service as APP in the year 1998. Whereas, the advocate chosen by the victims/writ petitioners is one Dr.Palla Trinadha Rao, who is stated to be having thirty years of work experience. The writ petitioners plead specifically that their tribe is classified as a Particularly Vulnerable Tribal Group by the Government and that they live in a remote hamlet called Vakapalli in the agency area of Visakhapatnam, which has a population of less than 250 people, and that very few people are conversant with their language, diction and ways of life and that very few lawyers would understand the plight of the petitioners. For the above stated and other grounds, which are pleaded, the writ petitioners request for engaging Dr.Palla Trinadha Rao, who has thirty years of work experience in the Courts at East and West Godavari Districts. According to them, he has a deep and extensive knowledge of tribal lives in the agency areas of East and West Godavari Districts. Submissions made by the Government pleader based on the written instructions indicate apprehension of bias on the

ground that 14 photographs of the accused are found in the car of the said advocate when intercepted by the police on 29.12.2017. It is also urged on behalf of the respondents that the said advocate went to the village of the victims to tutor them. But, the case of the writ petitioners as per the submissions made before this Court is that the photographs are implanted by the police who have cordoned the village and that by force a good behaviour bond was taken from the said advocate by detaining in the police station. In the written instructions given to the learned Government Pleader there is no mention about the taking of a Bond from the said advocate. It is also the case of the respondents that none of the nine victims were in the village when Sub-Collector, Paderu, was deputed to the village of the victims for selection of the advocate to be engaged from the panel. Be that as it may, this Court is not inclined to either make any comment on the above aspect in the present writ proceeding or examine as to which of the two versions is correct, since not necessary.

10. For reasons best known to the respondents, the District Collector/District Magistrate did not promptly act on the representation, dated 30.10.2017, of the victims and remained indolent till the writ petition is filed. The counsel for the petitioners submits that after the writ petition is filed and after seeking adjournments from time to time on the ground that the 2nd respondent is giving attention to the matter and is likely to take a decision in the matter, an attempt is being sought to be made to unnecessarily complicate the matter obviously to deny the writ petitioners an opportunity to have the services of their choice advocate for conducting the case. Despite the fact that the Supreme Court directed the trial Court to expedite and complete the trial in

the case within six months, the District Collector/District Magistrate did not act promptly in the matter is not appreciable. Though the District Magistrate is the competent authority to engage an advocate for conducting the case in the Special Court on such payment which he considers appropriate, yet he did not act independently in the instant matter as is evident from the submissions made by the Government Pleader on written instructions. Be that as it may. From the chronology of events up till now it is not obscure that the victims/writ petitioners did not get a fair deal till now and that they are being made to run from pillar to post for reasons which are palpable.

11. On the above analysis, this Court finds that it is a fit case to partly allow the writ petition with appropriate directions as it is necessary in a case of this nature that the victims shall eventually have the satisfaction that they have been fairly dealt with in the system.

12. In the result the Writ Petition is allowed in part, however, with costs, and the 2nd respondent is directed to forthwith engage the services of Dr.Palla Trinadha Rao, Advocate chosen by the victims/writ petitioners, for conducting the case in SC 96 of 2017 on the file of the XI Additional Sessions Court-cum-Special Court under the SC & ST (Prevention of Atrocities) Act, 1989, by doing the needful in the matter within a week after the receipt of a copy of this order.

The costs are quantified at Rs.3,000/-. Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

04.01.2018

Note: Issue CC by 05.01.2018

[B/o]

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