

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2018

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.No.2784 of 2017

Hemalatha

Petitioner

Vs

1.The District Collector
Erode District
Erode.

2.The Inspector of Police
Vellithiruppur Police Station
Erode District.

Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a writ of mandamus directing the 1st respondent herein to appoint Mr.M.V.Chandrasekar, Advocate, Erode as Special Prosecutor to conduct the case in Cr.No.206 of 2013 of 2nd respondent, now committed in S.C.No.169 of 2015 on the file of IV Additional Sessions Judge, Erode at Bhavani.

For petitioner

Mr.D.Selvaraju

For Respondents

Mr.D.Raja,

Additional Government Pleader

ORDER

This petition has been filed seeking a direction to the 1st respondent herein to appoint Mr.M.V.Chandrasekar, Advocate, Erode as Special Prosecutor to conduct the case in Cr.No.206 of 2013 of the 2nd respondent, now committed in S.C.No.169 of 2015 on the file of the IV

2. The petitioner's husband was brutally murdered on 09.11.2013, pursuant to which, on the complaint given by the petitioner, the police registered a case in Cr.No.206 of 2013 and after completing the investigation, filed a final report before the Judicial Magistrate, Bhavani for the offences under Sections 120-B, 147, 148, 341, 109, 302 and 506(2) IPC read with 149 IPC against five accused. The case has been committed to the Court of Sessions and the same is pending in S.C.No.169 of 2015 before the IV Additional District and Sessions Judge, Erode at Bhavani. While so, the petitioner gave a representation dated 06.04.2015 to the District Collector, seeking appointment of Mr.M.V.Chandrasekar, Advocate of eminence, as Special Public Prosecutor in the case. In response to the said communication, the petitioner has been informed by the Office of the District Collector, vide communication dated 14.09.2016, advising him to approach the High Court for appointment of Special Public Prosecutor. Therefore, the petitioner is before this Court with the above prayer.

3. Heard Mr.D.Selvaraju, learned counsel for the petitioner, who submitted that the petitioner's husband has been brutally murdered by a gang and interests of justice would be served, if a direction is issued to the District Collector, to appoint Special Public Prosecutor to do the case.

4. Per contra, Mr.Raja, learned Additional Government Pleader refuted the contentions.

5. This Court gave its anxious consideration to the rival submissions.

6. Admittedly, the Government has appointed a regular Public Prosecutor under Section 24 Cr.P.C. to conduct the case before the Sessions Court. The said Public Prosecutor has been appointed from the panel prepared by the District Collector, in consultation with the District Judge as required under Section 24 Cr.P.C.

7. Mr.D.Selvaraju, fairly submitted that no *mala fides* or allegations have been made against the incumbent Public Prosecutor and therefore, he has not made him as a party. However, the learned counsel contended that the accused in this case is the brother of a policeman and therefore, even for proper investigation, the petitioner/de facto complainant had to approach the higher officials for transfer of investigation. Hence, he contended that interests of justice would be served, if the prayer in the writ petition is granted.

8. In the opinion of this Court, such a mandamus cannot be issued without good reasons therefor. Any direction as prayed for by the petitioner would presuppose that the present incumbent would not do his duty in accordance with law. Such an inference cannot be drawn in the light of the presumption under Section 114 of the Evidence Act that, all official and judicial acts are regularly performed. This Court has the confidence and faith on the present incumbent and that he would follow the path of justice by conducting the trial thoroughly.

The trial Court and the respondent police shall ensure that sufficient protection is given to the de facto complainant and the witnesses inside the Court, when they give evidence. The trial Court Public Prosecutor shall interview the witnesses before putting them in the witness box as held by the Supreme Court in **Banti @ Guddu vs. State of Madhya Pradesh [2003 AIR SCW 5979]**. Liberty is given to the petitioner/de facto complainant to engage an Advocate of her choice for assisting the Public Prosecutor in the trial.

With the above directions, this petition is closed. No costs.

09.04.2018

gms

NOTE TO OFFICE:

<http://www.judis.nic.in> Issue order copy by 11.04.2018

To

1.The District Collector
Erode District
Erode.

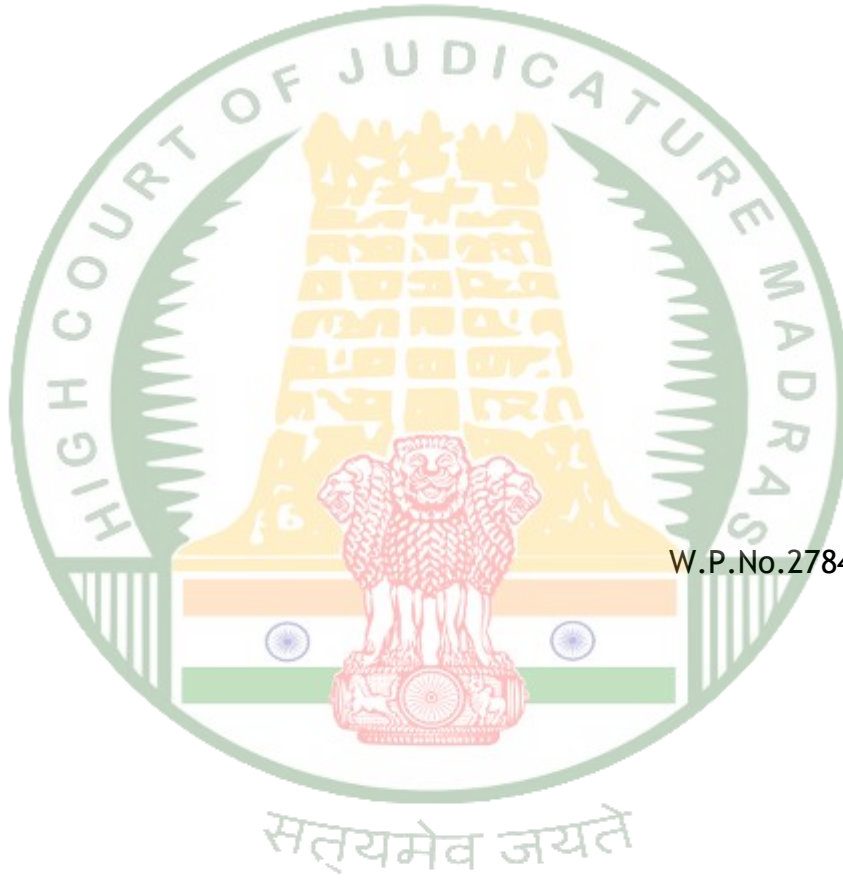
2.The Inspector of Police
Vellithiruppur Police Station
Erode District.



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P.N.PRAKASH, J.

gms



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