

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.11.2018

CORAM:

THE HON'BLE MR.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.23412 of 2018

and

Crl.M.P.No.13169 of 2018

V.Chitra

... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by its,
District Collector,
Namakkal District, Namakkal.

... Respondent

2. The Inspector of Police,
CBCID, Namakkal,
Namakkal District,
(Crime No.289 of 2015)

... Respondent/Complainant

3. Yuvaraj

4. Arun

5. Kumar @ Sivakumar

6. Sankar

7. Arul Senthil

8. Selvakumar

9. Thangadurai

10. Sathishkumar

11.Ragu @ Sridhar

12. Ranjith

13.Selvaraj

14.Chandrasekaran

15.Jothimani

16.Praba

17.Giridhar

18.Suresh

19.Amudharasu

20.Mr.Karunanithi,

Special Public Prosecutor, (S.S.No.78/2016)

The Principal Sessions Judge Court,

Namakkal.

... Respondent/De-facto Complainant

(Amended as per the order of this Court dated 30.10.2018
made in Crl.M.P.No.14370 of 2018 in Crl.O.P.No.23412 of 2018)

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C, to appoint Mr.B.Mohan, Advocate MS.No.354/1979 as Special Public Prosecutor in S.C.No.78 of 2016 on the file of Principal Sessions Judge, Namakkal on the basis of the representation of the petitioner dated 09.06.2016.

For Petitioner : Mr.Sankarasubbu
For R1 & R2 : Mr.M.Mohamed Riyaz
Additional Public Prosecutor.

ORDER

This petition has been filed to direct the District Collector, Namakkal District to appoint Mr. B.Mohan, as a Special Public Prosecutor to conduct the case on behalf of the petitioner in SC.No.78 of 2016 on the file of the Principal Sessions Judge, Namakkal.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents 1 and 2.

3. The learned counsel appearing for the petitioner would submit that the petitioner is a victim and her son was murdered on 24.06.2015. The petitioner is entitled under Rule 4 (5) of SC & ST (Prevention of Atrocities Rules 1995) to get a Special Public Prosecutor appointed for the purpose of conducting the case effectively. According to the learned counsel for the petitioner, the case is now at the stage of trial pending before the Special Court, Namakkal. The learned counsel for the petitioner also brought to the notice of this Court, the letter of the District Collector informing the petitioner that if a consent letter is obtained from the concerned advocate, he will be appointed as a Special Public Prosecutor to conduct the case. Accordingly, the consent letter has also been obtained from Mr.B.Mohan, Advocate to act as the Special Public Prosecutor and conduct the case in S.C.No.78 of 2016.

4. The learned Additional Public Prosecutor, on instructions would submit that the District Collector, Namakkal District has already given consent letter to the petitioner to get a Special Public Prosecutor appointed to conduct the case. If the petitioner had given the consent letter of the Advocate, the District Collector would have appointed a person as the Special Public Prosecutor to conduct the case in S.C.No.78 of 2016.

5. The main issue that is involved in this case is whether the first respondent has to appoint only the Advocate suggested by the petitioner as Special Public Prosecutor to conduct the case or the first respondent by himself can appoint any person

as Special Public Prosecutor. This question is no longer res-integra.

6. The learned counsel appearing for the petitioner has submitted three reported judgments of this Court made in (2011) 2 MLJ (Crl) 22-(Ms.Dhamayanthi Vs. Muruganantham and others), 2013-2-L.W.711-(P.Kandasamy Vs. The District Collector, Salem District, Salem) and 2018 (1) MWN (Cr.) 266-(S.Veeralakshmi Vs. District Collector cum District Magistrate, Madurai District, Madurai-20).

7. This Court has consistently held in all the above said three judgments that when the victim of the atrocity wishes that an eminent Senior Advocate shall be engaged to conduct the prosecution case, then the learned 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. In view of this settled position of law, the first respondent cannot insist that the Additional Public Prosecutor, who is attached to that Court will appear as Special Public Prosecutor in this case. The first respondent has to necessarily appoint the said Mr.B.Mohan as Special Public Prosecutor, since the victim wanted this Advocate to conduct the case.

8. In view of the above, there shall be a direction to the first respondent to appoint Mr.B.Mohan as Special Public Prosecutor to conduct the case in S.C.No.78 of 2016 on the file of the Principal Sessions Judge, Namakkal, within a period of 10 days from the date of receipt of copy of this order.

9. This Criminal Original Petition is allowed accordingly. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Sessions Court,
Namakkal.
2. The District Collector,
Namakkal District,
Namakkal.

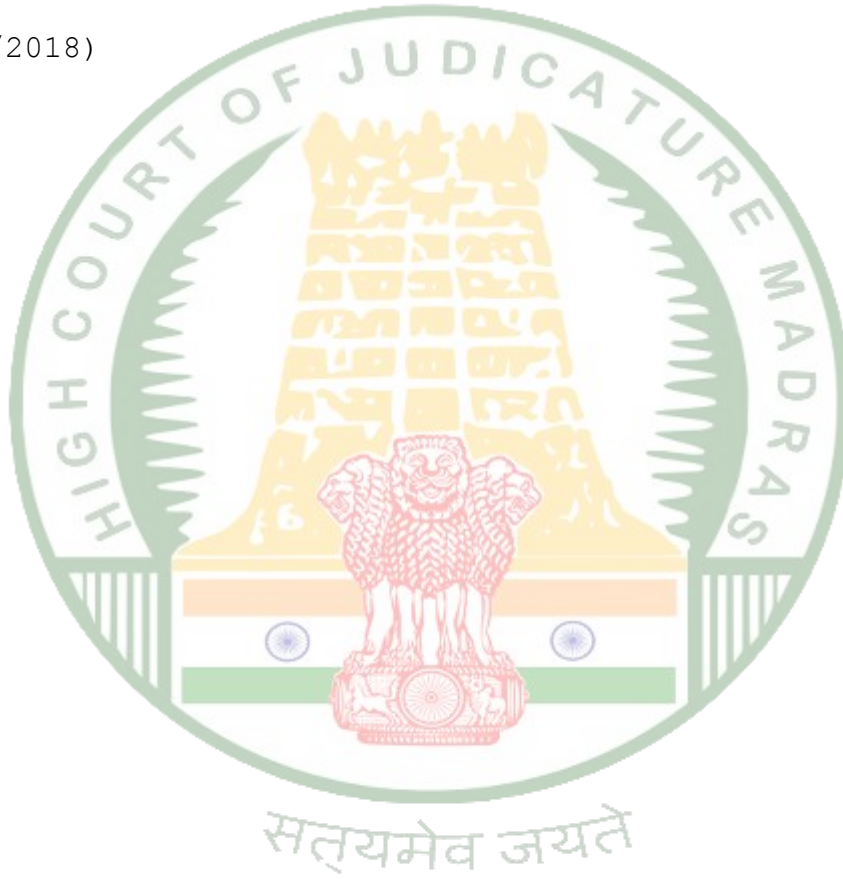
3. The Inspector of Police,
CBCID, Namakkal,
Namakkal District,

4. The Public Prosecutor,
Madras High Court, Madras

+2cc to Mr.R.Sankarasubbu, Advocate, S.R.No.77188 & 77524

CrI.O.P.No.23412 of 2018

VSNII(CO)
GSP(06/12/2018)



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