

INTHE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.26864 of 2018

Prabhu

...Petitioner

.Vs.

- 1.State of Tamil Nadu,  
Rep.by its Secretary to Government,  
Home (Courts) Department,  
Fort St.George,  
Chennai-600 009.
- 2.The District Collector,  
Coimbatore District,  
Coimbatore.
- 3.The Deputy Superintendent of Police,  
Karamadai,  
Coimbatore District.

..Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the 2nd respondent to pass appropriate orders forthwith appointing Mr.R.Murugavel, Advocate, Coimbatore as Special Public Prosecutor to conduct the trial of the case now in P.R.C.No.8 of 2017 on the file of the District Magistrate-cum-Judicial Magistrate, Mettupalayam, to be tried in the Special Court constituted under the Scheduled Castes and the Scheduled Tribes (prevention of Atrocities) Act, 1989, Coimbatore, 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 29.05.2017 and 08.06.2018.

For Petitioner : Mr.S.Sathia Chandran

For Respondents : Mr.M.Mohamed Riyaz  
Add. Public Prosecutor

## ORDER

This writ petition has been filed seeking to appoint Mr.R.Murugavel, Advocate, Coimbatore, as Special Public Prosecutor to conduct the trial pending in P.R.C.No.8 of 2017, on the file of the District Magistrate-cum-Judicial Magistrate, Mettupalayam, to be tried by the Special Court under the Scheduled Castes and the Scheduled Tribes Act.

2.The learned counsel for the petitioner would submit that on 13.01.2017 at about 4.30 p.m., one Kumar, an Auto owner came to the house of the petitioner and abused him in filthy language mentioning the caste name in a derogatory manner and also indiscriminately attacked the petitioner. A statement was taken from the petitioner and an FIR was registered in crime No.12 of 2017 for an offence under Section 294(b), 323 IPC and Section 3 (2)(V) and 3 (1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The Police investigated the case and a Final Report was also filed by the 3rd respondent and the same was taken on file in PRC No.8 of 2017, on the file of the District Magistrate-cum-Judicial Magistrate, Mettupalayam.

3.The learned counsel for the petitioner would submit that the petitioner made a representation to the 1st and 2nd respondents on 29.05.2017 seeking for the appointment of one R.Murugavel, Advocate as the Special Public Prosecutor to conduct the case. In spite of the receipt of the representation, the 1st and 2nd respondent have not taken any action appointing of the said R.Murugavel as Special Public Prosecutor to conduct the trial, and therefore, the present writ petition has been filed before this Court.

4.The learned counsel for the petitioner would submit that a Statutory right has been conferred upon victim under Rule 4(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 for an appointment of a Special Public Prosecutor to conduct the case in a special Court. The learned counsel also brought to the notice of this Court the letter of willingness dated 29.05.2017, issued by the above said advocate R.Murugavel. The learned counsel for the petitioner also brought to the notice of this Court a reported judgment in Somalaiappan .vs. Palanisamy & others reported in [2013-2-L.W. (Cr1) 438] . The relevant portions in the judgment is extracted hereunder:

"21. Sub-Rule (5) contains a non-obstante clause overriding the provisions of sub-rule (1). Thereunder, the District Magistrate or Sub Divisional Magistrate may on application

of the victim of atrocity or on his own motion, if deemed necessary, engage an eminent senior advocate to conduct the case. While the panels contemplated in sub rule(1) of the Rule 4 and standing panels and the Advocates/Public Prosecutors borne on these panels have a tenure of three years subject to review of their performance and ability- as provided in sub rules(2), (3) and (4) of Rule 4, and they may appear in the case assigned to them. The engagement under sub rule (5) of Rule 4 is special appointment for the particular case. This is evident from the fact that such appointment is on payment of special fee as considered appropriate, which may be different from the fee payable to an advocate/public prosecutor appointed or specified under Section 15 of the Act.

25. The language employed in Rule 4(5) is plain, simple and admit of any difficulty or ambiguity in understanding it. Unlike the General Penal Law of India or any other enactment providing prosecution, the SC/ST (PA) Act is a special Act intended to put an end to untouchability, degradation of human being merely on account of their birth. That is how, as per Section 18 of the Act, even grant of pre-arrest bail has been ruled out for those who commits the offences prescribed under the Act. Added to that Section 20 introduced a non-obstante clause and Section 21 imposed a duty on the Central Government to frame rules for effective implementation of the Act.

27. In view of the foregoing, 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".

5. The judgment referred supra is squarely applicable to the facts of the present case. The 2nd respondent viz; the District Collector, Coimbatore District is directed to engage Mr.R.Murugavel, Advocate to conduct the prosecution in the case

which is now pending in PRC No.8 of 2017, on the file of the District Magistrate-cum-Judicial Magistrate, Mettupalayam, within a period of two weeks from the date of receipt of a copy of this order.

6. Accordingly, the writ petition is allowed. No costs.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

KP

To

- 1.State of Tamil Nadu,  
Rep.by its Secretary to Government,  
Home (Courts) Department,  
Fort St.George,  
Chennai-600 009.
- 2.The District Collector,  
Coimbatore District,  
Coimbatore.
- 3.The Deputy Superintendent of Police,  
Karamadai,  
Coimbatore District.

Copy to  
The District Magistrate cum  
Judicial Magistrate Mettupalayam  
Coimbatore District

+1cc to Mr.S.Sathia Chandran, Advocate, S.R.No.76271

W.P.No.26864 of 2018

MG (CO)  
GSP (28/11/2018)

WEB COPY