



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Order reserved on: 31. 01.2018

Pronounced on : 02.02.2018

WEB COPY

CORAM

The HONOURABLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P. (MD) .No.16928 of 2017

S.Veeralakshmi

.. Petitioner

Vs.

1.The District Collector Cum District Magistrate,
Madurai District, Madurai-20.

2.The Deputy Superintendent of Police,
D.S.P Office, Samayanallur Sub Division,
Madurai District.

3.The Inspector of Police,
All Women Police Station (AWPS)
Samayanallur,
Madurai District.
(Cr.No.47/2013)

... Respondents

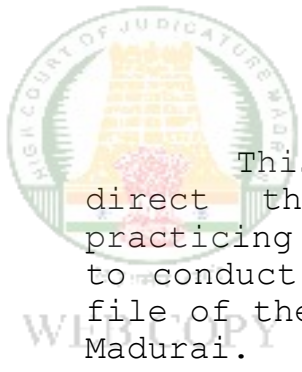
4.VeerakumaranImpleaded petitioner/Proposed respondent/
Accused

(4th respondent impleaded as per the order of this Court, dated
31.01.2018, made in Crl.M.P. (MD) .No.678/2017 in
Crl.O.P. (MD) .No.16928/2017)

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C
to direct the 1st respondent to appoint Mr.G.Bhagavath Singh,
practicing advocate of Madurai District as Special Public Prosecutor
to conduct the trial in Spl.S.C.No.120 of 2016, pending before the V
Additional District and Sessions Judge, (PCR), Madurai, in
accordance with the Rules 4(5) (6) of the Scheduled Castes and
Scheduled Tribes (Prevention of Atrocities) Amendments Rules, 2016
within a stipulated time that may be fixed by this Hon'ble Court.

For Appellants : Mr.A.Sahaya Philomin Raj

For Respondents: Mr.A.P.G.Ohm Chairma Prabhu
Govt. Advocate (Crl.Side)
for RR-1 to 3

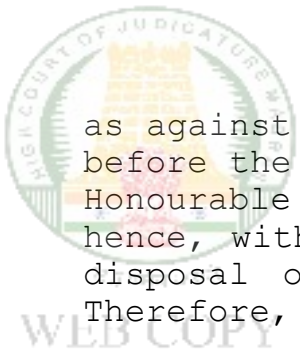
ORDER

This petition has been filed by the defacto complainant to direct the first respondent to appoint Mr.Bhagavath Singh, practicing advocate of Madurai District as Special Public Prosecutor to conduct the trial in Special S.C.No.120 of 2016, pending on the file of the learned V Additional District and Sessions Judge, (PCR), Madurai.

2.The learned counsel for the petitioner has submitted that the petitioner is the defacto complainant and victim in Special S.C.No.120 of 2016, on the file of the V Additional District and Sessions Judge, (PCR), Madurai. He further submitted that the rule 4(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, enables the petitioner to make a request to the first respondent to appoint an advocate for conducting cases in the Special courts and on such request, the first respondent has to appoint the said advocate for conducting the said case. He further submitted that said advocate Mr.G.Bhagavath Singh also gave a consent letter on 03.11.2017 and the petitioner has submitted her request letter on 06.11.2017 to the first respondent through speed post and also submitted another requisition on 13.11.2017 in the Grievance Cell of the first respondent and even thereafter, the first respondent has not passed any order on the said requisitions and hence, he has requested the Court to direct the first respondent to appoint the aforesaid Mr.G.Bhagavath Singh, advocate to conduct the trial in Special S.C.No.120 of 2016 on the file of the learned V Additional District and Sessions Judge, (PCR), Madurai. In support of the said contention, he relied upon a decision in R.Kandasamy Vs. District Collector, Salem District, Salem [(2013) 4 MLJ (Cr1) 339].

3.The learned Government Advocate (Cr1.Side) appearing for the respondents 1 to 3 has submitted that already, a Special Public Prosecutor has been appointed to conduct the cases under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, before the V Additional District and Sessions Judge, (PCR), Madurai and the chief examination of P.W.1 was also taken and under the said circumstances, another advocate need not be appointed to conduct the trial.

4.The learned counsel for the respondent No.4/accused has submitted that a DNA test was conducted by taking sample blood of the petitioner's child and the fourth respondent herein and in the test, a report has been given that the fourth respondent is not the biological father of the said child and hence, the petitioner herein has filed Cr1.O.P.No.19734 of 2014 to order for second DNA test and in that petition, the said advocate Mr.G.Bhagavath Singh has appeared on behalf of the petitioner. He further submitted that since the said advocate Mr.G.Bhagavath Singh, already appeared for the petitioner in Cr1.O.P.No.19734 of 2014, if he is appointed to conduct the trial in Spl. S.C.No.120 of 2016, that would cause great prejudice to the fourth respondent/accused. He further submitted that the said Cr1.O.P.No.19734/2014 was dismissed by this Court and



as against the said order, the petitioner herein has filed an appeal before the Honourable Supreme Court in SLP.No.3722 of 2015. But the Honourable Supreme Court was not inclined to grant any stay and hence, with a view to getting time before the trial court, till the disposal of SLP, the petitioner has filed the present petition. Therefore, he strongly opposed this petition.

5. In this context, it is relevant to refer Rule 4(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, which reads thus:

"4. Supervision of Prosecution and Submission of Report:

.....

(5) Notwithstanding anything contained in sub-rule (1) the District Magistrate or the Sub-Divisional Magistrate, may, if deem necessary or if so desired by the victims of atrocity engage an eminent Senior Advocate for conducting cases in the Special Court on such payment of fee as he may consider appropriate."

6. From the aforesaid provision, it is clear that the District Magistrate or Sub-Divisional Magistrate may, on his own motion, if deemed necessary or on application of victim of atrocity, engage an eminent Senior Advocate to conduct the case. Therefore, whether an advocate can be appointed to conduct the prosecution, as per the choice of the petitioner is the issue between the first respondent herein and the petitioner, in which, the 4th respondent/accused has no right to interfere. Merely because the advocate Mr.G.Bhagavath Singh has conducted the case in CrI.O.P.No.19734 of 2014 on behalf of the petitioner herein, it cannot be said that he cannot be engaged to conduct the prosecution before the Sessions Court. The other objection raised by the learned counsel for the fourth respondent that only with a view to gain time, the petitioner has filed the present petition does not have any merit.

7. In R.Kandasamy Vs. District Collector, Salem District, Salem [supra], this Court has dealt with Rule 4(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 and has observed in paragraph Nos.27 and 28 as follows:

"27. In view of the foregoings, 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.



28. In the circumstances, in pursuance of the written representations of the petitioner, dated 11.07.2012 and 19.10.2012, the District Collector, Salem District, Salem is directed to engage Mr. B. Mohan, Senior Advocate to conduct the prosecution in the special case in S.C.No.58 of 2009 pending before the Special Judge (Principal Sessions Judge) under SC/ST (PA) Act, Salem within 10 days from the date of receipt of a copy of this order. Accordingly, the criminal original petition is disposed of. Consequently, connected M.P is closed."

8. From the aforesaid decision, it is clear that 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 and cannot reject such a request of the victim of the atrocity. Therefore, in pursuance of the written representations of the petitioner, dated 06.11.2017 and 13.11.2017, the first respondent is directed to engage Mr. G. Bhagavath Singh, learned advocate to conduct the prosecution in Special S.C.No.120 of 2016 on the file of the learned V Additional District and Sessions Judge (Prevention and Atrocities) Act, Madurai, within 10 days from the date of receipt of a copy of this order.

9. Accordingly, this Criminal Original Petition is disposed of.

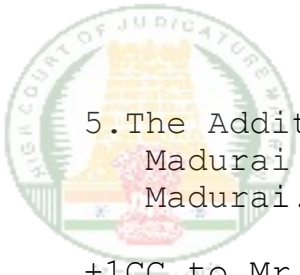
Sd/-
Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To.

1. The V Additional District and Sessions Judge
(PCR) Act, Madurai
2. The District Collector Cum District Magistrate,
Madurai District, Madurai-20.
3. The Deputy Superintendent of Police,
D.S.P Office, Samayanallur Sub Division,
Madurai District.
4. The Inspector of Police,
All Women Police Station (AWPS)
Samayanallur,
Madurai District.



5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.S.Balaji, Advocate, SR.No. 46065

+1CC to Mr.R.Karunanidhi, Advocate, SR.No. 46022

Cr1.O.P. (MD) .NO.16928 of 2017
02.02.2018

Vs

AM/SV MMS/SAR 1/05.02.2018/5P/8C