



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Order Reserved on :09.02.2018

Order Pronounced on :14.02.2018

WEB COPY

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THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.P(MD) No.22474 of 2017
and
W.M.P(MD).No.18781 of 2017

Vasanth

... Petitioner

-Vs-

1.The State represented through
The Home Secretary,
Govt. of TamilNadu,
Secretariat,
St. George Tower,
Chennai-09.

2.The District Collector,
Collectorate,
Virudhunagar District.

3.The Superintendent of Police,
Virudhunagar District,
Virudhunagar.

4.The Inspector of Police,
Soolaikarai Police Station,
Virudhunagar District.
(In Cr.No.275 of 2015)

5.Varadharajan

6.Veluchamy

7.Kannan

8.Alagarsamy @ Alagusamy

9.Samayakaruppasamy

10.Erajasekaran

11.Seenivasan

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue writ of mandamus directing the respondents 1 and 2 to appoint Mr.K.Kathiresan, practising Advocate at Madurai as a Special Public Prosecutor for conducting trial in S.C.No.180/2016



on the file of the learned 1st Additional Sessions Judge, Virudhunagar within a stipulated time that may be fixed by this Court.

For Petitioner	: Mr.R.Karunanithi
For Respondents 1 to 4	: Mr.N.Shanmuga Selvam Addl. Govt. Pleader
For respondent No.5 to 11	: No appearance

O R D E R

This writ petition has been filed by the defacto complainant to direct the respondents 1 and 2 to appoint one Mr.K.Kathiresan, practising Advocate at Madurai as a Special Public Prosecutor for conducting trial in S.C.No.180/2016 on the file of the learned 1st Additional Sessions Judge, Virudhunagar.

2.The case of the petitioner was that on 09.10.2015, her husband Muniyasmy was brutally murdered by the respondents 5 to 11 following a property dispute. A case was registered in Cr.No.275/2015 on the file of the fourth respondent and subsequently, the fourth respondent has filed a charge-sheet on 31.03.2016 against the respondents 5 to 11 for the offence punishable under Sections 150, 148, 341, 342, 294(b), 324, 326, 302 I.P.C r/w 149 I.P.C and Sections 201 and 202 I.P.C and based on the said charge-sheet, the Judicial Magistrate, Aruppukkottai has taken the case as P.R.C and committed to the Court of Sessions, Virudhunagar and the same was taken on file in S.C.No.180/2016 and made over to the First Additional Sessions Judge, Virudhunagar and the same is pending for trial. The respondents 5 to 11 are threatening the petitioner and other prosecution witnesses; that they are having money and muscle power; that specifically they have high-level political influence in the present ruling party and that the present Public Prosecutor will not conduct trial effectively for getting justice to the victim. The accused party will influence the Public Prosecutor through ruling party members. It is the further case of the petitioner that if the trial is going to be held without appointing the Special Public Prosecutor, the petitioner will not get justice. She got a consent letter from the Advocate Mr.K.Kathiresan, who is having above 10 years Bar experience for conducting the case in S.C.No.180/2016 as Special Public Prosecutor. Hence, the petitioner has sent a representation to the respondents 1 to 3 on 30.11.2017, requesting them to appoint a neutral and effective Public Prosecutor for conducting the case in S.C.No.180/2016, but, till date, there is no action on the said representation. Hence, she has filed the present writ petition for the aforesaid relief.

3.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents 1 to 4. In spite of service of notice, there is no representation on behalf of the respondents 5 to 11.



4.The learned counsel appearing for the petitioner has submitted that the petitioner's husband Muniyasmy was brutally murdered by the respondents 5 to 11 on 09.10.2015. He further submitted that the respondents 5 to 11 are having high-level political influence in the present ruling party and they will influence the present Public Prosecutor and as such, the present Public Prosecutor will not conduct the trial effectively and therefore, a Special Public Prosecutor has to be appointed for conducting the trial in S.C.No.180/2016. He further submitted that already the petitioner has got a consent letter from the Advocate Mr.K.Kathiresan and also sent a representation to the respondents 1 to 3 on 30.11.2017, requesting them to appoint the said Mr.K.Kathiresan as Special Public Prosecutor for conducting the aforesaid case, but so far, no order has been passed in the said representation and hence, the petitioner has approached this Court seeking a direction to appoint Mr.K.Kathiresan, Advocate as Special Public Prosecutor. In support of the aforesaid contentions, the learned counsel for the petitioner has relied upon the following decisions:

- i) Sunil Kumar Pal Vs. Phota Sheikh (1984) 4 SCC 533.
- ii) Hasan Ammal Vs. Home Secretary (W.P.(MD).No.674 of 2011, dated 16.03.2012.

5.The learned Additional Government Pleader appearing for the respondents 1 to 4 has denied the allegation that the respondents 5 to 11 are belong to ruling party and they will influence the present Public Prosecutor and as such, the present Public Prosecutor will not conduct the trial effectively. He further submitted that the petitioner can file an application under Section 301(2) of Cr.P.C and after getting permission from the trial court, she can engage a private advocate and assist the prosecution and in stead of doing so, the petitioner cannot seek a direction to appoint the Special Public Prosecutor in the place of regular Public Prosecutor.

6.No doubt, as per Section 301(2) of Cr.P.C, the petitioner can engage a private advocate for assisting the Public Prosecutor for conducting trial before the Sessions Court. But the Public Prosecutor is not bound to act as per the instructions of the said private advocate. Therefore, if any private advocate is engaged by the petitioner, the said private advocate cannot conduct the prosecution as he likes.

7.In Sunil Kumar Pal Vs. Phota Sheikh (supra), the Honourable Supreme Court in paragraph Nos. 9 and 10 has observed as follows:

9.....We have no doubt that under these circumstances, the trial could not be regarded as fair and just so far as the prosecution was concerned. The entire course of events shows that the conduct of the



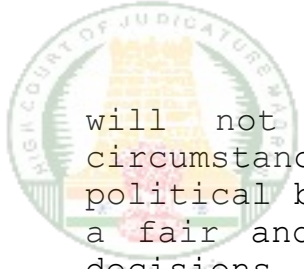
trial was heavily loaded in favour of respondents 1 to 9. The trial must in the circumstances be held to be vitiated and the acquittal of respondents 1 to 9 as a result of such trial must be set aside. It is imperative that in order that people may not lose faith in the administration of criminal justice, no one should be allowed to subvert the legal process. No citizen should go away with the feeling that he could not get justice from the court because the other side was socially, economically or politically powerful and could manipulate the legal process. That would be subversive of the rule of law."

"10..... It is necessary in the interest of justice that the trial should not be conducted in Krishna Nagar because the atmosphere there appears to be surcharged against the appellant and the complainant and we would accordingly direct that the sessions case shall stand transferred to the City Civil and Sessions Court, Calcutta and it shall be tried by a City Civil and Sessions Judge to be appointed by the Chief Judge of the City Civil and Sessions Court. We would also direct that in order that there should be fair yet effective prosecution, the State Government should appoint a senior advocate practising on the criminal side in the City Civil and Sessions Court, Calcutta as Special Public Prosecutor in consultation with the appellant and the complainant and any suggestions made by the appellant or the complainant shall be taken into consideration in making such appointment....."

8. In Hasan Ammal Vs. Home Secretary (supra), this Court has observed in paragraph No.13 as follows:

"13. In the light of these averments, it is just and necessary that the first respondent herein should be directed to appoint a Special Public Prosecutor and they should take note of the suggestion made by the petitioner to appoint one C.M.Arumugam, a practising Advocate at Madurai as a special Public Prosecutor in P.R.C.No.58 of 2009 pending before the Judicial Magistrate, Tenkasi in Crime No.391 of 2006. The first respondent is hereby directed to take decision in this regard within a period of eight weeks from the date of receipt of a copy of this order and communicate the result to the petitioner."

9. In this case, the petitioner has stated in her affidavit that the respondents 5 to 11 are having high-level political influence in the present ruling party and they will influence the present Public Prosecutor and as such, the present Public Prosecutor



will not conduct the trial effectively. In the aforesaid circumstances, this Court feels that an advocate who is not having political background has to be appointed for conducting the trial in a fair and effective manner. Therefore, following the aforesaid decisions, the first respondent is directed to appoint a Special Public Prosecutor and they should take note of the suggestion made by the petitioner to appoint Mr.K.Kathiresan, a practising Advocate at Madurai in S.C.No.180 of 2016, on the file of the learned 1st Additional Sessions Judge, Virudhunagar.

10.The first respondent is directed to take a decision in this regard within a period of 8 weeks from the date of receipt of copy of this order and communicate the result to the petitioner.

11.With the aforesaid observations, the writ petition is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub-Assistant Registrar

To

1. The Home Secretary,
Govt. of TamilNadu,
Secretariat,
St. George Tower, Chennai-09.
- 2.The District Collector,
Collectorate, Virudhunagar District.
- 3.The Superintendent of Police,
Virudhunagar District,
Virudhunagar.
- 4.The Inspector of Police,
Soolaikarai Police Station,
Virudhunagar District.

+One cc to M/s.R.Karunanidhi, Advocate, SR.No.48701

vs

RL/6C/5P/KK/SAR1/1/3/2018

Order made in
W.P(MD) Nos.22474 of 2017