



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 27.02.2018
CORAM:

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

WEB COPY

W.P. (MD) No. 9465 of 2017
and
W.M.P. (MD) Nos. 7198, 7199, 7200 and 10781 of 2017

T.K.S.P.A. Shanmugamurthy : Petitioner

-Vs-

1. The Principal Secretary to Government,
Public (SC) Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.

2. The Director of Vigilance & Anti Corruption,
Chennai.

3. The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Virudhunagar District.
Crime No.10 of 2011.

4. The Public Prosecutor,
High Court, Madras.

5. The Deputy Legal Advisor,
Vigilance and Anti Corruption,
Virudhunagar Unit at Virudhunagar.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records relating to the impugned order of the first respondent in G.O.Ms.No.789, Public (SC) Department, dated 26.09.2016, as far as Sl.No.8 is concerned and quash the same.

For Petitioner	: Mrs.D.Farjana Ghoushia, For M/s.Veera Associates
For Respondents	: Mr.B.Pugalendhi, Additional Advocate General, Assisted by Mr.C.Mayil Vahana Rajendran, Additional Public Prosecutor

O R D E R

On 12.02.2018, this Court passed the following order:

"One Shanmugamurthy is facing prosecution in Special C.C.No.24 of 2014 before the Special Court/Chief Judicial Magistrate, Virudhunagar at Srivilliputhur for the offence under Section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act r/w Section 109 of the Indian Penal Code. The prosecution in this case is by the Department of Vigilance and Anti-Corruption, which itself has cadre Public Prosecutors to



conduct their cases. Those Public Prosecutors are designated as DLA in their parlance. While so, the Government, by G.O.Ms.No.682, Public (S.C.) Department, dated 09.07.2013, appointed Mr.Shanmuga Velayutham as Public Prosecutor. Subsequently, by G.O.Ms.No.789, Public (SC) Department, dated 26.09.2016, Mr.R.Rajarathinam was appointed as Public Prosecutor to be assisted by Selvi P.Kritika Kamal, to argue the discharge applications and some important hearings before the Trial Court. Challenging the said Government Order, the Writ Petition has been filed.

2. Heard Mr.B.Pugalendhi, learned Additional Advocate General appearing for the respondents.

3. In the opinion of this Court, the prosecution against the accused can be carried forward by the Departmental Public Prosecutors, who are themselves very competent and it may not be necessary for the Government to appoint Special Public Prosecutor, giving room for the accused to challenge the appointment order and stall the trial.

4. The learned Additional Advocate General submitted that senior advocates are appearing for the accused and, therefore, the State also needs to have a Senior Advocate to defend the case in the Trial Court.

5. What is required for prosecuting a criminal case is long experience in trial work and integrity. The presence of a battery of lawyers for the accused should not overawe the State, since the State should have faith in the efficiency of its cadre Public Prosecutors and the Courts. Therefore, to put to rest this litigation, the State is advised to rescind the orders appointing Mr.Shanmuga Velayutham and Mr.R.Rajarathinam as Special Public Prosecutors in the case and leave the prosecution to be dealt with by a competent Cadre Legal Adviser or Additional Public Prosecutor as the State deems fit.

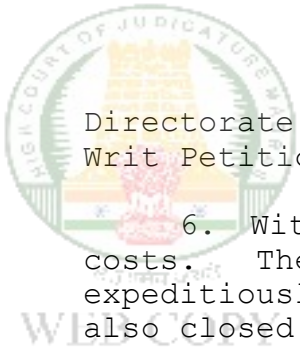
6. With the above observation, the matter stands adjourned to 27.02.2018 "for orders".

2. Today, Mr.R.Rajarathinam, former Public Prosecutor for the State is incidentally present before this Court in connection with some other case. On the question posed by this Court, he stated that he resigned from the post of Public Prosecutor, High Court of Madras on 04.10.2017 and his resignation was also accepted on 21.10.2017 and, therefore, he is also not acting as the Special Public Prosecutor in terms of G.O.Ms.No.789, Public (SC) Department, dated 26.09.2016.

3. In such view of the matter, this Writ Petition has become infructuous.

4. However, the learned counsel for the petitioner submitted that the petitioner has raised certain seminal issues in the Writ Petition, inasmuch as he has questioned the very authority of the Government to appoint more than one Public Prosecutor in the instant case.

5. Since G.O.Ms.No.789, Public (SC) Department, dated 26.09.2016 <https://hcservices.courts.gov.in/hcservices/> is infructuous, it may not be necessary for this Court to address those issues. As and when the Government appoints a Special Public Prosecutor other than the usual Cadre Prosecutors of the



Directorate of Prosecution, it is open to the petitioner to file a fresh Writ Petition challenging such appointment.

6. With the above observation, the Writ Petition is closed. No costs. The Trial Court shall proceed with the discharge applications expeditiously. Consequently, the connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar(CSII)

/True Copy/

Sub-Assistant Registrar

To

1.The Principal Secretary to Government,
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Virudhunagar Unit at Virudhunagar.

+One cc to The Special Government Pleader, SR.No.51913
+2ccs to M/s.Veera Associates, Advocate, SR.No.51441

SML

RL/9C/3P/KK/SAR4/12/3/2018

Order made in
W.P. (MD) No.9465 of 2017