

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.NO.27812 OF 2018

O R D E R

Writ petitioner is accused No.5 in S.C.No.433 of 2018, pending on the court of XIII Additional District and Sessions Judge, Rangareddy District. Additional Public Prosecutor of the said court has been conducting the prosecution of the case. Government vide impugned G.O.Rt.No.1078 Home (Courts.A1) Department dated 23-07-2018, entrusted the conduct of prosecution in the said case, to Additional Public Prosecutor Grade-I, Additional Sessions Court, Ranga Reddy District. Aggrieved by the same, the present writ petition is filed.

Learned counsel appearing for the petitioner, based on the averments made in the affidavit filed in support of the writ petition submits that the 4th respondent herein is the sister of the deceased and the Additional Public Prosecutor Grade – I, attached to the court of Additional Sessions Court, Ranga Reddy, who is now entrusted with the conduct of prosecution, is a close friend of the family of the deceased. Learned counsel submits that the role of Additional Public Prosecutor is to place the relevant facts before the court and seek for conviction and that he shall be fair to the accused and to the court. He states that the regular Additional Public Prosecutor is assisting the court in a fair manner. The learned counsel submits that since the Additional Public Prosecutor Grade-I, who is entrusted to conduct the prosecution under the impugned G.O., is closely associated to the family of the deceased, petitioner apprehends that he may not conduct the case in a fair manner. He further submits that when regular Public Prosecutor is appointed under Section 24 of Cr.P.C., there is no power to the

Government to appoint another Public Prosecutor and such a power is not traceable to the said provision. Therefore, he sought to set aside the impugned G.O.

On the other hand, learned Government Pleader for Home, appearing for respondents 1 to 3, produced written instructions of Director of Prosecutions. He submitted that the father of the deceased made a representation dated 12.07.2018 to the 2nd respondent – Director of Prosecutions, making certain allegations against Smt. P.Vidyavathy, Additional Public Prosecutor, who is presently conducting the case, and sought to appoint Additional Public Prosecutor Grade-I, II Additional Sessions Court, Rangareddy District, as Special Public Prosecutor, to conduct the case. The 2nd respondent forwarded the representation of the father of the deceased to the 1st respondent and in turn, the 1st respondent – Government, after calling for the remarks of Smt. P.Vidyavathy, Additional Public Prosecutor, vide office memo No.72/A2/2018 dated 16.07.2018 and considering the material on record, entrusted the prosecution of the case in S.C.No.433/2018 to Additional Public Prosecutor Grade – I, II Additional Sessions Court, Rangareddy District vide the impugned G.O., and the same was communicated to the concerned on 23.07.2018. It is stated that the allegation of the petitioner that Sri C.Ramu, Additional Public Prosecutor Grade – I, II Additional Sessions Court, Rangareddy District, is close friend of the family of the deceased, is misconceived and is only a bald allegation.

Learned Government Pleader for Home further contended that such decision of the Government in entrusting the conduct of prosecution to a Special Public Prosecutor, cannot be interfered with by this court by exercising power of judicial review under Article 226 of Constitution of

India. In support of his contention, learned Government Pleader, relied on the judgment of the Apex Court in *STATE OF MAHARASHTRA vs. PRAKASH PRAHLAD PATIL AND OTHERS*¹. He contended that the executive power of the State to appoint the Special Public Prosecutor, is traceable to Article 162 of the Constitution of India and it cannot be said that Government has no power. In support of this contention, the learned counsel relied on a Division Bench judgment of this court reported in *GORREPATI PRASADA REDDY vs. STATE OF ANDHRA PRADESH*².

4th respondent is the sister of the deceased. Mr. Nagaraju Nagur, learned counsel appearing for the 4th respondent, submits that 4th respondent is a citizen of Canada, and her parents are aged more than seventy five years and are suffering from different ailments and they intend to see the result of the case during their life time, wherein their son was killed. He submits that the family of the deceased has absolutely no connection with the Additional Public Prosecutor appointed under the impugned G.O., and hence he sought to dismiss the writ petition.

From the above it could be seen that the father of the deceased made representation dated 12.07.2018 and the 2nd respondent – Director of Prosecutors, forwarded the same to the Government and in turn, Government, after calling for remarks from the regular Additional Public Prosecutor i.e., Smt. P.Vidyavathy, and considering the material on record, taken a decision to entrust the conduct of prosecution in the sessions case in question, to Additional Public Prosecutor Grade – I, II Additional Sessions Court, Rangareddy District and accordingly issued the impugned G.O. The allegations of the petitioner are not supported

¹ CrL.A. No.748 of 2009 (Arising out of SLP (Criminal) No.6797 of 2008 dated 16.04.2009

². W.A.No.644 of 2012 dated 28.12.2012

by any material. The writ petition is filed on mere apprehension, without any basis.

Under Article 162 of the Constitution of India, subject to the provisions of the Constitution of India, the executive power of a State shall extend to the matter with respect to which the Legislature of the State has power to make laws. Therefore, the power of the Government to appoint the present Public Prosecutor, is traceable to Article 162 of the Constitution of India. Hence, the contention of the counsel for the petitioner that Government has no power to appoint another Public Prosecutor and that Section 24 of Cr.P.C. does not provide for the same, cannot be sustained.

In similar circumstances, a Division Bench of this court in **GORREPATI PRASAD REDDY vs. STATE OF ANDHRA PRADESH** (2 supra) held as under:

“26. It is evident from the above that the power of the State to appoint as many lawyers as it likes, to defend it, is well recognized and though the fourth respondent's appointment is not traceable to Section 24(8) Cr.P.C., it is clearly traceable to the executive power of the State under Article 162 of the Constitution of India, as in the aforesaid decision. It was also held in the above decision that quoting of wrong provision does not take away the jurisdiction of the authorities and as such, notwithstanding that source of power of the State is referred to as Section 24(8) Cr.P.C., the said appointment, in reality, is one under the executive power of the State under Article 162 of the Constitution of India.

....

28 (b). W.P.No.13637 of 2001 dated 29.07.2003 also questioned the appointment of the Special Public Prosecutor on the ground that the said appointee was a choice of the de-facto complainant and it was found that after examining the representation of the de-facto complainant, in view of the importance of the case and its early disposal, it was held that the interference by this court is warranted only where the facts and circumstances give rise to reasonable

apprehension that the Special Public Prosecutor would not act impartially and dispassionately. In that case also, except a vague statement in the affidavit, there was no material against the said appointee and as such, the appointment was upheld.”

In the decision of the Apex Court in *STATE OF MAHARASHTRA vs. PRAKASH PRAHALAD PATIL* (1 supra), the facts disclose that based on the petition filed by the close relatives of the victim, Government appointed respondent No.3 therein, as a Special Public Prosecutor for conducting sessions case. The same was challenged on the ground that such appointment was in violation of the scheme of Section 24(8) of Cr.P.C. and Rule 22 of the Rules for the Conduct of the Legal Affairs of Government, 1984. The High Court set aside the said appointment. In the appeal, the Apex Court held that courts should not interfere with a policy decision of the State and while exercising power of judicial review, the court is more concerned with the decision making process than the merit of the decision itself. The Apex Court accordingly allowed the appeal and set aside the order of the High Court, by holding thus:

“The scope of judicial review has been examined by this court in several cases. It has been consistently held that the power of judicial review is not intended to assume a supervisory role or don the robes of omnipresent. The power is not intended either to review governance under the rule of law nor do the courts step into the areas exclusively reserved by the supreme lex to other organs of the State. A mere wrong decision, without anything more, in most of the cases will not be sufficient to attract the power of judicial review. The supervisory jurisdiction concerned upon a court is limited to see that the authority concerned functions within its limits of its authority and that its decisions do not occasion miscarriage of justice.

The courts cannot be called upon to undertake governmental duties and functions. Courts should not ordinarily interfere with a policy decision of the State. While exercising power of judicial review the court is

more concerned with the decision making process than the merit of the decision itself.

In the instant case, acting on a petition filed by close relatives of a victim decisions have been taken at various levels. The High Court was not justified to pick up stray sentences from the records to conclude that there was non-application of mind. In any event, the appointment of a Special Public Prosecutor to conduct a proceeding does not in any way cause prejudice to the accused. In that sense the writ petition before the High Court was wholly misconceived. The impugned judgment of the High Court is set aside. Since the trial appears to have been held up, we direct that the trial court shall make all possible endeavours to see that the trial is completed expeditiously and in any event not later than by the end of October, 2009. The appeal is, accordingly, allowed."

Having regard to the facts and circumstances of the present case and in view of the law laid down in the decisions referred to supra, this court is not inclined to exercise its extraordinary and equitable jurisdiction under Article 226 of the Constitution of India, to interdict the impugned order.

Writ petition is accordingly dismissed.

Interlocutory applications pending, if any, shall stand closed. No costs.

A.RAJASHEKER REDDY,J

DATE:14—08—2018

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