

20.06.2019.
Item No. 111

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI.

M.A.T. 9 of 2019
With
C.A.N. 1 of 2019

Motilal Sarkar
Vs.
State of West Bengal and others.

Mr. Samir Das.
... for the appellant.

Mr. Bikramaditya Ghosh,
Mr. Momenur Rahaman.
... for the State.

The writ petitioner/appellant, who is a defacto complainant, claims that the Additional Public Prosecutor, who has been engaged to conduct the Sessions Case No. 392 of 2017 pending before the Learned Additional District and Sessions Judge, First Track 1st Court, Alipurduar, may not conduct the case fairly. He made a representation dated 31st January 2019 before the concerned District Magistrate praying for engaging another Public Prosecutor in place of the existing Public Prosecutor to conduct the trial. In a petition filed before the Sessions Judge, it has been stated that the petitioner/appellant prefers one Advocate, namely, Suhrid Majumder, who is also a Public Prosecutor, in the existing panel of the District Court to be engaged as the Public Prosecutor in the instant sessions case.

The learned Sessions Judge by an order being No. 16 dated 14th November 2018, however, permitted Suhrid Majumder, the learned Lawyer, to

represent the defacto complainant for the purpose of assisting the Public Prosecutor in the said case for ends of justice.

It is submitted by the Learned Advocate for the petitioner/appellant that the order passed by the learned Sessions Judge on 14th November 2018 was challenged before this Court by filing a revisional application, which was subsequently withdrawn. Thereafter, he further moved before this Court by filing an application under Article 226 of the Constitution of India being aggrieved by the fact that the District Magistrate has not acceded to the prayer of the petitioner/appellant for changing the present Public Prosecutor and engaging another Public Prosecutor in the instant Sessions Case.

The Learned Single Judge by an order dated 23rd April 2019 was pleased to dismiss the said writ petition upon holding that in exercise of power under Article 226 of the Constitution of India the direction upon the District Magistrate to alter the empanelled Advocate to conduct a case could not be passed. It was further held that an appointment of an Advocate to conduct a case on behalf of the prosecution is within the exclusive domain of the Public Prosecutor and such discretion of the Public Prosecutor cannot be interfered with sitting in the writ jurisdiction.

The appellant has assailed the said order by preferring the instant appeal. By referring to paragraph 104(iv) of the Legal Remembrance's Manual, the learned Advocate submitted that the District Magistrate has the power to appoint Public Prosecutor on the basis of an application made by a party. Paragraph 104(iv) of the said Manual runs thus:-

“104. Appearance in Sessions Court and Appeals.- (i).....

(iv) If the District Magistrate considers that some other legal practitioner should be appointed to conduct a particular prosecution before a Court of Sessions even if the Public Prosecutor may be available, the sanction of government should be obtained in order that the appointment may be duly made under section 492(1) of the Criminal Procedure Code.”

Upon reading of the said provision it appears that the same cannot be invoked by a party for change of the Public Prosecutor appointed for conducting session cases on the basis of wild and unsubstantiated allegations. The said provision gives power to the District Magistrate in case District Magistrate considers that some other legal practitioner should be appointed to conduct a particular prosecution before the Court of Sessions. In such a case the sanction of the government should also be obtained for making such appointment. A defacto complainant cannot apply before the District Magistrate for appointment of a Public Prosecutor upon removing the present Public Prosecutor, who is conducting the session case and appoint another person as Public Prosecutor. Paragraph 104(iv) of the said Manual however does not recognize such right of a defacto complainant.

As such, the provisions of paragraph 104(iv) cannot be said to apply for change of Public Prosecutor in the instant case at the instance of the defacto complainant.

We do not find any infirmity and/or illegality in the order passed by the learned Single Judge. The appeal is devoid of merit and, hence, the same is, accordingly, dismissed.

In view of the dismissal of the appeal itself, the connected application being CAN 1 of 2019 filed in

connection thereto has become infructuous and the same is also dismissed.

There shall be no order as to costs.

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(Hiranmay Bhattacharyya, J.) (Harish Tandon, J.)