

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP(C) No. 4070 of 2021

Vishnu Singh S/o Dhanushdhari Singh Aged About 66 Years R/o Village Champajhar, P.S. Patna, District Korea (Chhattisgarh), District : Koriya (Baikunthpur), Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Law And Legislative Affairs, Mantralaya, Naya Raipur (Chhattisgarh), District : Raipur, Chhattisgarh
2. State Of Chhattisgarh Through Secretary, Department Of Home Affairs, Mantralaya, Naya Raipur (Chhattisgarh)
3. District Magistrate District Korea (Chhattisgarh)

---- Respondents

For Petitioner	: Shri Raja Sharma, Advocate.
For the respondents / State	: Shri Chandresh Shrivastava, Dy.A.G.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

29.11.2021

Heard on petition.

1. It is submitted by counsel for the petitioner that the petitioner is a member of scheduled tribe and he is the victim of the case registered as Crime No.131 of 2017 for the commission of offences under Sections 147, 148, 188, 294, 506, 323, 395, 427, 447, 448, 452, 419, 420, 467, 468, 471 & 120-B of the Indian Penal Code and Sections 3(2), 3(iv), 3(v) & 3(1)(da)(dha) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The case is registered as Special Criminal Case (under SC/ST Act) 1989/55 of 2021 before the Special Court Baikunthpur, District Korea. It is further submitted by counsel for the petitioner that the petitioner has moved an application under Rule 4(5) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 to engage a counsel of his choice for conducting

the trial in the case. The petitioner had requested to engage advocate Mr. Arvind Singh after obtaining consent of Mr. Arvind Singh. The petitioner has made repeated requests but his prayer has remained unheard, therefore, the present petition has been filed. It is submitted that Hon'ble Division Bench of the Rajasthan High Court has in the case of **State of Rajasthan & Anr. vs. Tikam Singh & Ors.** in Civil Special Appeal (W) No. 4602 of 2006 decided on 29.8.2006, held that the victim has entitlement to engage an advocate of his choice. This view has been followed by the High Court of Madras in the case of **R. Kandasamy vs. The District Collector, Salem** in CrI.O.P. No. 9288 of 2013 decided on 26.9.2013. It is also submitted that in the case of **Mallika vs. Union of India and Anr.** in W.P. (MD) No. 8172 of 2008 decided on 25.2.2020 by the Madurai Bench of Madras High Court, it has been held that the words eminent Senior Advocate mentioned in Rule 4(5) of the Rules, 1995 is not a synonym of the definition of Senior Advocate contained in the Advocates Act, 1961. Advocate Mr. Arvind Singh has given consent to appear in the case on any reasonable fees which may be determined by the District Magistrate. Hence, it is prayed that the respondent authorities be directed to pass an order for engagement of the advocate Mr. Arvind Singh for conducting the trial in Special Criminal Case No. 55 of 2021.

2. Learned State counsel appearing for respondents opposes the submissions and submits that Section 15 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 specifically provides for appointment of Special Public Prosecutor and Exclusive Public Prosecutor for conducting the trial in the special case. Rule 4(1) of the Rules, 1995 empowers the District Magistrate of each District to prepare a panel of such member of eminent senior advocates who have

been in practice for not less than seven years. Hence, in view of this provision, the provision under Rule 4(5) of the Rules, 1995 is not mandatory or compulsive. The petitioner cannot claim as a matter of right for the engagement of an advocate of his choice. It is further submitted that the petitioner has not made any allegation against the prosecutor who is conducting the trial in which the petitioner is victim. The petitioner has remedy available to file an application under Section 301(2) of the Code of Criminal Procedure, therefore, the present petition is fit to be dismissed and disposed off.

3. In reply, it is submitted by counsel for the petitioner that Rule 4(5) of the Rules, 1995 have been clearly interpreted by the Rajasthan High Court in the case of **State of Rajasthan & Anr. vs. Tikam Singh and Ors.**, (supra), hence, the petitioner is entitled for relief.
4. Heard counsel for both the parties and perused the documents present on record.
5. Considered on the submissions. Rule 4(5) of Rules, 1995 is reproduced as under:

'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. In the case of **State of Rajasthan & Anr. vs. Tikam Singh & Ors.**, (supra) the Division Bench of the Rajasthan High Court has observed in page No.21 is as under:

'We do not find any conflict between Sub-rule (5) of Rule 4 and [Section 15](#) of the Act. As indicated above, whether a Public Prosecutor is specified or an advocate is appointed under [Section 15](#) of the Act or an eminent senior advocate is engaged under Rule 4(5), these appointments or engagements are for the purpose of conducting cases in Special Courts. The observation of the learned single Judge that Sub-rule (5) of Rule 4 is limited to implementing the Act framed in the context of [Section 21\(2\)\(iv\)](#) does not appear to be correct. We are conscious of the fact that Sub-rule (5) is part of the rule captioned as "supervision of prosecution and submission of report" - referred to in Clause (iv) of Sub-section (2) of [Section 21](#). However on a combined reading of the rule, it is manifest that while Sub-rules (1) to (4) contain provisions regarding supervision of prosecutions through panel prepared under Sub-rule (1) and review of the performance of the prosecutors borne on the panel, Sub-rule (5) is an independent provision with a non-obstante clause. Rules are always framed for effective implementation of the Act, but if Sub-rule (5) is given a restricted meaning and it is held that the authority of the advocate engaged by the District Magistrate to conduct case is limited to assisting the Public Prosecutor as a second fiddle, it would frustrate the object of Sub-rule (5) as it would deny the victim of atrocity the facility to have his case conducted by an advocate of his choice.

It is true that Sub-rule (5) does not lay down any qualification as to the minimum length of practice unlike [Section 15](#) or Sub-rule (1) of Rule 4 but, apparently, framers of the rule did not want to put any restriction on the choice of the victims of atrocity subject to the embargo that the person should be an 'eminent senior advocate' - a term used in Sub-rule (1) of Rule 4 as well. Thus the advocate should be of the choice of victim of atrocity and also in the opinion of the District Magistrate/Sub-Divisional Magistrate, an eminent senior advocate.

The golden rule of interpretation of statute is that the provision is to be given literal interpretation unless such interpretation leads to some absurdity. Sub-rule (5) of Rule 4 in no uncertain terms provides for engagement/appointment of an eminent senior advocate for conducting trial in a Special Court. We find no ambiguity or conflict with [Section 15](#) in the provision, and without challenging the vires thereof, the respondent cannot challenge the appointment of Shri Mahesh Bora for conducting the trial.

7. In view of the interpretation made by the Division Bench of the Rajasthan High Court, the petitioner has entitlement to make such prayer for appointment of an advocate of his choice. The District Magistrate has the power under Rule 4(5) of the Rules, 1995 to fix the fees remuneration for engagement of any eminent Senior Advocate of the choice of the victim whatever he may consider appropriate. Hence, on the basis of these observations, this petition is allowed. Respondent No.3 is directed to pass an order on the application filed by the petitioner for appointment of the advocate of his choice and fix the fees as may be considered appropriate by him. This order may be complied by respondent No.3, preferably, within a period of 30 days from today.

Sd/-

(Rajendra Chandra Singh Samant)
Judge