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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation : 01.11.2021

Date of Judgment : 09.11.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVA

Crl.A(MD)No.7 of 2021

J.Ramesh : Appellant/Petitioner/A19

Vs.

1.State through
Deputy Superintendent of Police,
South Police Station,
Thoothukudi Town,
Thoothukudi District.
(Crime No.533 of 2019 : R1/Respondent/Complainant

2.P.K.Ramkumar : R2/Respondent/De-facto
complainant

Prayer: Criminal Appeal is filed under section 14(A)(1) of the Schedule Caste/Schedule Tribes (Prevention of Atrocities)1989, Amendment Act 2015, to set aside the impugned order passed in Crl.MP No.40 of 2020 in SC No.62 of 2020, dated 16.12.2020 by the learned Sessions Judge, Special Court for Trial of cases under SC/ST (POA) Act, Thoothukudi.

For Petitioner : Mr.R.J.Karthick
For 1st Respondent : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)
For 2nd Respondent : Mr.A.S.Vaigunth

O R D E R

This Criminal Appeal is preferred against the order passed by the learned Sessions Judge, Special Court for Trial of cases under SC/ST (POA) Act, Thoothukudi, in Crl.MP No.40 of 2020, dated 16.12.2020.

2.The petitioner is the 19th accused in Crime No. 533 of 2019 on the file of the South Police Station, Thoothukudi, for the offence under sections 147, 148, 341, 294(b), 302, 506(ii), 120(b) and section 3(2)(V) of SC & ST Act, which was taken on file in SC No.187 of 2019 by the II Additional Sessions Judge, Special Court for SC/ST (POA) Act cases, Tirunelveli, along with the other accused persons. Now the case was tried by the II Additional Sessions Judge, Tirunelveli. The State Government has appointed one A.Kathiravan as Special Public Prosecutor and now, he is



appearing on behalf of the State. Later, it was transferred to the learned Sessions Judge, Special Court for S/ST (POA) Act cases, Thoothukudi and it has been renumbered as SC No.62 of 2020. The above said A.Kathiravan, was appointed only to appear before the II Additional District Judge, (PCR Court), Tirunelveli and he was not appointed to appear before the present trial court. So on that ground, the above said petition has been filed seeking an order from the trial court not to permit the above said A.Kathiravan, to conduct the prosecution.

3.Before the trial court, it has been submitted that the Special Public Prosecutor was appointed as per the order of the G.O.(o) No.1316 Home (cts.VIA) Department, dated 06.11.2019 issued by the Additional Chief Secretary to Government of Tamil Nadu, for conducting the prosecution in respect of Crime No.533 of 2019. So, he was empowered to appear and conduct the prosecution on behalf of the State.

4.After hearing both sides, the trial court dismissed the petition on the ground that the above said Government Order was not challenged by the petitioner and absolutely, there is no valid ground available to the petitioner to sustain such a sort of plea. Challenging the above said order, this appeal has been preferred reiterating the very same ground that has been raised before the trial court. In the grounds of appeal, it has been stated that there is a biased attitude on the part of the Special Public Prosecutor and it has been hardly stated that the Special Public Prosecutor is acting in aid of the victim and the prosecution. He has also alleged that he is more loyal to the victim. These grounds have been repeatedly rejected by the trial court.

5. Absolutely, there is no material on record to show that the Special Public Prosecutor has acted in a biased manner. The accused cannot choose the Prosecutor. The contention that has been pointed by the learned counsel appearing for the petitioner before the II Additional District and Sessions Judge, Tirunelveli, is also have no substance. As stated above, the above said A.Kathiravan was asked to appear as Special Public Prosecutor by specifying the crime number. Whether, it has been tried in original court or it has been transferred to other court does not alter the position of the Public Prosecutor. He was appointed as a Special Public Prosecutor to conduct the case on behalf of the prosecution in a particular case and not in a particular court. This type of argument advanced by the learned counsel for the petitioner is out of place and cannot be accepted at all. The trial court has elaborately discussed about the procedures to be followed in the appointment of Public Prosecutors. Further, as rightly pointed out by the learned Government Advocate (Criminal
<https://hccourtscorpus.org/> service) appearing for the respondent the said Government Order has not been challenged. It is nothing, but attempt on the part of the petitioner to drag on the proceedings.



6. Perusal of the records shows that a direction has been issued to expedite the trial process and dispose the same within a period of three months. It has been pointed by the trial court that that the trial is not yet commenced. The apprehension on the part of the petitioner/A19 that the above said Special Public Prosecutor acted in a biased manner is also without any substance. Further, the other grounds that have been raised by the petitioner is that in the final report was inconsistent in nature etc. Those facts cannot be taken into account for consideration this issue. It is entirely different issue and that can be taken up only during the trial process before the trial court. So absolutely, I find no merit in this appeal.

7. In fine, the criminal appeal fails and the same is **dismissed**.

Sd/-

Assistant Registrar (CS III)

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Sub Assistant Registrar (CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

1. The Sessions Judge,
Special Court for Trial of cases
under SC/ST (POA) Act,
Thoothukudi.
2. The Deputy Superintendent of Police,
South Police Station,
Thoothukudi Town, Thoothukudi District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Cr1.A(MD) No.7 of 2021
09.11.2021