



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P (MD) No.3376 of 2022

and

W.M.P (MD) Nos.2951 & 2952 of 2022

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M.Periyadurai

... Petitioner

Vs

1.The Government of Tamil Nadu,
Represented by its Additional Chief
Secretary to Government,
Home Department,
Secretariat,
Chennai - 9.

2.The Director General of Police,
Tamil Nadu Government,
Police Headquarters,
Chennai - 9.

3.The District Collector,
Thoothukudi District,
Thoothukudi.

4.The Superintendent of Police,
Thoothukudi District,
Thoothukudi.

5.The Deputy Superintendent of Police,
Thoothukudi Sub-Division,
Thoothukudi.

6.Kathiravan,
Special Public Prosecutor in S.C.No.62 of 2020,
Special Court for SC/St (Prevention of
Atrocities) Act, at Thoothukudi.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the first respondent in G.O (O) No.1316, Home (cts.VIA) Department, dated 06.11.2019 and quash the same and consequently appoint an eminent Senior Advocate to represent the case in the pending trial in S.C.No.62 of 2020 before the Special Court for SC/ST (Prevention of Atrocities) Act, at Thoothukudi, in the light of Rule IV(5) of the Scheduled Tribes (Prevention of Atrocities) Rules, 1995.



For Petitioner : Mr.R.J.Karthick
For RR 1 to 5 : Mr.B.Thanga Aravindh
Government Advocate (Crl. Side)
For R - 6 : Mr.B.Jeyakumar

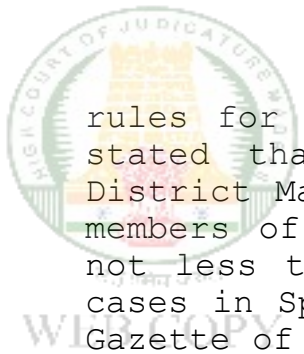
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ORDER

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the first respondent in G.O (o) No.1316, Home (cts.VIA) Department, dated 06.11.2019 and quash the same and consequently appoint an eminent Senior Advocate to represent the case in the pending trial in S.C.No.62 of 2020 before the Special Court for SC/ST (Prevention of Atrocities) Act, at Thoothukudi, in the light of Rule IV(5) of the Scheduled Tribes (Prevention of Atrocities) Rules, 1995.

2.The case of the petitioner is that he is Accused No.20 in Crime No.533 of 2019 registered for the offences under Sections 120 (b), 147, 148, 341, 294(b), 302, 506(ii), 34 and 109 of I.P.C and Section 3(2)(5)(va) of the SC/ST Act on the file of the fifth respondent herein. After completion of investigation, the fifth respondent filed a final report and the same has been taken cognizance on the file of the II Additional District Court (PCR), Tirunelveli in S.C.No.187 of 2019. Thereafter, the Special Court was constituted and transferred the case to the Special Court for trial of cases under SC/ST (POA) Act and re-numbered as S.C.No.62 of 2020. In the above said case, the sixth respondent was appointed as a Special Public Prosecutor to conduct the trial. The appointment of the sixth respondent is under challenge in this Writ Petition.

3.The learned counsel appearing for the petitioner would submit that the sixth respondent, who is expected to discharge his duty diligently, now acted as a mouth piece of the Investigating agency and the victim. He is acting in a biased manner and he tried to be more loyal to the victim as well as the dependent on the subject matter and has borne an animus against the petitioner than for the administration of criminal justice. He was appointed as a Special Public Prosecutor by the SC/ST cases on the representation of the defacto complainant. It is violative under the law to appoint a Special Public Prosecutor, as there is a Public Prosecutor to try the cases under the SC/ST Act. There is no incident to reveal that the existing Special Public Prosecutor, Thoothukudi had lapsed in his duty. Under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (hereinafter referred to as 'the Act') appointment of Special Public Prosecutor to conduct prosecution in the Special Court is envisaged under Sections 15 and 23(1) of the said Act. It empowers the Central Government to make



rules for carrying out the purpose of the Act. Rule 4 of the Act stated that the State Government on the recommendation of the District Magistrate shall prepare for each District a panel of such members of eminent senior advocates who have been in practice for not less than seven years as it may deem necessary for conducting cases in Special Court. The panel shall be notified in the official Gazette of the State and shall remain in force for a period of three years. Ignoring the provisions of the Act and the dictum laid down by the Division Bench of this Court, the sixth respondent/the Special Public Prosecutor was appointed at the request of the defacto complainant. In support of his contention, he relied on the Judgment of the Delhi High Court in **Sunil Grover Vs. Government of NCT of Delhi and others in W.P(C)No.729 of 2018, dated 23.01.2019**, wherein the Delhi High Court held as follows:-

9. Before proceeding further it would be relevant to refer to Section 15 of the SC/ST Act which reads as under:-

"15. Special Public Prosecutor and Exclusive Public Prosecutor.--(1) For every Special Court, the State Government shall, by notification in the Official Gazette, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

(2) For every Exclusive Special Court, the State Government shall, by notification in the Official Gazette, specify an Exclusive Special Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as an Exclusive Special Public Prosecutor for the purpose of conducting cases in that Court.]

.....

23. The decision in the case of Smt Satki Devi and Anr. Etc. V. Tikam Singh and Ors. (supra) was rendered in the context of the controversy whether an advocate appointed in terms of Rule 4(5) of the SC/ST Rules could act as a Special Public Prosecutor. The respondent in the said case had contended that only a Special Public Prosecutor appointed under Section 15 could conduct a case. The issue whether a District Magistrate could appoint an advocate of the victim's choice, without applying its mind to the criteria as specified in Sub-rule (5) of Rule 4 of the SC/ST Rules if requested by the victim, was not the controversy in that case. It is trite law that the judgment is an authority for what it



decides. The said decision is not an authority for the proposition that, the District Magistrate is required to ignore the criteria as set out in Rule 4(5) of the SC/CT Rules if the Advocate appointed is the one chosen by the alleged victim.

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24. Undoubtedly, a victim can suggest appointment of a lawyer, however, it would be necessary for the District Magistrate or Sub- Divisional Magistrate to satisfy themselves that it is necessary or appropriate to engage an eminent senior advocate and further that it is necessary that such an advocate be appointed to prosecute the case."

4. Heard the learned counsel appearing for the petitioner, the learned Government Advocate (Criminal Side) appearing for the respondents 1 to 5 and the learned counsel appearing for the sixth respondent.

5. On a perusal of the counter-affidavit filed by the fifth respondent revealed that Accused No.19 in this case, who is the brother of the first accused, filed a petition before the trial Court in CrI.M.P.No.40 of 2020 not to permit the sixth respondent to conduct the prosecution, as if the Government appointed him as a Special Public Prosecutor to conduct the trial in respect of S.C.No.187 of 2019 before the II Additional Sessions Judge, Special Court for SC/ST (POA) Act Cases, Tirunelveli, however, it was transferred to the file of the Sessions Court, Special Court for SC/ST (POA) Act Cases, Thoothukudi and the case was re-numbered as S.C.No.62 of 2020, he should not be permitted to conduct the prosecution before the trial Court.

6. The Special Public Prosecutor was appointed as per G.O (o) No.1316, Home (cts.VIA) Department, dated 06.11.2019, for conducting the prosecution in respect of S.C.No.62 of 2020. The application filed by Accused No.19 was dismissed by the trial Court, by an order dated 16.12.2020. Aggrieved by the same, Accused No.19 preferred CrI.A(MD)No.7 of 2021 before this Court and this Court, by an order, dated 09.11.2021, dismissed the appeal, which reads as follows:-

"4..... 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 side) 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.Now, the petitioner being Accused No.20 filed the present Writ Petition challenging the appointment of the sixth respondent as Special Public Prosecutor. Section 4(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (as amended vide GSR 316(E), dated 31.05.1995), reads as follows:-

"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 victim of atrocity engage an eminent Senior Advocate for conducting cases in the Special Courts on such payment of fees as he may consider appropriate."



8. Section 4(1)(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, deals with regard to appointment of Public Prosecutor for the Special Court constituted under SC/ST (POA) Act, 1989. Whereas, the sixth respondent has been appointed by the first respondent under Section 4(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, for conducting prosecution.

9. This Court repeatedly held that at the desire of the victims as per the provision under Section 4(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, the Special Public Prosecutor can be appointed to conduct prosecution. Therefore, the Judgment cited by the learned counsel appearing for the petitioner is not helpful to the case on hand. Accordingly, the Writ Petition is devoid of merits and the same is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

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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 Additional Chief Secretary to Government,
Home Department,
Secretariat,
Chennai - 9.

2. The Director General of Police,
Tamil Nadu Government,
Police Headquarters,
Chennai - 9.

3. The District Collector,
Thoothukudi District,
Thoothukudi.

<https://hcservices.ecourts.gov.in/hcservices/>



4.The Superintendent of Police,
Thoothukudi District,
Thoothukudi.

5.The Deputy Superintendent of Police,
Thoothukudi Sub-Division,
Thoothukudi.

6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.B.JEYAKUMAR, Advocate (SR-12836[F] dated 17/03/2022)

W.P (MD) No.3376 of 2022
15.03.2022

RK(30/03/2022) 7P 8C