



W.P.(MD)No.26958 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.11.2022

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THE HONOURABLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

W.P. (MD) No.26958 of 2022

and

W.M.P.(MD)No.21121 of 2022

M.Balakrishnan

.. Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep by the Secretary,
Home (Judicial) Department,
Secretariat, Fort St.George,
Chennai-600 009.

2.The District Collector,
Tirunelveli District.

3.The Commissioner of Police,
Tirunelveli City,
Tirunelveli.

.. Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the second respondent to appoint the Special Public Prosecutor to conduct the case in S.C.No.672 of 2018 pending on the file of the First Additional District and Sessions Court, Tirunelveli by considering the petitioner's representation dated 16.11.2022.

For Petitioner	: Mr.K.P.Narayanakumar
For R1 & R2	: Ms.K.Christy Theboral Additional Government Pleader
For R3	: Mr.B.Thanga Aravindh Government Advocate (Cr1.Side)



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ORDER

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This Writ Petition has been filed for issuance of Writ of Mandamus, directing the second respondent to appoint the Special Public Prosecutor to conduct the case in S.C.No.672 of 2018 pending on the file of the First Additional District and Sessions Court, Tirunelveli by considering the petitioner's representation dated 16.11.2022.

2.Heard Mr.K.P.Narayanakumar, learned counsel appearing for the petitioner, Ms.K.Christy Theboral, learned Additional Government Pleader, who takes notice for the first and second respondents and Mr.B.Thanga Aravindh, learned Government Advocate (CrI.Side), who takes notice for the third respondent. By consent of both parties, this writ petition is taken up for final disposal.

3. The grievance of the petitioner is that representation submitted by the petitioner dated 16.11.2022 seeking to appoint a Special Public Prosecutor has not been considered.

4. The learned counsel for the petitioner submitted that due some property dispute among the family members of the petitioner, the paternal uncle of the petitioner was murdered by the sister's son of the petitioner's



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paternal uncle. Based on the complaint given by the father of the petitioner, a case in Crime No.46 of 2015 for the offence under Section 302 of IPC was registered and final report was also filed in S.C.No.672 of 2018 after completing the investigation before the Principal Sessions Court, Tirunelveli . Thereafter, the same was transferred and pending before the First Additional District and Sessions Court, Tirunelveli. The advocate, namley, Karunanithi, who appeared for the accused persons during trial, is now appointed as Additional Public Prosecutor in the same Court and also appearing on behalf of the prosecution. Hence, the petitioner made a representation to the respondents on 16.11.2022 to appoint a Special Public Prosecution to conduct the case in S.C.No.672 of 2018 for conducting fair trial. But the same has not been considered. Hence, the petitioner has filed the present writ petition with the prayer stated supra.

5.The learned Additional Government Pleader appearing for the respondents 1 and 2 submitted that there are four Additional Sessions Courts in Tirunelveli District and this case may be directed to be transferred to any one of the Courts.

6.The Advocate, who initially appeared on behalf of the accused and later became a Public Prosecutor, should refrain himself from appearing in



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such cases on behalf of the prosecution citing the genuine reason by following the ethics for conducting a fair trial of the cases. In the present case on hand, instead of doing so, the former Advocate, who appeared on behalf of the accused and became a Public Prosecutor, later, appeared for the prosecution. It is also pertinent to note that the last hearing of this case was on 22.11.2022 and three witnesses were examined by the said Public Prosecutor and they turned hostile. The act of the said Public Prosecutor is not acceptable.

7. Fair trial is the constitutional right guaranteed to the petitioner and the same cannot be infringed. In that view of the matter, S.C.No.672 of 2018 is directed to be withdrawn by the Principal District Judge, Tirunelveli from the file of the First Additional District and Sessions Court, Tirunelveli and transfer it to some other Additional District and Sessions Court, Tirunelveli within a period of four weeks from the date of receipt of a copy of this order and the case has to be handled by the Public Prosecutor of that Court.

8. With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

30.11.2022

Index : Yes/No
Internet : Yes/No



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- To
- 1.The Secretary,
Home (Judicial) Department,
Secretariat, Fort St.George,
Chennai-600 009.
 - 2.The District Collector,
Tirunelveli District.
 - 3.The Commissioner of Police,
Tirunelveli City,
Tirunelveli.



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V.BHAVANI SUBBAROYAN, J.

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Order made in
W.P.(MD) No.26958 of 2022

30.11.2022