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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 03/04/2023

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

Crl.OP(MD)No.3772 of 2023

V.Babyrani : Petitioner

Vs.

1.The District Magistrate/
District Collector,
Trichy District,
Trichy.

2.The Inspector of Police,
Fort Police Station,
Trichy City.

3.Suganthi
4.Kanagaraj
5.Murugaiyan
6.Vengur Saravanan
7.Senthilkumar
8.Muruganantham
9.Mohanraj
10.Sundara Moorthi
11.Anbalagan
12.Kaliyamoorthy
13.Kannan
14.Satheesh
15.Thangadurai
16.Saravanan
17.Periyasamy
18.Vairamuthu
19.Ravichandran
20.Muruganantham
21.Ilayarasan
22.Paulraj
23.Senthil
24.Tamilselvan



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PRAYER:- This Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to issue a direction to the 1st respondent to appoint Mr.S.Shagar, Advocate as desired by the petitioner for conducting the prosecution in Special SC No.53 of 2018 on the file of the 1st Additional District and Sessions Judge (PCR), Trichy, as per Rule 4(4) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Rules, 1995 and pass such further or other orders.

For Petitioner : Mr.T.Lenin Kumar

For R1 and R2 : Mr.B.Nambiselvan
Additional Public Prosecutor

For R3 to R24 : Mr.J.William Christopher

O R D E R

This criminal original petition has been filed seeking for direction to the 1st respondent to appoint Mr.S.Shagar, Advocate, as desired by the petitioner for conducting the prosecution in Special SC No.53 of 2018 on the file of the 1st Additional District and Sessions Judge (PCR), Trichy, as per Rule 4(4) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Rules, 1995.



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2. The facts in brief:-

The petitioner is the wife of one Vincent. He was allegedly murdered by the private respondents herein as a case of retaliation on 01/06/2017 at about 05.15 pm. On that date in the very same occurrence, one Senthil Kumar was also murdered.

3. Over the above said double murder, a case in Crime No.721 of 2017 was registered and after completing the investigation, final report was filed before the Sessions Court. During the trial process, seven witnesses examined. Except the further witness, during the trial process, some of the witnesses turned hostile.

4. The brother of the deceased made an application before the trial court under section 302 Cr.P.C seeking some reliefs. That was dismissed by the trial court. Later, this petitioner as the wife of the deceased Vincent, filed two petitions for appointment of an Advocate to conduct the prosecution and sent an application to the District Collector, on 01/02/2023 to appoint one S.Shagar as Advocate to conduct the prosecution. That application is pending.



5. Seeking direction to consider the above said application, this criminal original petition has been filed.

6. Heard both sides.

7. A short point, which arises for consideration, whether this petitioner will come under the protective umbrella, as per the provisions of the SC/ST (PoA) Act, as amended by 2015.

8. An objection has been raised by the accused as well as the prosecution to the effect that since, the deceased Vincent, who is the husband of this petitioner, was a converted Christian, this petitioner cannot be called as 'victim' under the provisions of the above said Act.

9. The *locus standi* of the accused to challenge the petition is also under dispute. Because the accused can not have any say for the appointment of either Special Public Prosecutor as requested by the petitioner. It is a matter between the petitioner and the Government



represented by the District Collector. The accused cannot choose the Prosecutor. But however, since the question of very maintainability of the petition was raised, the accused was also heard.

10.The judgment cited by the petitioner is not relevant for consideration now, since in the above said judgments, social status of the petitioner was not under issue. So the question, which arises for consideration is whether despite of conversion into Christianity, the provisions of the special status can be given under the provision of the Special Act can be exercised.

11.Section 2(1)(e)(c) of the SC/ST Acts, defined the victim as under:-

'Victim' means any individual who falls within the definition of the 'Scheduled Castes and Scheduled Tribes' under clause (c) of sub-section (1) of section 2, and who has suffered or experienced physical, mental, psychological, emotional or monetary harm or harm to this property as a result of the commission of any offence under this act and includes his relatives, legal guardian and legal heirs.



12. For disposing this petition, we need not go into larger issue, whether conversion of a person's religion will automatically disentitle him from protective umbrella. Because it requires thorough study. With regard to the reservation issue, the matter is pending before the Hon'ble Supreme Court and a committee has also been formed by the Central Government to study the reservation issue for the converted people. So we need not go into that aspect.

13. Whether on the facts, now available, whether it can be construed the deceased as converted to Christianity. No material is available to show the conversion, except the statement of the Investigating Officer in the final report that the Vincent namely the deceased was a converted SC Christian. So the question, which arises for consideration, this is sufficient enough to dismiss the petition on the ground that the protection is not available. But without any basic material, mere statement in the final report may not be sufficient. It is a matter for consideration by the trial court by taking into the relevant facts, whether the victim or Vincent belongs to SC and whether he was converted to Christianity.



14. Coming to the factual aspects, now the grievance of the petitioner is that since it is a case of double murder, the eye witnesses turned hostile. No information was furnished, either to the petitioner nor to the legal heirs of the deceased Senthil Kumar about the trial process.

15. The learned Additional Public Prosecutor appearing for the prosecution has not elicited anything from the statement of the eye witnesses for not supporting the case of the prosecution.

16. Reading of the cross examination portion of the Investigating Officer also indicate that no point was raised by the prosecution for them to turn hostile. When serious case of murder is tried, if the prosecution witnesses turned hostile, it is the duty of the prosecution to elicit the reason for the witnesses to turn hostile. Unless the specific reason is put to that, the evidentiary value cannot be decided at the time of judgment. This basic thing escaped the notice of the Public Prosecutor at the time of trial. So probably due to non communication of the trial to the petitioner and



the legal heirs of the above said Senthil Kumar, those things have not brought on record by way of cross examination. The Investigating officer might also have enquired about the reason for the eye witnesses to turn hostile. Now whatever it may be, it is the duty of the Public Prosecutor to elicit the reason. He also failed in his duty.

17.A report has been called for from the trial court. The trial court simply stated that none can control the witness. So I am of the considered view that the facts and circumstances of the case warrants interference by this court.

18.Let the representation that was made by the petitioner be considered by the first respondent, who is the competent authority to appoint a Special Public Prosecutor as requested by the petitioner within a period of 15 days from the date of receipt of a copy of this order. Since the trial process is under way, the first respondent may dispose the representation within time stipulated by this court. Till then, the trial process be kept in abeyance.



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19. With the above said directions, this criminal original petition is **allowed to that extent indicated above.**

03/04/2023

Index: Yes/No
Internet: Yes/No

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To,

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- 1.The I Additional District and Sessions Judge (PCR),
Trichy.
- 2.The District Magistrate/
District Collector,
Trichy District,
Trichy.
- 3.The Inspector of Police,
Fort Police Station,
Trichy City.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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