



W.P(MD)No.11926 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.05.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P(MD)No.11926 of 2023

and

W.M.P(MD)No.10331 of 2023

C,Bharathidasan

... Petitioner

Vs.

**The District Collector,
Office of the District Collector,
Thiruchirapalli.**

... Respondent

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records pertaining to the impugned orders of the respondent in Na.Ka.No.T4/676688/2023 dated 24.03.2023 and quash the same.

For Petitioner : Mr.S.Ramsundarvijayraj

**For Respondents : Mr.M.Sarangan
Addl. Govt. Pleader**

**For Defacto
Complainant : Mr.G.Balu Mahendran**



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ORDER

Mr.M.Sarangan, learned Additional Government Pleader takes notice for the respondent. By consent, this writ petition is taken up for final disposal at the admission stage itself.

2. This writ petition has been filed challenging the impugned order of the respondent in Na.Ka.No.T4/676688/2023 dated 24.03.2023, wherein, the respondent has appointed Mr.G.Karuppasamy Pandian, Advocate, as Special Public Prosecutor to conduct the Spl.S.C.No.36 of 2019 on the file of the PCR Court, Trichy, for the offences under Sections 147, 148, 420, 447, 294(b), 354(i) IPC r/w 3(1)(r), 3(1)(s), 3(2) (va) of SC/ST (Prevention of Atrocities) Act, 1989, based on the representation given by the defacto complainant.

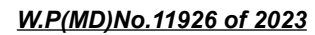
3. The learned counsel appearing for the petitioner would submit that the petitioner is a Government Servant and he is working as Junior Assistant in the Backward Class Department since 2013. He would further submit that it is a false case filed only to damage the image of the



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petitioner. He would further submit that on 09.02.2023, when the said case has been posted before the trial Court for arguments, the entire trial has been completed. Thereafter, the present impugned order has been passed based on the representation of the defacto complainant. Hence, this present writ petition came to be filed challenging the said impugned order of appointment.

4. The learned Additional Government Pleader appearing for the respondent would submit that the said special case has been registered under the special Act of SC/ST (Prevention of Atrocities) Act, 1989. It is the prerogative of the District Collector to appoint a Special Public Prosecutor at any point of time whenever it is necessary and in this particular case, it is understood that the defacto complainant has made an application dated 04.12.2023 seeking the respondent/District Collector to appoint a Special Public Prosecutor to conduct the prosecution case effectively and considering the same, the impugned order came to be passed appointing Mr.G.Karuppasamy Pandian as the Special Public Prosecutor.



(2) In particular, and without prejudice to the generality of



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the foregoing provisions, such measures may include,-

- (i) the provision for adequate facilities, including legal aid to the persons subjected to atrocities to enable them to avail themselves of justice;
- (ii) the provision for travelling and maintenance expenses to witnesses, including the victims of atrocities, during investigation and trial of offences under this Act;
- (iii) the provision for the economic and social rehabilitation of the victims of the atrocities;
- (iv) the appointment of officers for initiating or exercising supervision over prosecutions for the contravention of the provisions of this Act;
- (v) the setting up of committees at such appropriate levels as the State Government may think fit to assist that Government in formulation or implementation of such measures;
- (vi) provision for a periodic survey of the working of the provisions of this Act with a view to suggesting measures for the better implementation of the provision of this Act;
- (vii) the identification of the areas where the members of the Scheduled Castes and the Scheduled Tribes are likely to be subjected to atrocities and adoption of such measures so as to ensure safety for such members.

(3) The Central Government shall take such steps as may



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be necessary to co-ordinate the measures taken by the State Governments under sub-section (1) (4) The Central Government shall, every year, place on the table of each House of Parliament a report on the measures taken by itself and by the State Governments in pursuance of the provisions of this section.”

“Rule 4(1) - The State Government on the recommendation of the District Magistrate shall prepare for each District a panel of such number of eminent senior advocates who has been in practice for not less than seven years, as it may deem necessary for conducting cases in the Special Courts. Similarly, in consultation with the Director Prosecution/incharge of the prosecution, a panel of such number of Public Prosecutors as it may deem necessary for conducting cases in the Special Courts, shall also be specified. Both these panels shall be notified in the Official Gazette of the State and shall remain in force for a period of three years.

(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 Courts on such payment of fee as he may consider appropriate.



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(6) Payment of fee to the Special Public Prosecutor shall be fixed by the State Government on a scale higher than the other panel advocates in the State.”

8. It is seen that the matter is pending before the Sessions Court for trial. The power to appoint a Special Public Prosecutor under the Criminal procedure Code is entirely different from the one laid down under the SC/ST (PoA) Act, 1989. It is no doubt true that under the Code of Criminal Procedure, the Government is the ultimate authority to appoint a person in terms of Section 301 Cr.P.C. For better understanding Sections 301 and 302 Cr.P.C. are extracted hereunder:

“301. Appearance by Public Prosecutor - (1) The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.

(2) If any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit



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written arguments after the evidence is closed in the case.”

302. Permission to conduct prosecution - (1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person, other than a police officer below the rank of Inspector; but no person, other than the Advocate-General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission:

Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

(2) Any person conducting the prosecution may do so personally or by a pleader.

However, the SC/ST (PoA) Act, 1989 is a special statute, which overrides any other law for the time being in force and it empowers the victim of atrocity in the matter of trial of offences covered by the Act to have his case conducted by an eminent lawyer of his choice so as to ensure fair trial of his case. Even going by Section 302 Cr.P.C., it stipulates that any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of Inspector; but



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no person, other than the Advocate-General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission:

9. The contention of the respondents that in the event of the aggrieved party choosing a lawyer of his choice from other States, it will have a bearing on the Government financially, cannot be accepted, as Rule 4(6) clearly stipulates that payment of fee vests only with the Government 11 and selection of the lawyer is with the victim. The fee fixed other than the one fixed by the Government cannot be sought to be increased either by the victim or by the relative of the victim or the lawyer, who is appearing for the victim/relative of the victim. It is to be noted that SC/ST (PoA) Act, 1989 is a Special Act enacted to view seriously the atrocities committed on the members of the downtrodden communities, the objective of which is enumerated by including Sections 20 and 21 in the Act. The said Act aims at putting to an end to untouchability and therefore, harmonious consideration of the Rule is mandatory. If the contention of the respondents is accepted, the very purpose of its enactment would get defeated.



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10. The next contention of the respondents is that as per Section 21 of the SC/ST (PoA) Act, 1989, a victim of atrocities is entitled to select a lawyer empaneled by the Government in terms of Rule 4(1) of the Act or a lawyer through Legal Aid. In order to consider the said submission, it may be relevant to refer to a judgment of this Court in the case of R.Kandasamy vs. District Collector, Salem District, Salem, reported in (2013) 4 MLJ (CrI) 339, wherein it has been held as under:

“23. The Division Bench set aside the order of a learned Single Judge setting aside the appointment of an Advocate at the instance of a victim of atrocity under Rule 4(5). The Division Bench critically examined Rule 4(5) and observed as under:-

“16 to 22....

23. It is true that sub rule (5) employs a different term viz., engage different from appoint or 12 specify used in Section 15. But we do not think, the phraseology has any bearing on the extent of one's brief. Whether he is appointed, specified or engaged he would nonetheless be conducting the case in special Court. We are conscious of the fact that in the scheme of things provided in the Code, the trial in the Court of Session is conducted only by a Public Prosecutor or Special Public Prosecutor Section 15 of the Act also provides for conducting cases in Special Court by a Special Public Prosecutor. No mention, on the other hand is made of Special Public



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Prosecutor in sub rule(5). The reason however, is not far to seek. Section 15 contemplates 'specifying' a Public Prosecutor whether appointed under Section 24 of the Code or empanelled under sub-rule (1) of Rule 4 or appointing an advocate as Special Public Prosecutor for the purpose of conducting cases in the Special Court. These appointments apparently are made from panels of prosecutors and Advocates. It may so happen that the victim of atrocity in a particular case may not have faith in the prosecutors/advocate specified or appointed under Section 15. He may like to have the case conducted by an Advocate of his choice. It is in order to inspire confidence of the victim of atrocity in the administration of justice that a special provision has been made for engagement of an eminent senior advocate to conduct the case. That is why a different term 'engaged' has been used in Rule 4(5) in contradistinction to 'appoint' or 'specify' in Section 15. 'Engaged' means that he has been engaged for a particular case, unlike appointment/specifying of an advocate/ prosecutor from the panel. It is to be kept in mind that sub rule (5) contains a non-obstante clause overriding the provisions of rule rule(1) which means that the appointment under Rule 4(5) can be made of a person who is not in the panel. The panels, as seen above, comprise of advocates/Public Prosecutors of the choice of the Government. It is also to be kept in mind that the Act is a special statute enacted to provide relief to the victims of atrocity in the matter of trial of offences covered by the Act and Rule 4(5) confers a right upon victim of atrocity to have his case conducted by an advocate of his choice so as to ensure that he has faith in the trial.”

11. Firstly, the entire Rule 4(1) of the SC/ST (PoA) Act, 1989 has got to be read as a whole and not in isolation.



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Even assuming for the sake of argument that Rule 4(1) has got to be read alone, it deals with the preparation of panels and it is not mandatory on the part of the victim/relative of the victim to choose a lawyer only from the panel.

7. From the above said order, it is clear that the SC/ST (POA) Act, 1989 is a special statute, which overrides any other law for the time being in force and it empowers the victim of atrocity in the matter of trial of offences covered by the Act to have his case conducted by an eminent lawyer of his choice so as to ensure fair trial of his case.

8. Even in this case, an application has been made by the defacto complainant and that was appreciated by the respondent and the impugned order has been passed. This Court is of the view that there is no flaw, irregularity or illegality in the said impugned order dated 24.03.2023 passed by the respondent. However, this Court is inclined to direct the PCR Court, Trichy to dispose of the said Spl.S.C.No.36 of 2019 within a period of one month from the date of receipt of a copy of this order.



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

17.05.2023

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Index :Yes/No
Internet :Yes/No
NCC : Yes / No

To

The District Collector,
Office of the District Collector,
Thiruchirapalli.



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L.VICTORIA GOWRI., J.

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