



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.2329 of 2024

R.Kalpana

... Petitioner

Vs.

1.The Additional Chief Secretary,
The Office of Home Department (Court-6A)
The Secretariat,
Fort St. George,
Chennai – 600 009.

2.The District Collector,
Tiruppur District.

3.The Deputy Superintendent of Police,
Udumalpet Taluk,
Tiruppur District.

4.The Inspector of Police
Dhali Police Station,
Tiruppur District.
Cime No.107 of 2022

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Mandamus, directing the 2nd respondent to appoint Mr.A.Pandian, Advocate (Ms.1585/2008) for conducting prosecution in Spl.SC.No. 28 of 2022 before the Learned Principal District Judge, Tiruppur in lieu of the Rule 4(5) of Schedule Castes and Schedule Tribes (POA) Rules 1995 as per the order of the 2nd respondent vide Na.Ka.No.16715/2023/E1 dated 11.08.2023.



For Respondents

: Mr.A.Damodaran
Additional Public Prosecutor
for R1 to R4

ORDER

This writ petition has been filed for a direction to the 2nd respondent to appoint Mr.A.Pandian, Advocate (Ms.1585/2008) for conducting the prosecution in Spl.SC.No.28 of 2022 pending before the learned Principal District Judge, Tiruppur.

2.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing on behalf of the respondents.

3.The petitioner is the *defacto* complainant based on whose complaint, an FIR came to be registered in Crime No.107 of 2022 for various offences under IPC and also under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015. The investigation was conducted by the 4th respondent and a final report came to be filed and the same was taken on file by the Court below in Spl.S.C.No.28 of 2022.

4.The petitioner made a representation before the 2nd respondent requesting for appointment of Mr.A.Pandian, Advocate as the Special Public Prosecutor to conduct the case. As per Rule 4(5) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995. On receipt of the representation, the 2nd



respondent through communication dated 11.08.2023 made to the 1st respondent recommended for the appointment of Mr.A.Pandian, Advocate as Special Public Prosecutor. Since there was absolutely no progress, the present writ petition has been filed before this Court seeking for appropriate directions.

5.The learned counsel for the petitioner submitted that the 2nd respondent has already expressed his mind and was satisfied that Mr.A.Pandian, Advocate can be appointed as the Special Public Prosecutor to conduct the case in Spl.S.C.No.28 of 2022. While coming to such a decision under Rule 4(5) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities), 1995, the 2nd respondent himself could have directed for the appointment and there was no requirement to send a communication to the Government and in turn request the Government to appoint the Special Public Prosecutor. The learned counsel for the petitioner to substantiate his submissions, relied upon the earlier order passed by this Court in CrI.O.P.No.22043 of 2013, dated 25.09.2013.

6.The relevant portions in the order are extracted hereunder:

25. The language employed in Rule 4(5) is plain, simple and admit of any difficulty or ambiguity in understanding it. Unlike the General Penal Law of India or any other enactment providing prosecution, the SC/ST (PA) Act is a special Act intended to put an end to untouchability, degradation of human being merely on account



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of their birth. That is how, as per Section 18 of the Act, even grant of pre-arrest bail has been ruled out for those who commits the offences prescribed under the Act. Added to that Section 20 introduced a non-obstante clause and Section 21 imposed a duty on the Central Government to frame rules for effective implementation of the Act.

26. In such circumstances, the golden rule of literal interpretation has to be adopted. There shall not be any addition or subtraction to the language of the law employed in such plain rule.

27. In view of the foregoings, whether the prosecution is being conducted by a Senior Public Prosecutor or whether there was any allegation as against the Prosecutor, when the victim of the atrocity wishes that an eminent Senior Advocate shall be engaged to conduct the prosecution case then the District Magistrate has to engage such an Advocate to conduct the prosecution in the Special Court. The District Collector cannot avoid such a request of the victim of the atrocity.

7.The learned counsel also relied upon the judgment of this Court in ***K.Muruganandam Versus The District Magistrate and District Collector, Namakkal Dist & Another*** reported in ***2011 (3) MWN (Crl) 146*** in this regard.

8.It is clear from the above judgment that under Rule 4(5) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities), 1995, the District Magistrate himself can direct for engaging the Advocate as Special Public Prosecutor

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to conduct the case in the Special Court. It is not necessary to get the concurrence from the Government in this regard. Hence, there shall be a direction to the 2nd respondent to appoint Mr.A.Pandian, Advocate (Ms.1585/2008) as Special Public Prosecutor to conduct the case of the prosecution in Spl.S.C.No.28 of 2022 pending before the Principal District Judge, Tiruppur. This process shall be completed by the 2nd respondent, within a period of two weeks from the date of receipt of copy of this order.

9.This writ petition is disposed of with the above directions. No Costs.

02.02.2024

Index : Yes/No
Internet : Yes/No
ssr

To

- 1.The Additional Chief Secretary,
The Office of Home Department (Court-6A)
The Secretariat,
Fort St. George,
Chennai – 600 009.



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N. ANAND VENKATESH, J.

SSR

- 2.The District Collector,
Tiruppur District.
- 3.The Deputy Superintendent of Police,
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Tiruppur District.
- 4.The Inspector of Police
Dhali Police Station,
Tiruppur District.
- 5.The Public Prosecutor,
High Court, Madras.

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