



W.P(MD)No.3577 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 26.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.3577 of 2017

C.Santhanakumar

... Petitioner

Vs

The District Magistrate/District Collector,
Tirunelveli District,
Tirunelveli.

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondent to appoint Mr.A.Murugan (Roll No.MS1780/2004) as a Special Public Prosecutor in S.C.No.75 of 2009 pending before the learned II Additional District and Sessions Judge, Tirunelveli by considering the petitioner's representation, dated 25.05.2015 within a period stipulated by this Court.

For Petitioner	: No appearance
For Respondent	: Mr.G.V.Vairam Santhosh Additional Government Pleader

ORDER

The petitioner is a practising Advocate and he claims that there was an incident in the year 2008, where, he was attacked



W.P(MD)No.3577 of 2017

by one Nagarajan and three other police personnels, for which, the petitioner has lodged a private complaint before the Chief Judicial Magistrate Court, Tirunelveli for the offences punishable under Sections 294b, 323, 342, 427, 506(ii) IPC r/w 3(i) (ii), 3 (i)(iii), 3(i) (viii), 3(i)(ix), 3(i)(x), 3(i)(xv), 3(ii)(i), 3(ii)(ii), 3(ii)(v), 3(ii)(vii) of the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989. This private complaint was committed by the learned Chief Judicial Magistrate, Tirunelveli to the Court of Sessions and the same is pending before the II Additional District and Sessions Court, Tirunelveli in S.C.No.75 of 2009. The petitioner has made a request for appointment of Special Public Prosecutor for conducting his private complaint. The District Collector has appointed an Advocate one Parimalam as a Special Public Prosecutor by his proceedings in A2/50701/2011,dated 12.10.2011. However, the said Parimalam has filed a memo, dated 22.05.2015 stating that he is not willing to continue as a Special Public Prosecutor and recused from the case. The petitioner is not willing to proceed with the case with the Special Public Prosecutor and therefore, he once again submitted a representation on 25.05.2015, requesting the respondents to appoint



W.P(MD)No.3577 of 2017

one A.Murugan, who is an Advocate practising from Madurai Bar Association as a Special Public Prosecutor in this case and filed this writ petition for a Mandamus, directing the respondent to appoint the above said Murugan as a Special Public Prosecutor in S.C.No.75 of 2009, pending before the II Additional District and Sessions Court, Tirunelveli, by considering his representation, dated 25.05.2015.

2.The petitioner himself is a practising Advocate and filed a private complaint. This Court verified with the learned counsel for the petitioner as to the relevant provision, based on which, the petitioner seeks Mandamus for appointment of a Special Government Pleader by the Government for prosecuting the private complaint initiated by this petitioner. The learned counsel sought for an adjournment and accordingly at his request this writ petition was adjourned from 09.01.2024 to 11.01.2024. On 11.01.2024, the learned Special Government Pleader appearing for the respondent submits that the petitioner has also lodged a complaint before the police and the same was referred as "mistake of fact". However, the



W.P(MD)No.3577 of 2017

petitioner has not challenged the final report. Thereafter, he filed this private complaint and the same is pending from the year 2009.

3. Based on the submissions of the learned Special Government Pleader, this Court once again directed the petitioner to refer the relevant provision, based on which, this writ petition for Mandamus is maintained. The petitioner has not responded to the same. This Court has verified from the trial Court on the stage of the case initiated by this petitioner. The learned II Additional District Judge (PCR) (FAC), Tirunelveli has submitted a report that S.C.No. 75 of 2009 is still pending, since the earlier Special Public Prosecutor appointed by the Government was withdrawn and as on date, no Special Public Prosecutor has been appointed by the Government.

4. Considering the submissions made by the learned Additional Public Prosecutor and the report of the learned II Additional District Judge, (PCR), (FAC), this Court is of the view that the petitioner by seeking for an appointment of Special Public



W.P(MD)No.3577 of 2017

Prosecutor, is keeping the private complaint, which was filed in the year 2009 pending for the past 15 years. Certainly, this would amounts to harassment to the accused, who is facing the criminal case in S.C.No.75 of 2009. This affidavit filed by the petitioner is bereft of materials i.e without the details on the date of occurrence, in which, the petitioner was assaulted. The petitioner has simply submitted that in an incident that took place in the year 2008, he was attacked. The petitioner has not even enclosed the private complaint copy along with this writ petition. The Additional Government Pleader claims that the petitioner has lodged a complaint, which was enquired and closed as mistake of fact. The petitioner, a practising Advocate did not file any protest petition as against the final report filed by the concerned police. Instead, he preferred a private complaint in the year 2009 as against some police officials and requested for appointment of Special Public Prosecutor. There is no provision available for appointment of Special Public Prosecutor for prosecuting the private complaint proceedings. Though this Court has provided sufficient opportunities to the petitioner, he has not referred any provision, which enables him to



W.P(MD)No.3577 of 2017

maintain this writ petition for a Mandamus.

WEB COPY

5.In view of the above, the petitioner is not entitled for any relief. Accordingly, this writ petition is dismissed with a direction to the learned II Additional District Judge (PCR), Tirunelveli to dispose of S.C.No.75 of 2009 as expeditiously as possible by enabling this petitioner to prosecute the case. No costs.

27.02.2024

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

To

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

2.The II Additional District Judge (PCR),
Tirunelveli.



WEB COPY



W.P(MD)No.3577 of 2017

B.PUGALENDHI, J.

vrn

Order made in
W.P(MD)No.3577 of 2017

27.02.2024