



W.P.(MD)No.28871 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 06.12.2024

CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

W.P.(MD)No.28871 of 2024

and

W.M.P.(MD)No.24455 of 2024

M.Rajeswari

... Petitioner

Vs.

1.State through the Secretary to Government,
Home Department,
Fort St. George,
Chennai – 600 009.

2.The District Collector,
Karur District,
Karur.

3.The Deputy Superintendent of Police,
Crime Branch CID,
Tiruchirapalli.

4.The Inspector of Police,
Crime Branch CID,
Karur.

(Ref : Crime No.1 of 2019, CBCID, Karur)

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the



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respondents 1 and 2 to appoint Thiru.N.Anantha Padmanabhan, Senior Advocate, Madurai, as the Special Public Prosecutor, especially a Counsel of petitioner's choice to conduct the case in Spl.S.C.No.79/2019, on the file of the Sessions Mahila Court, Karur.

For Petitioner : Mr.N.Anantha Padmanabhan
Senior Counsel
for M/s.APN Law Associates

For R1 and R2 : Mr.M.Muthumanikkam
Government Advocate

For R3 and R4 : Mr.P.Kottaichamy
Government Advocate
(Criminal Side)

ORDER

The petitioner / de-facto complainant (victim) has filed this Writ Petition seeking a direction to allow her to engage the services of an advocate of her choice to conduct the prosecution in respect of Spl.S.C. No.79 of 2019.

2. The petitioner, a young lady with little awareness of life's complexities, was actively involved in social activities, particularly the "Save River" and "Save Sand" campaigns conducted by various volunteer organizations across the State of Tamil Nadu. Through her



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participation in these movements, aimed at safeguarding social interests and natural resources, the petitioner became acquainted with one Mugilan, who claimed to be the leader of various agitations and a prominent figure in preventing sand theft and the exploitation of minerals.

3. The petitioner, impressed by his cause, became a follower of Mugilan. At the time they met, Mugilan was 59 years old. The petitioner developed complete trust in him and accompanied him wherever he went. Over time, Mugilan exerted increasing control over the petitioner, to the point where, unknowingly, the petitioner became involved in a physical relationship with him. Mugilan had presented himself as an unmarried man, but the petitioner later came to know that he was in fact married with children. This betrayal led the petitioner to lodge a complaint, which resulted in the registration of a case and a charge sheet has been filed.

4. Since the said Mugilan is involved in social activism and has cultivated a network of supporters, including advocates and influential



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individuals, the petitioner is concerned that the prosecution may not be fair if conducted by an unknown individual. The petitioner believes that having her case prosecuted by someone of her choosing, particularly an advocate with sufficient experience and integrity, is in her best interest. Section 24(8) of the Cr.P.C. (similar to Section 18(8) of the BNSS, 2023, and Section 302 of the Cr.P.C., akin to Section 339 of BNSS, 2023) allows for a party to conduct prosecution either personally or through an advocate. In this case, the petitioner has identified an advocate with the requisite qualifications and integrity to prosecute her case.

5. The learned Senior Counsel appearing for the petitioner, while referring to the following two judgments of the Hon'ble Supreme Court, fairly submitted that there is no definitive answer to the issues raised in this matter.

(i) **State of Maharashtra and others vs. Prakash Prahlad Patil and others** [2009 0 Supreme (SC) 748]

(ii) **Mukul Dalal and others vs. Union of India and others** [1988 0 Supreme (SC) 365]



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6. The learned Government Advocate (Criminal side) appearing for the respondents 3 and 4 submits that this is a sessions trial, and the conduct of prosecution, particularly in sessions trial cases, is the prerogative of the State. The State assumes this role to ensure that the prosecution is conducted impartially, both to the accused and the affected parties. If a private party were allowed to engage an advocate of their choice to conduct the prosecution, it would introduce a personal element, undermining the impartiality of the prosecution. This could lead to concerns that the case is pre-decided or that the prosecutor is biased in favour of the prosecution. Therefore, the learned Government Advocate (Criminal side) strongly opposes the present petition.

7. Considering the above said submissions and on perusal of the materials on record, it is evident that this is a sessions trial case, and as per the Cr.P.C. and the B.N.S.S. 2023, the State is responsible for conducting the prosecution in sessions cases. In view of the same, this Court is not inclined to entertain the present Writ Petition. Hence, this



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Writ Petition is dismissed. No costs. Consequently, connected

Miscellaneous Petition is closed.

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NCC : Yes / No

Index : Yes / No

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To

- 1.The Secretary to Government,
Home Department,
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Chennai – 600 009.
- 2.The District Collector,
Karur District,
Karur.
- 3.The Deputy Superintendent of Police,
Crime Branch CID,
Tiruchirapalli.
- 4.The Inspector of Police,
Crime Branch CID,
Karur.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.NIRMAL KUMAR, J.

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Order made in
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