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CRR 3282 of 2025

In Re : An application under Section 482 of the Code of Criminal Procedure, 1973 corresponding to Section 528 of the BNSS read with Article 227 of the Constitution of India.

In Re : Suraj Surpetitioner

Mr. Sudipta Maitra, learned Sr. Adv.
Mr. Bratin Kumar Das
Mr. Joydeep Das
..... for the petitioner

Mr. Debasish Roy, learned P.P.
Mr. Jaydeep Biswas
..... for the State

The de-facto complainant in three cases, namely G.R. Case No. 426 of 2013, G.R. Case No. 475 of 2017, and G.R. Case No. 619 of 2012, pending before the learned Judicial Magistrate, 2nd Court, and the learned Judicial Magistrate, 3rd Court, Chandannagore, Hooghly, has filed the present revisional application under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter “BNSS”), corresponding to Section 482 of the Code of Criminal Procedure, 1973 (hereinafter “the Code”), read with Article 227 of the Constitution of India, challenging the legality and/or justification of the order dated 2nd July, 2025, issued by the Office of the Legal Remembrancer and Ex-Officio Principal Secretary to the Government of West Bengal, Judicial Department, in the name of the His Excellency the Hon’ble Governor, whereby Mr. Apurba Das, learned Additional Public Prosecutor, attached to the Court of the learned

Additional Chief Judicial Magistrate, Kalna, Purba Bardhaman, was relieved of his appointment as Special Public Prosecutor in respect of the aforesaid three cases.

Mr. Moitra, learned Senior Advocate representing the petitioner, submits that all three cases were initiated based on complaints filed by the de facto complainant. He submits that the proceedings in all three cases were stalled, and the Assistant Public Prosecutor initially appointed to conduct those cases was not diligent. Subsequently, Mr. Das was appointed to conduct the trial of these cases in the interest of the prosecution by an order dated 3rd September, 2024. He further submits that immediately after his appointment, Mr. Das took steps for the speedy disposal of the cases and even advanced arguments on behalf of the prosecution in G.R. Case No. 475 of 2017. However, at this stage, Mr. Das was suddenly removed from his responsibility to act as Assistant Public Prosecutor in respect of those cases by an order dated 7th July, 2025.

He submits that this order has created suspicion in the mind of the de-facto complainant that, if the cases are not conducted by Mr. Das, the complainant may not receive fair justice. Consequently, the de-facto complainant has been compelled to prefer this revisional application.

He argues that the concerned respondents must assign cogent reasons before removing any Assistant Public Prosecutor or Special Prosecutor from charge of any particular case. In the present case, he contends, no reason has been assigned in the order, and therefore, the order cannot be sustained. In support of his contention, he cites decisions reported in 2001 (2) MPLJ 61 (Poonamchand Jain vs. State of M.P. & Ors.), 1985 SCC OnLine Del 293 (Vishwa Nath Verma vs. Commissioner of Police & Anr.), and (2004) 4 SCC 427 (Varada Rama Mohana Rao vs. State of A.P.).

He submits that to ensure a fair trial and justice, Mr. Das should be reappointed as Special Public Prosecutor in respect of the three cases.

Mr. Roy, learned Public Prosecutor, at the outset, raised the issue of maintainability of this revisional application. He submits that the order which has been challenged in this revisional application invoking Section 482 of the Code and Article 227 of the Constitution of India, is an administrative order. He further submits that by preferring this revisional application in its present form, the administrative order cannot be challenged, and the only remedy available to the petitioner is to invoke Article 226 of the Constitution of India to challenge the administrative order dated 7th July, 2025. To support his contention, he refers to the decision reported in (2007) 2 CHN 819 (Chhaya Ray vs. State of West Bengal & Ors.). He also submits that in that intra-court appeal, the Hon'ble Division Bench held that a de facto complainant cannot dictate to the State Government to engage a counsel of his choice to act as Public Prosecutor. Further, he submits that a de-facto complainant has no right even to request the State to appoint a person of his choice as Public Prosecutor in respect of a particular case.

In reply, Mr. Moitra submits that Section 482 of the Code underscores the object of incorporating the provision to prevent the abuse of the process of any Court or, otherwise, to secure the ends of justice. He further submits that the expression "otherwise to secure the ends of justice" is wide enough to cover a case examining the justification of an order whereby a Public Prosecutor is removed just before the argument of any case.

Heard the learned Advocates representing the respective parties and perused the materials on record.

Undisputedly, any order appointing a person to act as a Special Public Prosecutor or Additional Public Prosecutor, or removing any person from such duties, is purely an administrative order. Article 227 of the Constitution of India confers superintending powers upon the High Court over its subordinate courts and tribunals, and Section 482 of the Code was incorporated to clarify that no provision of the Code is intended to limit or affect the inherent powers of the Court. These inherent powers may be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.

As observed earlier, the order under challenge in the present revisional application is not a judicial order and has not been passed by any court of law. It is purely an administrative order, even though it concerns the removal of a person previously appointed as a Public Prosecutor in respect of the aforementioned cases.

The decision in *Vishwa Nath Verma* (supra), cited by Mr. Moitra, is clearly distinguishable on facts, as it dealt with the grant of parole or furlough to a convicted person under Section 482 of the Code. Therefore, the said decision has no application to the present case.

It is well-settled that before initiating any action before a court of law, a person must demonstrate that they have an existing legal right and that such right has been infringed or violated by the action or inaction of a person or authority. A de-facto complainant has no legal right to dictate or compel the State to engage a specific individual as Public Prosecutor or Special Prosecutor in a particular case.

The Court is not unmindful of the provisions of Section 24(8) of the Code. Although the present application concerns an Assistant Public Prosecutor within the meaning of Section 25 of the Code, reference may be made to the proviso to sub-section (8) of Section 24, where the

legislature permits the victim to engage an advocate of their choice. Subsequently, the right to prefer an appeal against acquittal or inadequate punishment was granted to victims through a proviso inserted under Section 372 of the Code. The another right conferred upon a de-facto complainant or victim is found in Section 301 of the Code, whereby, with the permission of the Court, he/she may engage a lawyer to assist the Public Prosecutor or Assistant Public Prosecutor and, with the Court's permission, may submit written arguments after the close of evidence in the case. No other legal right has been recognised by the legislature.

Therefore, it may safely be concluded that a de-facto complainant has no legal right to demand or dictate that the State appoint a particular person to act as Public Prosecutor in any case. In support of this view, reference may be made to the proposition laid down by the Hon'ble Division Bench of this Court in decision of *Chhaya Ray* (supra).

I have carefully considered the decisions cited by Mr. Moitra. There is no dispute regarding the binding nature of those precedents. However, the said decisions are distinguishable on facts.

I do not find any merit in the contentions advanced by Mr. Moitra and, accordingly, the revisional application is dismissed.

However, there will be no order as to costs.

(Partha Sarathi Chatterjee, J.)