

(1999) 11 DEL CK 0091

In the Delhi High Court

Case No : Criminal Writ Petition No. 216 of 1999

Jitendra Kumar @ Ajju

APPELLANT

Vs

State (NCT of Delhi) and Another

RESPONDENT

Date of Decision : 12-11-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 201, 302, 363

Citation : (2000) 84 DLT 88 : (2000) 53 DRJ 707

Hon'ble Judges : R.S. Sodhi, J;A.D. Singh, J

Bench : Division Bench

Advocate : Sandeep Sethi, for the Appellant; K.C. Mittal, Standing Counsel (Crl.), for the Respondent

Final Decision : Allowed

Judgement

Anil Dev Singh, J.—Rule D.B.

This is a writ petition whereby the petitioner seeks quashing of the notification dated March 9, 1998 issued by the Deputy Secretary (Home), Government of NCT of Delhi. By this notification respondent No. 2 has been appointed as Special Public Prosecutor to conduct case FIR No. 340/96 under Sections 363/302/201, IPC, P.S. Nangloi, on behalf of the State. The facts giving rise to this petition are as follows.

2. The petitioner is facing trial in the aforesaid case u/s 302, IPC for the murder of Master Hunni, The petitioner is aggrieved by the appointment of Mr. P.L. Kalra, Advocate, respondent No. 2 as the Special Public Prosecutor for conducting the prosecution before the Trial Court on behalf of the State in the aforesaid case on the ground that respondent No. 2 was a Counsel for the complainant, Mr. Suresh Kalra, a relative of the deceased, in a complaint filed against the petitioner and several others under Sections 302/201/364A/363/217/218/219/221/225A/193/196/120B/109/34, IPC for the same offence in which it was alleged that the deceased had been murdered on May 13, 1996 by the

respondents therein after kidnapping him for ransom. The Metropolitan Magistrate in whose Court the complaint was filed dismissed the same on November 20, 1998 on the ground that the complainant had not selected proper Forum for filing the complaint. Thereafter, the complainant Mr. Suresh Kalra filed Crl. Misc. (Main) being No. 4586/98 through respondent No. 2 u/s 482 of the Code of Criminal Procedure, On October 13, 1999, a learned Single Judge of this Court declined to interfere with the order passed by the Metropolitan Magistrate and consequently dismissed the petition.

3. The fact that respondent No. 2 was Counsel for Mr. Suresh Kalra and had been engaged by him to prosecute the aforesaid complaint against the petitioner and others is not denied by the learned Counsel for the State. It appears to us that the action of the State in issuing the impugned notification was improper and it was not justified in appointing respondent No. 2 as the Special Public Prosecutor since he had appeared for the complainant in the aforesaid criminal complaint and the Crl. Misc. (Main) No. 4586/98.

4. It is well settled that a Public Prosecutor is an officer of the Court and is required and expected to assist the Court to unravel the truth in a given case. In performance of his duty he can prosecute the accused but he cannot assume the role of a persecutor. It is no part of his duty to secure conviction at all costs. In discharge of his duty the Public Prosecutor is expected to act fairly and impartially and must be conscious of the rights of the accused. He is not only required to conduct prosecution case to the best of his ability but at the same time he is expected to respect and protect the rights of the accused. The State while appointing a Special Public Prosecutor must be mindful of the aforesaid duties which he would be required to perform while conducting the prosecution in a given case. The State must also be conscious of the fact that the Special Public Prosecutor has to secure the cause and interests of justice and not to act as the mouth piece of the victim of the crime or his close relations. He must consider himself as an agent of justice and truth. In other words, a Special Public Prosecutor should be able to act independently without taking sides. In the instant case, in the first instance, respondent No. 2 was engaged by a relative of the deceased to prosecute his complaint against the petitioner and others. His association with the complainant party as their Counsel is capable of impairing his ability to act in a detached manner. The apprehension of the petitioner that there may be a likelihood of respondent No. 2 turning to the relatives of the deceased for seeking directions to vindicate their grievances against the petitioner cannot be ruled out. It is possible that respondent No. 2 may rise to the occasion and may act impartially and fairly and in keeping with public interest and demands of justice while appearing for the State before the Trial Court, but likelihood of his being biased against the petitioner cannot be ruled out. The accused must have confidence that he will be treated fairly by the Trial Court and the Public Prosecutor and he will not consider himself as an agent of the complainant. Nothing should be done by the State which shakes the faith of the accused in the impartiality of the trial. It is essential to maintain purity and

impartiality in the field of administration of criminal justice. In *Ram Ranjan v. The Emperor*, 2nd 1942 Calcutta 422, it was observed as follows:

".... that the purpose of a criminal trial is not to support at all costs a theory but to investigate the offence and to determine the fault or innocence of the accused and the duty of a Public Prosecutor is to represent not the police but the Crown and his duty should be discharged by him fairly and fearlessly and with full sense of responsibility that attaches to his position...."

5. Having regard to the aforesaid decision and keeping in view the fact that respondent No. 2 was a Counsel for the complainant, we are of the opinion that the appointment of respondent No. 2 vide the impugned notification ought to be quashed. We order accordingly.