
(1989) 03 P&H CK 0011
In the Punjab And Haryana At Chandigarh

Krishan Singh Kundu

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 31-03-1989

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 235, 256, 258
Criminal Procedure Code, 1973 (CrPC) — Section 24, 25

Citation : (1989) CriLJ 1309 : (1990) 1 ILR (P&H) 211

Hon'ble Judges : M.R. Agnihotri, J; Amarjeet Chaudhary, J

Bench : Division Bench

Judgement

M.R. Agnihotri, J.—This is a petition under Articles 226 and 227 of the Constitution which has been brought before us in the nature of Public Interest Litigation by Mr. Krishan Singh Kundu a practising Advocate of this Court. At the very outset, we must bring on record our appreciation for Mr. Kundu for having done a commendable service to the cause of the Administration of Justice in the State of Haryana.

2. The short grievance of the petitioner, as projected in this petition, is against the appointment of a police officer as Director of Prosecution by the State of Haryana, which according to the petitioner is in utter violation of the letter and spirit of the provisions of Sections 24 and 25 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code"), as also against the recommendations of the Law Commission of India which have already been accepted by the State of Haryana. In nutshell, the thrust of the argument of the petitioner is that the Director of Prosecution being head of the Prosecution Department and overall incharge of the Prosecution Agency of the State, should be a person who has been an experienced prosecutor himself and possesses to his credit the legal qualifications, professional training and the rich experience acquired by conducting cases personally in the trial as well as the appellate court. If to the contrary, a police officer without any experience as a prosecutor is appointed as Director of Prosecution, then the Prosecution Agency as a whole and the Public Prosecutors in important criminal cases in particular, would be

deprived of the day to day guidance with regard to the conduct of the cases at various stages. According to the petitioner, in certain important cases the Director of Prosecution is also supposed to appear personally in the courts and conduct the cases under his close supervision, but the Prosecution Agency of the State would be deprived of this service if the Director of Prosecution happens to be a police officer without any professional training to his credit. Attack on the appointment of a police officer manning the office of Director of Prosecution has been advanced further with the help of established principles of law as well as precedents, to contend that the very appointment of a police officer incharge of the Prosecution Agency lies directly counter to the impartial and fair trial in the Court of law, as the Director of Prosecution belonging to Police Department will always be anxious to secure maximum convictions in the State cases by exerting all sorts of influences at the stage of investigation and even thereafter at the stage of examining the prosecution witnesses. Such a situation would be inconsistent with the march of times in a welfare State.

3. In reply to the writ petition, written statement has been filed by the Deputy Secretary to Government, Haryana, Department of Administration of Justice, on behalf of the State of Haryana the only respondent in the case. In the written statement, the stand taken by the respondent is that according to Sub-section (6) of Section 24 of the Code, where in a State there existed a regular cadre of prosecuting officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from amongst the persons constituting such cadre. But, an exception had also been made in Section 25 to the effect that where no Assistant Public Prosecutor was available for the purpose of any particular case, the District Magistrate could appoint a police officer not below the rank of Inspector to be an Assistant Public Prosecutor provided that the officer had not taken any part in the investigation. Further, it has been conceded in the written statement that in the State of Haryana, the Prosecuting Agency had in fact been separated from the control of the police with effect from 1-4-1974 consequent upon the enforcement of the Code. Further, it has been asserted that the Prosecuting Agency in Haryana at present was independently working with no police interference at all. It has further been admitted that the State was aware of the fact that a ban had in fact been imposed u/s 25 of the Code against the appointment of a police officer as Assistant Public Prosecutor. In order to justify the appointment of a police officer as Head of the Prosecuting Agency in Haryana, the stand taken by the respondent is that there were no statutory rules governing the appointment of Director of Prosecution from amongst the Assistant District Attorneys/Deputy District Attorneys/District Attorneys. Therefore, in the absence of such rules, the State Government took a policy decision on 2-3-1974 for filling the post of Director of Prosecution either by direct recruitment or by transfer or by promotion from amongst the District Attorneys. However, it has further been pleaded "that the appointment of a police officer as Director of Prosecution does not violate in any way the spirit of the scheme as laid down in Section 25 of the Code of Criminal Procedure, 1973, as

the officer, so appointed as Head of the Prosecuting Agency is not under the control of the Police Department. An officer from the IPS Cadre when appointed as Director of Prosecuting severs his relations with the Police de facto, He is directly answerable to the State Government and not to the Police Chief and as such the Prosecution Agency's , independence has not been Jeopardised". Emphasis has also been laid that the appointment of Director of Prosecution was not covered by Section 25 of the Code and that the post of Director of Prosecution was not that of Public Prosecutor and was merely of an administrative head of the Prosecution Department.

4. After hearing the learned Counsel for the parties, we are of the considered view that there is considerable merit in the submissions of the petitioner and that the stand taken by the respondent is wholly without any basis.

5. Recapitulating the brief history of the Prosecution Agency in the State of Haryana, it may be noticed that before 1st of April, 1974, there used to be two wings of the Prosecution Agency. The work of the prosecution of criminal cases in the Courts subordinate to the Courts of Sessions Judge stood assigned to the Prosecuting Sub Inspectors, Prosecuting Inspectors and Prosecuting Deputy Superintendents of Police, who were police officers and were directly under the administrative control of the Superintendent of Police at the district level and the Inspector General of Police at the State level. The second wing of the Prosecution Agency was in charge of the prosecution work at the stage of Sessions Courts where experienced and more senior prosecutors as Assistant District Attorneys and District Attorneys used to handle the Cases, However, with effect from 1st of April, 1974, the State Government merged both the wings of the Prosecution Agency and placed the unified wing under the control of the Director of Prosecution, As a consequence thereof, the institution of Prosecuting Sub Inspectors, Prosecuting Inspectors and Prosecuting Deputy Superintendents of Police stood abolished and was replaced by Assistant District Attorneys, Deputy District Attorneys and District Attorneys. In the meantime, the Law Commission of India, in its XIV Report on Judicial Administration while dealing with the subject of "Prosecution Agency", made certain recommendations in para 12 of Ch. XXXV of Vol. II, relevant extract whereof is reproduced below:

It is obvious that by the very fact of their being members of the Police force and the nature of duties they have to discharge in bringing a case to Court it is not possible for them to exhibit that degree of detachment which is necessary in a Prosecutor. It is to be remembered that a belief prevails among police officers that their promotion in the Department depends upon the number of convictions they are able to obtain as prosecuting officers. Finally, the only control or supervision of the work of these prosecuting officers is that exercised by the departmental officials.

We, therefore, suggest that as a first step towards improvement, the prosecuting agency should be completely separated from the police Department. In every district a separate prosecution department may be constituted and placed in

charge of an official, who may be called a "Director of Public Prosecution". The entire prosecution machinery in the district should be under his control. In order to ensure that he is not regarded as a part of the police department he should be an independent official directly responsible to the State Government. The departments of the machinery of the criminal justice, namely, the investigation department and the prosecuting department should thus be Completely separated from each other.

In nutshell, the Law Commission recommended that the Prosecution Agency deserved to be Separated from the Police Department of the State so that the Police Department should have no administrative control over the Prosecution Agency, These recommendations of the Law Commission were accepted by the Central Government and the Parliament while enacting the Code of Criminal Procedure, 1973 (Parliament Act II 6f 1974), made the necessary provision in Sections 24 and 25 thereof, which are reproduced as under:

24. Public Prosecutors.- For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be.

(2) The Central Government may appoint one or more Public Prosecutors, for the purpose of conducting any case or class of cases in any district, or local area.

(3) For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district:

Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a public Prosecutor as the case may be for another district.

(4) The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion, fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district.

(5) No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under Sub-section (4).

(6) Notwithstanding anything contained in Sub-section (5), where in a State, there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre:

Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be,

from the panel of names prepared by the District Magistrate under Sub-section (4).

Explanation,- For the purpose of sub-s, (6), the persons constituting the Haryana State prosecution Legal Service (Group A) or Haryana State Prosecution Legal Service (Group B), shall be deemed to be a regular cadre of prosecuting officers.

(7) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under Sub-section (1) or Sub-section (2) or Sub-section (3) or Sub-section (6), only If he has been in practice as an advocate for not less than seven years.

(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years" as a Special Public Prosecutor,

(9) For the purposes of Sub-section (7) and sub-s, (8), the period during which a person has been in practice as a pleader, or has rendered (whether before or after the commencement of this Code) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an advocate.

25. Assistant Public Prosecutors.-

(1) The State Government shall appoint in every district one or more Assistant Public Prosecutors for conducting prosecutions in the Courts Of Magistrates.

(1-A) The Central Government may appoint one or more Assistant Public Prosecutors for the purpose of conducting any case or class of cases in the Courts of Magistrates.

(2) Save as otherwise provided in Sub-section (3), no police officer shall be eligible to be appointed as an Assistant Public Prosecutor.

(3) Where no Assistant Public Prosecutor is available for the purposes of any particular case, the District Magistrate may appoint any other person to be the Assistant Public Prosecutor in charge of that case:

Provided that a police officer shall not be so appointed -

(a) if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted; or

(b) if he is below the rank of Inspector.

According to Sub-section (7)of Section 24, a person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor only if he has been in practice as an advocate for not less than seven years. Similarly, a person can be appointed as a Special Public Prosecutor by the Central Government only if he has been in practice as an Advocate for not less than ten years. According

to Sub-section (2) of Section 25, no police officer shall be eligible to be appointed as an Assistant Public Prosecutor. This made the intention of the Parliament amply clear that only that person should be appointed as a Prosecutor who has been in practice as an Advocate for certain period and such a person should not be a police officer.

6. The aforesaid provisions of the Code of Criminal Procedure, 1973, came into force with effect from 1st of April, 1974, and the Prosecution Agency was separated from the control of the Police Department in the State of Haryana, but in the very next year the State Government started toying with the idea of reverting to the old system by bifurcating the unified Prosecuting Agency and by placing the Prosecutors conducting criminal trials up to the level of the Magistrates under the administrative and disciplinary control of the Superintendents of Police and those who were entrusted with the prosecution work in the Sessions Courts by placing them under the administrative and disciplinary control of the Legal Remembrancer. Advice was sought from the Legal Remembrancer (later on Mr. Justice J. M. Tandon of this Court) and the then Advocate General, Mr. Jagan Nath Kaushal, who became Union Law Minister later on. As stated by the petitioner in para 5 of the petition, the advice received by the State Government was not in favour of reverting to the old system as the proposed step was considered to be inconsistent with the provisions contained in Section 25 of the Code. Though in the written statement, the State has pleaded ignorance about the averments regarding the obtaining of advice from the Legal Remembrancer and the Advocate General, yet during the course of arguments the petitioner placed before us copies of the opinion of the learned Advocate General and the Legal Remembrancer, which did support the contention of the petitioner. It was thereafter that the idea of bifurcation of the Prosecution Agency was dropped by the State Government. In addition to that, by amending the Code of Criminal Procedure in 1973, in its application to the State of Haryana, an explanation was added to Sub-section (6) of Section 24, to provide that the persons constituting the Haryana State Prosecution Legal Service (Group A) or Haryana State Prosecution Legal Service (Group B) shall be deemed to be a regular cadre of prosecuting officers for the purposes of Sub-section (6) of Section 24 of the Code. This was done with the idea that the public prosecutors or the Additional Public Prosecutors could be appointed only from amongst the persons constituting such cadre.

7. However, as told by the petitioner, despite all this the State Government persisted and continued to fill the office of Director of Prosecution by appointing police officers one after the other, most of whom, if not all, were not even Law Graduates, e.g.:

1. Mr. M.S. Bhatnagar (Director General of Police),
2. Mr. S.K. Sethi (Dy. Inspector General of Police),
3. Mr. Dharam Singh (Inspector General of Police),

4. Mr. R.S. Yadav (Dy. Inspector General of Police),
5. Mr. H.R. Swan (Director General of Police),
6. Mr. K. L. Deewan (Director General of Police),
7. Mr. P.S. Bhinder (Director General of Police),
8. Mr. R.R. Singh (Inspector General of Police).

Not only that, instead of placing the entire unified cadre of Public Prosecutors, Additional Public Prosecutors and Assistant Public Prosecutors under a non-police officer, the State Government placed the entire cadre under the administrative control of an officer belonging to the Police Department. Thus, a retrograde step was taken to place even those Prosecutors belonging to the Prosecution Agency of the State under the control of the police officer, who even in the British times had not been kept under the control of either the Superintendent of Police at the district level or the Inspector General of Police at the State level. Thus, the mischief which was intended to be rectified by the Parliament has in fact been perpetuated by the State, despite a clear mandate by the Parliament based on the wisdom and experience of the Law Commission of India. Such an abuse of authority cannot be countenanced in a welfare State governed by the rule of law.

8. The intention of the Legislature underlying the enactment of Sections 24 and 25 of the Code had been made clear in no uncertain terms by impressing upon the State Governments that a Prosecutor who has to conduct cases in the Courts on behalf of the State should not be a person other than an advocate having seven years" standing at the bar. This command of the Parliament was not intended to be complied with only at the stage of filling the posts of Public Prosecutors and to be flouted at the stage of manning the office of the Chief Prosecutor of the State known as Director of Prosecution. If a police officer is allowed to be appointed as Director of Prosecution, who is head of the Prosecution Agency, then it was a wholly futile exercise and pointless pursuit in the matter of reforms in the Administration of Justice, to prohibit police officers from manning the subordinate posts of Assistant Public Prosecutors and Public Prosecutors, This would in fact amount to defeating the very purpose behind the enactment of Sections 24 and 25 of the Code and throwing the recommendations of the Law Commission, which have since been accepted by the Central Government as well as the State of Haryana, to the winds.

9. The office of the Public Prosecutor is a very responsible office which is an integral part of the machinery of Administration of Justice. For the last more than a century, the administration of criminal justice in this country has seen the Public Prosecutors conducting cases in an independent, unbiased and impartial capacity. Even the Britishers never thought of placing them under the control of the Police Department, as that would have robbed the Public Prosecutors of their objectivity in the conduct of trial of the cases and would have tarnished the fair name of justice. To repeat the Law Commission in its XIV Report had observed,

more than thirty years ago, as under:

The integrity of a person chosen to be in charge of prosecution does not need to be emphasised. The purpose of a criminal trial being to determine the guilt or innocence of the accused person, the duty of a Public Prosecutor is not to represent any particular party but the State. The prosecution of accused persons has to be conducted with the utmost fairness. In undertaking the prosecution, the State is not actuated by any motive of revenge but seeks only to protect the community.

That is why the National Police Commission in its Fourth Report submitted to the Government of India made the following recommendations in Ch. XXIX relating to the Prosecuting Agency:

29.12. The minimum qualification and experience that may be prescribed for various categories of prosecutors are suggested below:

Sr.	Name of the Post.	Minimum years of practice or experience	No.
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	Assistant Public Prosecutor Gr. II.	Three years of experience at the Bar	2.
	Assistant Public Prosecutor Gr. I.	Five years practice at the Bar or five years experience as a judicial officer.	3.
	Additional Public Prosecutor.	Seven years practice at the Bar or seven years experience as a judicial officer.	4.
	Public Prosecutor -do-	Seven years practice at the Bar or seven years experience as a judicial officer of which at least three years should be as a Sessions Judge or three years experience as Additional Public Prosecutor or Public Prosecutor.	5.
	Deputy Director of prosecution,	Seven years practice at the Bar or seven years experience as a judicial officer of which at least five years should be as a Sessions Judge or three years experience as Deputy Director.	6.
	Director of Prosecution and Additional	Ten years practice at the Bar or ten years experience as a judicial officer of which at least five years should be as a Sessions Judge or three years experience as Deputy Director.	
	Director of Prosecution.		

These recommendations of the National Police Commission also go to show that if the Prosecution Agency were placed under the control of a police officer, a situation could be seen as likely to curtail freedom, as it would go against the principle of impartiality, e.g., the police having an interest in seeing that their work in investigation and arrest move to a conviction and there may be a temptation to suppress evidence to this end. Excessive zeal on the part of a police Prosecutor may result in placing the life and liberty of some citizens, who were before the Courts in jeopardy. It is precisely with this objective in view that the recommendations of the Law Commission and the National Police Commission, which are based on the wisdom, maturity and rich experience gained during the years, intended to confer on the Prosecutor an independent discretion, to decide as to whether a prima facie case existed against a person and whether proceedings should be commenced, continued or withdrawn in the Courts. All this is bound to be lost if a police officer is allowed to head the Prosecution Agency by holding the office of Director of Prosecution.

10. The petitioner has also substantiated his submissions by citing certain precedents which do throw sufficient light and support his view point. The petitioner has placed reliance on *The State of Bihar Vs. Ram Naresh Pandey*, , to highlight the importance of the office of the Public Prosecutor and the fairness and impartiality with which he is supposed to conduct himself in the trial of a case. In the words of the Hon"ble Supreme Court:

The judicial function, therefore, implicit in the exercise of the judicial discretion for granting the consent would normally mean that the Court has to satisfy itself that the executive function of the public prosecutor has not been improperly exercised, or that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes. In this context it is right to remember that the Public Prosecutor though an executive officer as stated by the Privy Council in AIR 1938 266 (Privy Council) , is, in a larger sense, also an officer of the Court and that he is bound to assist the " Court with his fairly considered view and the Court is entitled to have the benefit of the fair exercise of his function.

These observations of the Hon"ble Supreme Court have been followed by a Division Bench of the Calcutta High Court in *Raj Kishore Rabidas Vs. The State*, , wherein the Court observed as under:

It would be, therefore, apposite to say that a public prosecutor for the State is not such a mouthpiece for his client the State, to say what it wants or his tool to do what the State directs. He owes allegiance to higher cause. He must not consciously misstate the facts, nor knowingly conceal truth. Despite his undoubted duty to his client, the State, he must sometimes, disregard his client"s most specific instructions if they conflict with his duty to the Court to be fair, independent and unbiased in his views. As an Advocate for the State, he may be ranked as a minister of justice equally with the Judge.

Reliance has further been placed on a Full Bench decision of the Kerala High Court in the case of *Dy. Accountant General (Admn) Office of the Accountant General, Kerala Trivandrum Vs. State of Kerala and Others*, , to contend that a Public Prosecutor has to discharge various functions in the Court which would be difficult for him to discharge independently if he had to serve under the administrative and disciplinary control of a police officer holding the rank of the Head of his Department in the capacity of Director of Prosecution. It is contended that very frequently the Public Prosecutor has to exercise his discretion and own judgment to come to the conclusion as to whether in a certain case prosecution should be withdrawn against the accused persons or not. Their Lordships, while setting aside the withdrawal of the prosecution observed as under:

As pointed out by the Supreme Court in *The State of Bihar Vs. Ram Naresh Pandey*, , two things are clear from a plain reading of the section. The first is that the power to withdraw is conferred on the Public Prosecutor and on no one else; and, although this is an executive power, it is a power which he must exercise in

the light of his own judgment and not at the dictation of some other authority, however high. That being so, the discussion at the bar as to whether the executive power in respect of this matter is vested in the State by reason of "administration of justice" being in the State List, and "Criminal Procedure, "including all matters included in the Code of Criminal Procedure at the commencement of this Constitution", being in the Concurrent List, or whether it is vested in the Union by reason of "Union Public Services" being in the Union List seems to be largely beside the point. So also whether, even if the power falls within the executive power of the Union, Article 256 (subject to any direction given thereunder by the Central Government none has, in fact, been given) and Article 258(2) (in the light of the decisions in AIR 1945 156 (Privy Council) and Anant Baburao Sawant and Others Vs. State, would not confer executive power on the State. For, there can be no question of the executive power, either of the Union or of the State, being exercised contrary to law; and when, as we have seen, the law confers the power of withdrawal on the Public Prosecutor, that means that power must be exercised by the Public Prosecutor and by no one else.

The second thing that is clear from a plain reading of the section is that the power of withdrawal conferred on the Public Prosecutor is not an absolute power. He can withdraw from the prosecution only with the consent of the Court and this curb is placed on his power in order to ensure that the power is not abused, in other words, is not exercised for improper reasons or to serve improper ends.

Firm reliance has been placed by the petitioner on the judgment of the Hon"ble Supreme Court in Balwant Singh and Others Vs. State of Bihar, , to contend that the Public Prosecutor has to discharge his duties without receivin"g any instructions or submitting to the dictation of any outside agency. Their Lordships of the Supreme Court have authoritatively held as under ; -

The Criminal Procedure Code is the only master of the public prosecutor and he has to guide himself with reference to Criminal Procedure Code only. So guided, the consideration which must weigh with him is, whether the broader cause of public justice will be advanced or retarded by the withdrawal or continuance of the prosecution. As we have already explained, public justice may be a much wider conception than the justice in a particular case. Here, the public prosecutor is ordered to move for withdrawal. This is not proper for a District Magistrate to do. Indeed, it is not proper to have the public prosecutor ordered about. It is entirely within the discretion of the public prosecutor. It may be open to the District Magistrate to bring to the notice of the public prosecutor materials and suggest to him to consider whether the prosecution should be withdrawn or not. He cannot command where he can only commend.

Strong support has been taken from the judgment of Mr, Justice K. N. Singh of the Allahabad High Court (at present adorning the Supreme Court of India), in Jai Pal Singh Naresh and Others Vs. State of U.P. and Others, , which in fact happened to be a case exactly identical and squarely applicable, to the facts of the present case. There also, by an executive order the State Government placed

the Assistant Public Prosecutors under the administrative and disciplinary control of the Superintendents of Police. The order was found inconsistent and contrary to the letter and spirit of Section 25 of the Code of Criminal Procedure and the learned Judge held as under (at pp. 35 and 36):

The question then arises as to whether the Government Order dated 15th March, 1975, has been issued under the Appointment Rules as notified on 27th March, 1974. The petitioners have, no doubt, no right to choose the authority which may have administrative control over them, nor they can claim any right to insist that the State Government should entrust this matter to a particular authority. The State Government as the appointing authority has power to entrust the disciplinary and administrative control to any authority it deems fit and proper, but in doing that the State Government cannot nullify the legislative policy as contained in Section 25 of the Code. The legislative history and the above discussion would show that Section 25(2) was enacted by the Parliament to ensure independence of prosecuting agency from the Police Department and it was for that reason that a police officer was declared ineligible for appointment as a Public Prosecutor, If the recommendations of the Law Commission and the Statement of Objects and Reasons of the Bill in respect of the Code of Criminal Procedure is taken into account, there can be no manner of doubt that the Parliament intended that Public Prosecutors should be free from the control of the Police Department. If the Assistant Public Prosecutors are placed under the administrative and disciplinary control of the Superintendent of Police who is the principal police officer at the district level, the legislative purpose would be defeated.

Learned Standing Counsel urged that Section 25(3) itself contemplated that a police officer can legally be appointed as Assistant Public Prosecutor. Parliament never intended that there should be complete separation of the prosecuting agency with the Police Department or that the officers of the Police Department should have no control over the Assistant Public Prosecutors. He placed reliance upon Rule 5 of the appointment Rules to support his contention. Rule 5 lays down:

5. Disciplinary control over the Assistant Public Prosecutors:

The immediate disciplinary control over the Assistant Public Prosecutors, senior grade, first grade and second grade, shall be exercised by such authority or authorities in the district as the State Government may, from time to time, specify in that behalf and the inter se relationship between these officers shall be governed by such rules or general orders as the State Government may from time to time make in that behalf.

Under the aforesaid rule the State Government is empowered to issue orders specifying the authority which may have immediate disciplinary control over the Assistant Public Prosecutors at the district level. It is urged that since the State Government was invested with the power of appointing authority to have

immediate disciplinary control over the Assistant Public Prosecutors, it was permissible for the State Government to entrust disciplinary control over the Assistant Public Prosecutors to the Superintendent of Police and the Inspector General of Police. No doubt, Rule 5 confers power on the State Government to entrust the administrative and disciplinary control over the Assistant Public Prosecutors to any authority under Rule 5 of the appointment Rules but while exercising that power it cannot ignore Section 25(2) of the Code and the legislative history and the Parliament's intention and the purpose which was sought to be achieved by the said enactment. The purpose of Section 25(2) was to secure independence of prosecuting agency from Police Department, that purpose would be defeated if the Assistant Public Prosecutors are placed under the disciplinary control of the officers of the Police Department. Rule 5, therefore, does not confer power on the State Government to entrust disciplinary control over the prosecuting agency to the Police Department and thereby to nullify the legislative intent and purpose as contained in Section 25(2) of the Code.

Learned Standing Counsel urged that the Assistant Public Prosecutors do not become members of the Police force nor they lose their independence merely because the administrative and disciplinary control is entrusted to Superintendent of Police and the Inspector General of Police. He further urged that the State Government being the appointing authority has the ultimate control over the Assistant Public Prosecutors and the Superintendent of Police and the Inspector General of Police will have power to supervise the working of the Assistant Public Prosecutors in day to day matters and they will have no right to dismiss or remove the petitioners from service. Therefore, the impugned order is not in violation of Section 25 of the Code. The question then arises what is the scope of "administrative and disciplinary control". In common parlance this expression means immediate supervision in matters relating to the work any functioning of the Assistant Public Prosecutors which may include power to call for explanation, suspension and awarding minor punishments namely, withholding of increment, promotion and imposition and recovery of losses which the Government may suffer from the negligence of the officers. The expression "control" occurring in Article 235 of the Constitution was interpreted by the Supreme Court in *The State of West Bengal Vs. Nripendra Nath Bagchi*, . The Supreme Court observed that the word "control" even though not defined in the Constitution indicates that it meant disciplinary control or disciplinary jurisdiction. The Court observed that in considering the scope of the word "control" aid can be taken from the history which lay behind the enactment of Article 235 of the Constitution, that was permissible to find out the meaning of the expression "control", and recourse may legitimately be had to the prior state of law, the evil sought to be removed and the process by which the law was evolved. After examining the legislative history, the Supreme Court observed that Article 235 was framed to effectuate a purpose namely to secure independence of the subordinate judiciary, thereafter it held that the word "control" occurring in Article 235 included disciplinary Control, if that was not so the very object of

securing the independence of the subordinate judiciary from the executive would be frustrated.

Applying the principles laid down by the Supreme Court and having regard to the legislative history and the object and purpose which was sought to be achieved by the enactment of Section 25(2), there can be no manner of doubt that if administrative and disciplinary control over the public prosecutors was entrusted to the officers of the police department, the very purpose for which Section 25 was enacted would be frustrated. This position is not altered merely because the State Government is invested with the powers of ultimate control to pass orders to dismiss or remove a public prosecutor. The State Government appoints Assistant Public Prosecutors and it can alone dismiss or remove them but that does not mean that the police officers to whom immediate disciplinary control has been entrusted will cease to have any right to exercise powers over the Assistant Public Prosecutors. Once the police officers are entrusted with those powers they will have jurisdiction to regulate and control the working of Assistant Public Prosecutors. It is difficult to accept the contention that even though the Assistant Public Prosecutors would be subordinate to police officers in administrative and disciplinary matters, they would be independent in discharge of their duties and functions. Once they are liable to answer to the Superintendent of Police and Inspector General of Police, in substance they are subordinate officers to them and they would be liable to carry out their orders and directions. The State Government while exercising its power of dismissal or removal is bound to be affected by the reports and opinion of those police officers who have administrative and disciplinary control over the Public Prosecutors, therefore, the contention that since the ultimate control vests with the State Government the immediate control of police officers would not affect the independence of the prosecuting agency is fallacious. Similar contention was rejected by the Supreme Court in *The State of West Bengal Vs. Nripendra Nath Bagchi*, ."

11. Mr. B.S. Malik, the learned Additional Advocate General, Haryana, appearing on behalf of the State, has vehemently pleaded the case of the State in order to justify the appointment of a police officer as Director of Prosecution. Even though he could not dispute the wisdom and the law laid down by the aforesaid precedents and the principles underlying the recommendations made by the Law Commission and the national Police Commission, yet he has pleaded that the Court should not presume lack of objectivity and impartiality merely because the head of the Prosecution Agency happens to be a police officer. We do not agree with the stand taken by the learned Additional Advocate General, as the very idea of appointing a police officer as in charge of the Prosecution Agency is abhorrent to the letter and spirit of Sections 24 and 25 of the Code. As we are told, mostly the police officer, who are brought from the Police Department to occupy the high office of Director of Prosecution are not even Law Graduates, as probably the position has been during the tenure of the last seven or eight incumbents. If that is so, then the question of impartiality, independence or

unbiased approach of the Head of the Department apart, even the benefit of having day to day guidance of expert and professional nature by the Public Prosecutors would also be denied to them, making the interest of the State suffer to a considerable extent.

12. In view of the above factual and legal position, we find that the action of the respondent State of Haryana, in appointing a police officer as Director of Prosecution, that is, in charge of the Prosecution Agency of the State, is wholly illegal and violative of the very letter and spirit of Sections 24 and 25 of the Code of Criminal Procedure. We, therefore, by issuing a writ of certiorari, quash the appointment of the Director of Prosecution, Haryana, who happens to be an officer of the Police Department, and by issuing further a writ of Prohibition, we forthwith restrain the State of Haryana from permitting any police officer to occupy the office of the Director of Prosecution. By issuing a writ of mandamus, we command the State of Haryana to fill the post of Director of Prosecution only by appointing a senior officer belonging to the Prosecution Agency, having sufficient experience of actual working as a Public Prosecutor. This writ petition is allowed with costs, which are quantified as Rs. 1,000/-.