

(2019) 07 KAR CK 0016

In the Karnataka High Court

Case No : Writ Petition No. 43675 Of 2013(Gm-Res)

P. L. G. Manu

APPELLANT

Vs

State Of Karnataka

RESPONDENT

Date of Decision : 08-07-2019

Acts Referred:

Code of Criminal Procedure, 1973 — Section 24, 24(8), 25(1), 25, 482
Indian Penal Code, 1860 — Section 34, 109, 120B, 403, 468, 465, 471, 408, 420
Karnataka Legal Officers Rules, 1977 — Rule 30maharashtra Law Officers
(Appointment, Conditions of Service and Remuneration) Rules, 1984 — Rule 22

Citation : (2019) 07 KAR CK 0016

Hon'ble Judges : B. Veerappa, J

Bench : Single Bench

**Advocate : B.K. Sampath Kumar, Y.D. Harsha, Santhosh S Gogi, C.V. Nagesh,
Vijaykumar Desai**

Final Decision : Dismissed

Judgement

1. The petitioner who is the accused in CC No.13613/2009, filed the present writ petition to quash the impugned notification dated 27.8.2013 as per

Annexure-A, appointing the 2nd respondent as the Special Public Prosecutor under the Provisions of Section 24(8) of the Code of Criminal Procedure

to conduct the above criminal case on behalf of the State Government.

I. BRIEF FACTS OF THE CASE

2. It is the case of the petitioner that he is the 1st Accused in C.C. No.13613/2009 pending on the file of the IV Addl. Chief Metropolitan Magistrate,

Bangalore, on the basis of a false complaint by one R. Jayavelu and the entire case is based on false premises and the averments relied on therein are

totally absurd and inconsistent. The complainant in the said matter has resorted to various acts of high handedness and this writ petition is meant to

challenge the latest such atrocity suffered by the petitioner at the hands of the complainant, wherein the 2nd respondent has been appointed as the

Special Public Prosecutor by the 1st respondent â?" State Government without there being any special circumstances requiring such an appointment

nor does public interest demand such an appointment. It is further contended that the complainant is further attempting to get another counsel

appointed as an Assistant to the prosecution and has filed an application for the same on 7.8.2013. It is further contended that the Public Prosecutor

has already been appointed by the State Government, who is perfectly capable of conducting the trial in the said matter and there is no need of any

such assistance. The entire facts of the case elucidated squarely establish the mala fide acts of the complainant.

3. It is further contended that the petitioner joined the Indian Navy and served the Nation for a period of 13 years and when resigned, he was Lt.

Commander and after resigning from the Indian Navy, he got into business with his nephew Joseph Tharakan and it is thus M/s Shashi Distilleries, a

registered partnership firm was formed in the year 1990 at Goa with the petitioner and his nephew â?" Joseph Tharakan, as its partners, with the

object of manufacturing and selling Indian made foreign liquor and they are carrying on its business from Bangalore from the year 1992.

4. It is further case of the petitioner that one N. Ganesan, an acquaintance of the petitioner, was roped into the said business by the petitioner, to look

after the business in Bangalore as the petitioner was busy in the full time management of his business in Goa. In turn, the said N. Ganesan entrusted

the business to his cousin â?" R. Jayavelu, as he had to leave to Pondicherry to tend to his own business. The said R. Jayavelu is the complainant and

N. Ganesan is the 3rd accused in C.C. No.13613/2009. It is further contended that there were business transactions between the petitioner, Ganesan

and the complainant â?" Jayavelu. During the course of such business transactions, the petitioner realized that the perverse acts of the complainant

had not stopped at the forgery of the partnership deed, but the complainant in addition, forged a deed of reconstitution in the year 1997 and on the

basis of deed of reconstitution, the complainant and N. Ganesan, the 3rd accused, were inducted into the firm as partners, with a share percentage of

55% to the complainant, 35% to N. Ganesan and 5% each to the petitioner and Joseph Tharakan. The whole transfer of partnership share had taken

place without any consideration being paid to the petitioner and Joseph Tharakan, although a license in Karnataka is worth crores.

5. It is further contended that in order to capitalize on the said business of liquor, which has been systematically taken over by the use of forged

documents, the complainant in the year 1997 pursuant to the forged deed of reconstitution as per Annexure-F, sent forged letters alleged to have been

signed by Joseph Tharakan and the petitioner to the Excise Department, Government of Karnataka, falsely mentioning that they have no objection in

retiring from the business altogether.

6. It is further contended that on 2.1.2007, the 3rd Accused " N. Ganesan lodged a complaint at Hulimavu Police Station against R. Jayavelu,

alleging that he has forged several documents to cheat and hoodwink the petitioner and Joseph Tharakan so as to knock off the business of M/s

Shashi Distilleries Private Limited. The jurisdictional Police, after registering the complaint filed FIR and registered Crime No.3/2007. There is a case

and counter-case against the petitioner.

7. It is further contended that the petitioner made a RTI application through one of his agents at Bangalore to the concerned authority requesting for

all the documents related to the appointment of the 2nd respondent and the reasons for the same. The 1st respondent responded to the said RTI query

stating that he was attaching therewith all the relevant documents, which included the complainant's application for appointment of the 2nd

respondent to the Principal Secretary and Additional Chief Secretary of the Government of Karnataka along with the 2nd respondent's consent to

the same and his Karnataka State Bar Council Enrolment Certificate. The same was followed by the Director of Prosecution's recommendation

letter dated 7.8.2013 to the Addl. Chief Secretary, Home Department. On receipt of the application, the Director of Prosecution has issued letter

approving the said request without applying his mind. The only reason stated therein is that the said appointment will not impose a financial burden

upon the State exchequer, since the complainant has offered to bear his expenses and the counsel sought to be appointed is eligible for the said post in

view of his consent having been obtained and as he has fulfilled the eligibility criteria.

8. It is further contended that it is the reasonable apprehension of the petitioner

that a Special Public Prosecutor so appointed will be inclined in favour of the complainant and against the petitioner and will, therefore, not conduct the prosecution impartially. The complainant is seeking to create an impression that the matter is one of a complex nature and that the offences allegedly committed by the petitioner are grave in nature and the mala fide actions of the complainant are an abuse of the process of law. Therefore the petitioner contended that the very appointment made by the State Government appointing the 2nd respondent as Special Public Prosecutor to conduct C.C.

No.13613/2009, is erroneous and contrary to the material on record. Hence the present writ petition is filed.

II OBJECTIONS FILED BY RESPONDENT NO.3

9. The 3rd respondent filed statement of objections and denied the averments made in the writ petition and contended that the very writ petition filed

by the petitioner is not maintainable either in law or on facts and therefore the same is liable to be dismissed. It is further contended that the 3rd

respondent has filed the criminal complaint against the petitioner and others for having filed Form-32 illegally showing that eight Directors have been

purportedly appointed and thereafter the jurisdictional Police have initiated investigation and charge sheet is filed against the petitioner and others. It is

further contended that the petitioner also lodged complaint against the 3rd respondent, which came to be challenged by the 3rd respondent in Criminal

Petition No.842/2013. This Court after hearing both the parties by an order dated 21.5.2013 quashed the very complaint. The said order passed by this

Court was challenged by the accused before the Honâ??ble Supreme Court in SLP (criminal) No.6990/2013 and the Honâ??ble Supreme Court

dismissed the said SLP on 14.8.2014. It is further contended that the present petitioner and other accused are powerful persons and they have taken

the matter to this Court and the Honâ??ble Supreme Court and have failed in their effort to quash the proceedings against them; the charge sheet

contains voluminous records, which require personal attention to conduct the case on behalf of the State Government; the accused have engaged

senior advocates to defend them; and the senior APP attached to the IV Additional Chief Metropolitan Magistrate Court is having pressure of work

and it is not possible for him to go through the voluminous records in the case

and conduct prosecution effectively. Under these circumstances, the 3rd respondent filed application before the State Government for appointment of the 2nd respondent as Special Public Prosecutor to conduct CC No.13613/2009. It is also contended that based on the request made, the 2nd respondent also given consent to be appointed as Special Public Prosecutor. Thereafter, on the recommendation made by the Director of Prosecutions, the State Government passed the impugned order appointing the 2nd respondent as Special Public Prosecutor to conduct CC No.13613/2009 on behalf of the State Government, exercising the powers under the provisions of Section 24(8) of the Code of Criminal procedure. The same is in accordance with law and the petitioner is not entitled to any relief before this Court. Accordingly, sought for dismissal of the writ petition.

III, ARGUMENTS ADVANCED BY THE LEARNED COUNSEL FOR THE PARTIES

10. I have heard the learned counsel for the parties to the lis.

11. Sri B.K.Sampath Kumar, learned counsel for the petitioner contended that the impugned order passed by the State Government appointing Special Public Prosecutor is without application of mind, only on the basis of the consent letter given by the concerned advocate and the recommendation of the Director of Prosecution, as per Annexures-X and Y. He contended that even the State Government has not assigned any reasons for appointing the second petitioner as Special Public Prosecutor in conducting C.C.No.13613/2009 and no public interest is involved in appointing the second respondent as Special Public Prosecutor to conduct the criminal case on behalf of the State Government. The impugned Order passed by the State Government appointing second respondent as Special Public Prosecutor is not a speaking order. No reasons have been attributed to substantiate the appointment of the second respondent. The impugned notification is bald and baseless.

12. The impugned notification issued by the State Government is perverse, contrary to all canons of interest of justice and liable to be quashed. He contended that, in view of the provisions of Section 24(8) of Code of Criminal Procedure, Special Public Prosecutor can be appointed only under special circumstances, wherein public interest is involved. The Government does not have an unfettered power or discretion to make appointment. The appointment of Special Public Prosecutor in the present case is contrary to the

judicial pronouncement made by this Court and the Honâ??ble

Supreme Court and the same cannot be sustained.

13. He further contended that the impugned order passed by the State Government appointing the second respondent as Special Public Prosecutor is

against the law declared by this Court in the case of K.V.Shiva Reddy vs. The State of Karnataka reported in ILR 2005 KAR 4780 wherein this

Court held that the appointment should be based on the reasons more of remuneration and principles of fair trial. The same has not been considered by

the State Government. He contended that the accused has a right to fair trial which is a part of the fundamental rights guaranteed by the Indian

Constitution under Articles 14 and

21. Therefore, appointment of the second respondent as Special Public Prosecutor amounts to violation of Articles 14 and 21 of the Constitution of

India. Therefore, the same cannot be sustained.

14. In support of his contentions, learned counsel for the petitioner, relied upon the following judgments:

(i) K.V.Shiva Reddy vs. The State of Karnataka reported in ILR 2005 KAR 4780 Para 5 to 9.

(ii) Mukul Dalal and others vs. Union of India and others reported in (1988)3 SCC 144 para 14, 67.

(iii) Thimmegowda vs. The State of Karnataka made in WP 28969/2015 dated 23.04.2016 para 3 and 4.

(iv) Gopalkrishna and another vs. State of Karnataka and others WA 1199-1200/2018 dated 12.4.2019 para -11

15. Per contra, Sri C.V.Nagesh, learned Senior Counsel for the respondent No.3, sought to justify the impugned Order and contended that the State

Government exercising its power under the provisions of Section 24(8), issued the impugned notification appointing 2nd respondent as Special Public

Prosecutor to conduct C.C.No.13613/2009 on behalf of the State Government at its discretion and the writ petition filed by the petitioner is not

maintainable and is liable to be dismissed. He further contended that the 3rd respondent and another, earlier, filed Crl.P.No.842/2013 under Section

482 of the Code of Criminal Procedure seeking to quash the FIR dated 12.08.2012 in Crime No.213/2012 for the offences punishable under Sections

403, 468, 465, 471, 408, 420, 109, 120B r/w Section 34 of the Indian Penal

Code. After contest, the said petition filed by the third respondent and another came to be allowed and the proceedings in Crime No.213/2012 on the file of the IV Addl. CMM, came to be quashed. That was the subject matter of the SLP No.6990/2013 filed by the present petitioner before the Honâ??ble Supreme Court. The Honâ??ble Supreme Court dismissed the SLP on 14.08.2014.

16. He further contended that the third respondent filed an application before the Prl. Secretary and Addl. Chief Secretary, Government of Karnataka dated 19.07.2013 through the Director of Prosecution and Government Litigation, Bengaluru-01 for appointment of Special Public Prosecutor in C.C.No.13630/2009 and specifically stated that now the case is proceeded for arguments on the point of framing charges against accused. The accused are powerful persons and have taken the matter to High Court and Supreme Court and have failed in their effort to get the proceedings quashed against them. The charge sheet contains voluminous records which requires personal attention to conduct the case. The accused have engaged senior advocate to defend them. The Senior Addl. Public Prosecutor is having pressure of work and it is not possible for him to go through the voluminous records in this case and conduct the case effectively. Therefore, the third respondent requested the Government to appoint the second respondent to conduct the prosecution on behalf of the State as he is having rich experience in conducting such cases in his tenure as Special Public Prosecutor at Central Bureau of Investigation, Bengaluru. Based on the said representation, the Director of Public Prosecution recommended the State Government to appoint the second respondent. Accordingly, the State Government, considering the entire material on record, passed the impugned Order. The same is in accordance with law. Therefore, writ petition is liable to be dismissed.

17. He further contended that the notes of the Government clearly depicts that there will be no financial burden on the State. No prejudice will be caused to the petitioner if Special Public Prosecutor is appointed and there is no need for the Government to pass a detailed order assigning reasons.

In the interest of the case, the second respondent is appointed as Special Public Prosecutor which is discretionary order passed by the State

Government. This Court cannot interfere under the extraordinary jurisdiction. He

further contended that the petitioner has not made out any case, that what is the prejudice caused to the accused in the present writ petition. Therefore, he sought to dismiss the writ petition.

18. In support of his contentions, learned Senior Counsel relied upon the following cases.

Â (i) In the case of K.V.Shiva Reddy vs. The State of Karnataka, reported in ILR 2005 KAR 4780 para 17 and 18 to the effect that the Special

Public Prosecutor should be fair even to the accused. Ultimately, this Court quashed the Government Order with liberty to the victim to file affidavit of

application of some other person.

(ii) In the case of Sri Jaikeshan Virwani vs. The State of Karnataka and others made in WA 5818/2012 dated 23.01.2013, wherein, this Court held

that reasons for appointing public prosecutor are not necessary.

(iii) In the case of Sri Balachandra Prabhakar Kodlekar and others vs. The State of Karnataka and others made in W.P No.77242/2013 and

connected matters dated 17.09.2013 wherein, it is held that there appears to be no prohibition against decision taken by the Government to impose

condition that the appointment of Public Prosecutor shall be subject to payment of his fee by Mutta and the Government can quantify remuneration

payable to the Special Public Prosecutor. The complainant to deposit the said amount with the Government which shall be, thereafter, paid by the

Government to the Special Public Prosecutor.

(iv) In the case of Sri Jaikishan Virwani vs. State of Karnataka and others made in W.P.No.11623/2012 dated 29.08.2012 para-3, wherein, it is held

that the reasons could not be assigned for appointment of Special Public Prosecutor. There is no doubt that all administrative orders should be backed

by reasons and the petitioner cannot compel the Government to appoint or not appoint any person as Special Public Prosecutor. It is for the

Government to decide the appointment of Special Public Prosecutor depending on fact situation. Ultimately, writ petition was dismissed.

(v) In the case of Sri Pampapathi and another vs. The State of Karnataka and others made in W.P.No.104234-35/2018 dated 05.07.2018 the learned

single Judge of this Court, observed the dictum in the case of K.V.Shivareddy, wherein it has been held that the complainant should be called upon to

deposit the fees in advance to the Government and the Special Public Prosecutor

be paid out of the said amount by the Government.

By such a condition being prescribed in the impugned order, there is no violation of the right of the accused towards a fair trial in the proceedings

before this Court. Ultimately, the writ petition came to be dismissed.

(vi) In the case of Sri Jagadish Chidanand Kore vs. The State of Karnataka, reported in ILR 2010 KAR 3540 para 7, 9.

19. Sri Y.D., Harsha, learned Government Advocate appearing for the State sought to justify the impugned order and produced the original records

before the Court for perusal.

IV. POINT FOR DETERMINATION

20. In view of the rival contentions urged by the learned counsel for the parties, the only point that arises for consideration in the present writ petition

is:

â??Whether the State Government is justified in issuing the impugned notification dated 27.8.2013 in exercise of the powers under the provisions of

Section 24(8) of the Code of Criminal Procedure r/w Rule 30 of the Karnataka Legal Officers Rules, 1977 (Appointment and Service Conditions),

appointing the 2nd respondent as Special Public Prosecutor to conduct C.C. No.13613/2009 before the IV Additional Chief Metropolitan Magistrate

Court, Bangalore on behalf of the State Government, in the facts and circumstances of the case ?

V. CONSIDERATION

21. The material on record clearly depicts that the jurisdictional Police registered Crime No.12/2007 against the petitioner and another for the offences

punishable under Sections 380, 406, 420, 468, 471 and 120-B of the Indian Penal Code. After conducting the investigation, the jurisdictional Police filed

the charge sheet. Thereafter the same is converted into C.C. No.13613/2009. The present petitioner filed Criminal Petition No.3782/2009 before this

Court to quash the entire proceedings in C.C. No.13613/2009 on the file of the IV Addl. Chief Metropolitan Magistrate, Bangalore. This Court by an

order dated 13.8.2009 dismissed the petition as withdrawn with liberty to the petitioner to argue for discharge.

22. It is also not in dispute that the 3rd respondent (complainant in CC No.13613/2009) and another also filed Criminal Petition No.842/2013 before

this Court to quash the FIR dated 12.8.2012 in Crime No.213/2012 of Magadi Police Station, pending before the IV Additional Chief Metropolitan

Magistrate, Bangalore registered for the offences punishable under Sections 403, 468, 465, 471, 408, 120, 109, 120-B r/w Section 34 of the Indian

Penal Code. This Court by an order dated 21.5.2013 allowed the said criminal petition and quashed the proceedings in Crime No.213/2012 on the file

of the IV Additional Chief Metropolitan Magistrate, Bangalore. Against the said order passed by this Court, the present petitioner filed SLP

No.6990/2013. The Honâ??ble Supreme Court by an order dated 14.8.2014 dismissed the Special Leave Petition.

23. During the pendency of the proceedings in C.C. No.13613/2009 before the IV Additional Chief Metropolitan Magistrate, the 3rd respondent

(complainant in CC No.13613/2009) filed an application on 19.7.2013 before the Prl. Secretary and Addl. Chief Secretary, Government of Karnataka

through the Director of Prosecutions and Government Litigations, K.G. Road, Bangalore-1, for appointment of the Special Public Prosecutor in C.C.

No.13613/2009 raising certain grounds. In the said application, the 3rd respondent has also made a request to appoint the 2nd respondent â?? P.

Govindan, Advocate, Bangalore as Special Public Prosecutor to conduct the above criminal case stating that he is having rich experience in conducting

these types of criminal cases in his tenure as Senior Public Prosecutor in CBI, Bangalore. In the said application, the 3rd respondent has also stated

that he is willing to bear the expenses towards remuneration to be paid to the Special Public Prosecutor.

24. Based on the request made, the 2nd respondent also given consent on 19.7.2013 to be appointed as Special Public Prosecutor in C.C.

No.13613/2009. The Director (Prosecution), Prosecution and Government Litigation Department, Bangalore in the letter dated 7.8.2013 addressed to

the Addl. Chief Secretary, Home Department, Government of Karnataka, has stated that in view of the fact that the complainant himself agreed to

bear the expenditure of the Special Public Prosecutor and suggested advocate has satisfied the eligibility criteria, it is recommended that the 2nd

respondent - Mr. P. Govindan, retired Public Prosecutor, CBI, Bangalore and retired Judge, DRT-III, Mumbai, be appointed as Special Prosecutor in

the said case.

25. It is relevant to note that based on the representation made by the complainant, consent given by the 2nd respondent and the recommendation made by the Director of Prosecutions, the State Government initiated proceedings in O.E. No.428 PPE 2013 and in the said proceedings after considering the entire material on record as per internal Memo No.45449/2013, it is stated that the 2nd respondent " P. Govindan, can be appointed as Special Public Prosecutor to conduct C.C. No.13613/2009

26. Accordingly, the State Government passed the impugned order at Annexure " appointing the 2nd respondent as Special Public

Prosecutor to conduct C.C. No.13613/2009 on behalf of the State Government exercising the powers under Section 24(8) of the Code of Criminal

Procedure and Rule 30 of the Karnataka Legal Officers Rules, 1977 (Appointment and Service Conditions). It is also stated in the in the impugned

notification that the 3rd respondent - complainant has to bear the fee/expenses of the Special Public Prosecutor.

VI. PROVISIONS OF SECTION 24(8) OF THE CODE CRIMINAL PROCEDURE.

27. The provisions of Section 24(8) of the Code of Criminal Procedure reads as under:

24(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.

[Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section]

28. A plain reading of the said provision makes it clear that 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; provided that the

Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section. Power to appoint Special Public

Prosecutor is a discretionary power vested in the Government. An accused cannot claim as a matter of right that the prosecution be conducted by a

particular prosecutor and not by any other. It is for the State Government to be satisfied about the credentials of the Advocate being appointed as a

Special Public Prosecutor. When a request for appointment of Special Public Prosecutor was made by a private person, the request will have to be

scrutinized and legal Remembrancer will have to scrutinize the case and after independently applying his mind come to the conclusion whether such an appointment should be made or not.

29. Admittedly in the present case, no allegations of malice are made against the 2nd respondent, who has been appointed as Special Public

Prosecutor. It is also not alleged that the 2nd respondent is related to the 3rd respondent - complainant. The competency of the 2nd respondent is also

not questioned. It is also not stated as to what prejudice would be caused to the petitioner with the appointment of the 2nd respondent as Special

Public Prosecutor. Therefore the appointment of the 2nd

respondent as Special Public Prosecutor is well within the discretion of the State Government. My view is fortified by the judgment of the Madhya

Pradesh High Court in the case of Dr. P.S. Thakur v. State of M.P. and others reported in 2016 SCC OnLine MP 2909, wherein at paragraphs 20

and 21 it is observed as under:

20. In the case at hand, as evident from the impugned order that the State Government does not abruptly take a decision, but takes an action on the

basis of the report furnished by the District Magistrate and the Superintendent of Police. There is no allegation against these two officers that they

acted with any malice. Thus, a proper procedure has been adopted by the State Government before taking a decision for appointment of Special

Public Prosecutor, after satisfying itself that the case deserves to be conducted by Special Public Prosecutor. In this context, reference can be had of

a decision in State of Maharashtra v. Prakash Prahlad Patil, (2009) 12 SCC 159, wherein it is heldâ?

â??5. The scope for judicial review has been examined by this court in several cases. It has been consistently held that the power of judicial review is

not intended to assume a supervisory role or don the robes of omnipresent. The power is not intended either to review governance under the rule of

law nor do the courts step into the areas exclusively reserved by the supreme lex to other organs of the State. A mere wrong decision, without

anything more, in most of the cases will not be sufficient to attract the power of judicial review. The supervisory jurisdiction conferred upon a court is

limited to see that the authority concerned functions within its limits of its authority and that its decisions do not occasion miscarriage of justice.

6. The courts cannot be called upon to undertake governmental duties and functions. Courts should not ordinarily interfere with a policy decision of the State. While exercising power of judicial review the court is more concerned with the decision making process than the merit of the decision itself.

7. In the instant case, acting on a petition filed by close relatives of a victim decisions have been taken at various levels. The High Court was not justified to pick up stray sentences from the records to conclude that there was non-application of mind. In any event, the appointment of a Special Public Prosecutor to conduct a proceeding does not in any way cause prejudice to the accused. In that sense the writ petition before the High Court was wholly misconceived.

21. Be it noted that the verdict in Prakash Prahlad Patil (supra) is in the context of the case wherein several accused were facing trial and though initially it was not disclosed that respondent No. 1 was related to one of the accused opposing the appointment of respondent No. 3 as Special Public Prosecutor at the instance of brother and son of victim. Whereas, in the present case, appointment is primarily opposed on the ground of close relationship which may cause prejudice. However, since the petitioner fails to establish the relationship between the complainant and the Special Public Prosecutor and that there is no allegation against the competency of the Special Public Prosecutor nor could it be established as to what prejudice would be caused to the petitioner with the appointment of respondent No. 4 as Special Public Prosecutor, the State is well within its right in appointing respondent No. 4 as Special Public Prosecutor.

30. The main contention of the learned counsel for the petitioner in the present case is that the appointment of the Special Public Prosecutor was made without assigning any reasons and no public interest is involved. The said contention cannot be accepted for the simple reason that in the application dated 19.7.2013 filed by the 3rd respondent "complainant before the Prl. Secretary and Additional Chief Secretary to Government, it is specifically stated as under:

"Now the case is posted for arguments on the point of framing of charges against the accused persons on 07/08/2013. The accused are powerful persons and they have taken the matter to the Hon'ble High Court and the Hon'ble Supreme Court and they have failed in their effort to

quash the proceedings against them. The charge-sheet contains voluminous records, which requires personal attention to conduct the case on behalf of the State. The accused have engaged senior advocates to defend them. The senior APP attached to the IVth ACMM Court is having pressure of work and it is not possible for him to go through the voluminous records in this case and conduct prosecution effectively.â??

31. The State Government on the consent given by the 2nd respondent, initiated proceedings and applied its mind to the entire gravity of the case and come to the conclusion that the appointment of the Special Public Prosecutor necessitated in the present case. The proceedings at paragraph-3 reads as under:â??

3. , . Ã?

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...13613/2009 Ã?

. . . (-07-06).

VII. JUDGMENTS RELIED UPON

32. The Division Bench of this Court in the case of Sri Jaikeshan Virwani v. The State of Karnataka and others in Writ Appeal No.5818/2012 decided on 23.1.2013 while considering the provisions of Section 24(8) of the Code of Criminal Procedure has held as under:

The appointment of SPP, made by the State Government is under Section 24(8) of the Cr.P.C.1973. The two grounds, challenging the order, urged by learned counsel for the appellant are that there was no valid and cogent reason recorded by the Government in appointing the SPP, and that the complainant is directed to pay remuneration to the SPP directly. We do not find any substance in the grounds of challenge. Insofar as remuneration that there is no such direction in the notification to the complainant to pay remuneration to the SPP directly. The complainant is supposed to bear the expenses for appointment of SPP since he has been appointed at the request of complainant for the reasons reflected in the Notification. We do not find any good ground to interfere with the order passed by learned Single Judge. Hence, the appeal is dismissed.

33. The Co-Ordinate Bench of this Court in the case of Sri Balachandra Prabhakar Kodlekare and others v. The State of Karnataka and others in

Writ Petition No.77242/2013 and connected matters decided on 17.9.2013 while considering the provisions of Section 24(8) of the Code of Criminal

Procedure has observed as under:

From a reading of the above, the requirement of consultation by the Government with the Director of Prosecutions, in so far as the appointment of the

third respondent is seem to be complied with. Though there appears to be no prohibition against the decision taken by the State Government, to impose

a condition that the appointment of the third respondent shall be subject to payment of his fees by the Mutta. The caution sounded in Shiva Reddy's

case, though not with reference to the above Rule, would apply with equal force in the present case as well.

32. In the matter of remuneration payable to the Special Public Prosecutor, ordinarily the Special Public Prosecutor should be paid out of the State

funds even when he appears in support of a private complainant. But there may be some special cases where Special Public Prosecutors

remuneration may be collected from private source. The rate of fees should be prescribed and the complainant should be called upon to deposit the

fees in advance to the Government and the Special Public Prosecutor be paid out of the said amount by the Government. To leave the complainant to

pay to the Special Public Prosecutor would indeed not be appropriate. If he looks to a private party for his remuneration, his capacity and ability to

perform his role as Public Prosecutor properly will be endangered. Government cannot appoint Special Public Prosecutor on such terms abdicating

their financial responsibility or directing him to receive his remuneration from any private individual. Then it introduces an advocate-client relationship,

a personal element from which the Public Prosecutor must be considered immune. He is above the personal loyalty. He does not have a dual

capacity.

This bench fully endorses the above view.

The petition is allowed in part. The Government shall quantify the remuneration payable to the Special Public Prosecutor and direct the fourth

respondent to deposit the said amount with the Government, which shall thereafter be paid by the Government to the Special Public Prosecutor.

34. Another learned Single Judge of this Court in the case of Sri Pampapathi v. The State of Karnataka in Writ Petition No.104234-104235/2019

decided on 5th July 2018 while considering the provisions of Section 24(8) of the Code of Criminal Procedure and considering the dictum of this Court

in the case of Sri K.V. Shiva Reddy vs. State of Karnataka, Rep. by its Secretary and others (ILR 2005 KAR 4785) observed at paragraphs 11 and

12 as under:

11. Further the other ground sought to be made out is that the impugned order does not disclose reasons for appointment of third respondent as a

Special Public Prosecutor. The said requirement is wholly unnecessary as the petitioners are not entitled to know the reasons for appointment of a

Special Public prosecutor. That is a matter left to the Department of prosecution and the wisdom of the State Government.

12. The other aspect is with regard to the Special Public Prosecutor not having any claim with the Government regarding his remuneration. In that

regard para 32 of the aforesaid order states that ordinarily the Special Public Prosecutor should be paid out of the State funds even if he appears in

support of a private complainant. But there may be some special cases where Special Public Prosecutors remuneration may be collected from private

sources. In the instant case, taking note of the said observations of this Court, the State Government has stated in the impugned Notification that the

Special Public Prosecutor would have no claim with the Government regarding his remuneration as he has been appointed at the instance of the

applicants-respondent Nos.4 and 5 herein. As already noted, in the case of K.V. Shiva Reddy, it has been held that the complainant should be called

upon to deposit the fees in advance to the Government and the Special Public Prosecutor be paid out of the said amount by the Government. By such

a condition being prescribed in the impugned order, I do not think that there is any violation of the right of the accused towards a fair trial in the

proceedings before this Court.

35. This Court in the case of Sri Jagadish Chidanand Kore vs. The State of Karnataka, Department of Law, Rep. by its Secretary and others reported

in ILR 2010(3) KAR 3540 while considering the provisions of Section 24(8) of the Code of Criminal Procedure held at paragraphs 9 and 10 has under:

9. The contention of the Learned Counsel for the petitioner that by virtue of the impugned order he would not get a fair trial, is only a mere

apprehension and there is no basis for such an apprehension. The Learned

Counsel for the petitioner pleads apprehension but the same would have to be adequately supported and should be reasonably justified. Only because the complainant has chosen to engage a lawyer of his choice, it cannot be presumed that the trial would not be just or fair. The accused does not have a right to question an appointment of an Advocate of the choice of the complainant. The right to a fair trial is a fundamental right and it cannot be restricted to the accused alone. The right to a fair trial is the fundamental right of every citizen of this Country and more so in the case of a complainant or a victim who has suffered. Therefore, the apprehension of the Learned Counsel for the petitioner is ill-founded.

10. Moreover, it is to be seen that the Presiding Officer is there to protect both the parties, to control the proceedings, and also to check the omissions and commissions of both the counsels. The Court is not a mute spectator in a criminal trial but an effective participant therein. The aim of a trial is ultimately the quest for truth. In the pursuit of the quest for truth nothing should come in the way. Therefore, the apprehension of the petitioner being ill-founded deserves to be rejected.

36. This Court in the case of K.V. Shiva Reddy vs. State of Karnataka reported in ILR 2005 KAR 4780 quashed the appointment of the Special

Public Prosecutor therein in view of the reasons recorded at paragraphs 5,6,7,8 and 9 of the order. There is no dispute that the Special Public

Prosecutor cannot be appointed with a view to secure conviction at all cost. Special Public Prosecutor could be appointed only when public interest

demand it and not to vindicate the grievances of a private person, such as close relation of the deceased. In order that he discharges his duties

properly, he should look to the State for remuneration for his services and if he looks to a private party for his remuneration, his capacity and ability to

perform his role as Public Prosecutor properly will be endangered.

37. It is also not in dispute that on the role of the Prosecutor, he is an officer of the Court expected to assist the Court in arriving at the truth in a given

case. The Prosecutor no doubt, has to vigorously and conscientiously prosecute the case so as to serve the high public interest of finding out the truth

and in ensuring adequate punishment to the offender. At the same time, it is no part of his duty to secure by fair means or foul, conviction in any case.

He has to safeguard public interest in prosecuting the case; public interest also

demands that the trial should be conducted in a fair manner, heedful of the rights granted to the accused under the laws of the country including the Code. The prosecutor, while being fully aware of his duty to prosecute the case vigorously and conscientiously, must also be prepared to respect and protect the rights of the accused.

38. It is also well settled that the Public Prosecutor is a functionary of the State appointed to assist the Court in the conduct of a trial, the object of

which is basically to find the truth and to punish the accused if he is found guilty according to the known norms of law and procedure. It is no part of

his obligation to secure conviction of an accused, in any event, or at all costs. Nor is he intended to play a partial role or become party to the

prosecution of the accused or lend support, directly or indirectly to a denial of justice or of fair trial to the accused. His plain task is to represent the

State's point of view on the basis of the material which could be legitimately brought before the Court at the trial. If all State actions must be just,

fair and reasonable, he would be under no less duty as a functionary of the State to discharge his functions as a Public Prosecutor in an equally just,

fair and reasonable manner irrespective of the outcome of the trial. In that sense, he is part of the judiciary system, and an upright Public Prosecutor

has no friends and foes in Court. He has no prejudices, preconceived notions, bias, hostility or his own axe to grind. He represents public interest but is

not a partisan in the narrow sense of the term. The Government would be obliged to appoint the Special Public Prosecutor in all cases in which the

accused engage a competent or a leading Advocate.

39. A contention was raised by the learned Counsel for the petitioner that this Court quashed the appointment of the Special Public Prosecutor in the

case of Shivareddy stated supra. It was a case that the Public Prosecutor came to be appointed at the instance of the local MLA who has political

rivalry against the other MLA and this Court held that the statement made by the Public Prosecutor therein clearly demonstrates that he is unable to

prosecute the case with detachment. He has prejudices, preconceived notions, bias and hostility against the accused. Though he may not have his own

axe to grind, he has allowed himself to be used by the MLA to fight his political battle in the Court under the garb of a Public Prosecutor and the

statement of objections speaks for itself. Realizing his folly in exposing himself in

the aforesaid manner, a memo was filed to withdraw the statement of objections. The 2nd respondent therein has served as a Public Prosecutor earlier. He ought to know his status and role better. The allegations in the statement of objections therefore cannot be considered as unintentional or borne out of inexperience. Moreover the said writ petition does not contain any personal allegations against him. In spite of the same not only he defends his appointment, which was totally unwarranted, but makes allegations against the accused and his mentors, bringing in politics and political rivalry to the fore, thus disentitling him to be appointed as a Special Public Prosecutor. Therefore, his appointment cannot be sustained. In the said circumstances, this Court quashed the appointment reserving liberty to the State Government to proceed in exercise of powers under Section 24(8) of the Code of Criminal Procedure.

40. Admittedly in the present case, no such political rivalry is involved. In the present case, a representation was made by the complainant to the Prl.

Secretary and Addl. Chief Secretary to Government for appointment of the 2nd respondent as Special Public Prosecutor in CC No.13613/2009 raising

certain grounds like the accused are influential and powerful persons and they have challenged the cognizance taken in CC No.13613/2009 in the High

Court and went up to the Supreme Court and have failed to quash the proceedings against them etc., On the request made, the 2nd respondent who is

not related and nothing to do with the complainant, has given consent to be appointed as Special Public Prosecutor. On the consent given by the 2nd

respondent, the Director of Prosecutions has recommended that the 2nd respondent be appointed as the Special Public Prosecutor. Thereafter, the

State Government appointed the 2nd respondent as a Special Public Prosecutor on behalf of the State. Therefore, the case of Shivareddy has no

application to the facts and circumstances of the present case.

41. Learned counsel for the petitioner also relied upon the judgment of the Division Bench of this Court in the case of Sri Gopalkrishna and others v.

State of Karnataka and others in Writ Appeal Nos.1199-1200 of 2018 decided 12.4.2019. In the said matter, the learned Single Judge dismissed the

Writ Petition Nos.9212-13/2018 at the stage of admission on the ground that the petitioners therein have no locus standi and it was the subject matter

of Writ Appeal Nos.1199-1200 of 2018. In the writ appeals, the order passed in

Writ Petitions was set aside and remanded to the learned Single Judge to consider the matter afresh after giving opportunity to the parties to place on record necessary materials and to pass appropriate orders. The said case has no application to the facts and circumstances of the present case.

42. Admittedly, in the present case, in the entire pleadings of the writ petitions, no personal allegations are made against the 2nd respondent who is appointed as Public Prosecutor about his credibility, competency and eligibility and no malafides are made against the State Government in exercise of powers under Section 24(8) of the Code of Criminal Procedure appointing the 2nd respondent as Special Public Prosecutor and the petitioner has not made out any ground as to how the appointment of the 2nd respondent prejudice the case of the petitioner in CC No.13613/2009. In the absence of the said material, the contention of the petitioner that no reasons are assigned and no public interest involved, cannot be accepted.

43. The learned counsel for the petitioner also relied upon the judgment of the Honâ??ble Supreme Court in the case of Mukul Dalal and others v.

Union of India and others reported in (1988)3 SCC 144 to the effect that the request of the private complainant for such appointment must be

examined by Legal Remembrancer on the basis of guidelines prescribed or to be prescribed and decision taken accordingly and normally remuneration

to be paid by the State. It was a case the Public Prosecutor was appointed under the Maharashtra Rules, wherein the Honâ??ble Supreme Court

held that the primacy given to the Public Prosecutor under the scheme of the Code has a social purpose and the same would be lost if the procedure

adopted by Rule 22 of Maharashtra Rules is accepted. Ordinarily, the Special Public Prosecutor should be paid out of the State funds even when he

appears in support of a private complainant but there may be some special case where the Special Public Prosecutorâ??s remuneration may be

collected from the private source, such as where the prosecutor is a public sector undertaking, a bank whether nationalized or not, an educational

institution and the like. The rate of fees should be prescribed and the private complainant should be called upon to deposit the fees either with the

Remembrancer of Legal Affairs or a prescribed State Agency from where the fees would be drawn by the Special Public Prosecutor.

44. The judgment stated supra has no application to the facts and circumstances

of the present case. Admittedly in the present case, taking into the gravity of the case and on the complaint made that the accused are influential and powerful persons, who went up to the Supreme Court and failed in their effort to quash the proceedings against them and based on the consent given by the 2nd respondent, the Director of Prosecution has after application of mind and considering the entire material on record recommended to the State Government that the 2nd respondent be appointed as Special Prosecutor. The State Government in exercise of the powers under Section 24(8) of the Code of Criminal Procedure and Rule 30 of the Karnataka Legal Officers Rules, 1977 (Appointment and Service Conditions), appointed the 2nd respondent as the Special Public Prosecutor and in the appointment order it is stated that the remuneration of the Public Prosecutor has to be borne by the complainant.

45. A combined reading of the provisions of Sections 24 and 25 of the Code of Criminal Procedure clearly depicts, that for conducting prosecution in all Courts, the State is empowered to appoint Public Prosecutors or Additional Public Prosecutors or Special Prosecutors, while for conducting prosecutions in the Court of Magistrates, the State is empowered to appoint in addition, Assistant Public Prosecutors. It is well settled that Criminal prosecutions are launched not only by the State but also by private parties. The role of the Prosecutor in any criminal trial whether at the instance of the State or private party is to safeguard the interests of both the complainant and the accused. The right to be heard includes the right to be represented by an able spokesman of one's confidence. This right belongs both to the accused and the complainant. It is not only the accused who is in need of assistance, and protection of his rights but also the complainant. The Prosecutor has therefore to discharge his duties diligently towards that effect. In the discharge of his duties as a Prosecutor he is ordained by law, by professional ethics and by his role as an officer of the Court, to employ only such means as are fair and legitimate, and to desist from resorting to unjust and wrongful means. This is so whether the prosecution is private or State. The duties of the Prosecutor and the requirements of a fair trial do not vary from case to case. Besides, there is always the Court to safeguard the interests of the accused and the complainant, to control the proceedings and to check omissions and commissions of the Prosecutor.

The court is not a silent spectator to the proceedings, but an active participant in it. Hence, it cannot be argued that where Special Public Prosecutors are appointed whether paid by the State or the private party, the prosecution and the trial must be presumed to be biased, partial or unfair. Therefore, the contention of the learned counsel for the petitioner that no public interest is involved and no reasons are assigned are devoid of merits in view of the provisions of Sections 24(8) and 25(1) of the Code of Criminal Procedure are not assailable on the ground of arbitrariness.

VII. CONCLUSION

46. For the aforesaid reasons and in view of the dictums of this Court and the Apex Court as stated supra, the point raised in the present writ petition

is answered in the affirmative holding that the State Government is justified in issuing the impugned notification dated 27.8.2013 in exercise of the

powers under the provisions of Section 24(8) of the Code of Criminal Procedure r/w Rule 30 of the Karnataka Legal Officers Rules, 1977

(Appointment and Service Conditions), appointing the 2nd respondent as Public Prosecutor to conduct CC No.13613/2009 before the IV Additional

Chief Metropolitan Magistrate Court, Bangalore on behalf of the State Government, in the facts and circumstances of the case. The petitioner has not

made out any ground to interfere with the impugned order passed by the State Government in exercise of the power under Articles 226 and 227 of the

Constitution of India.

Accordingly, the writ petition is dismissed.