

(1998) 11 KL CK 0034
In the High Court Of Kerala
Case No : W.A. No. 1179 of 1998

R. Balakrishna Pillai

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 10-11-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 225, 239, 24, 24(8)

Citation : (1999) CriLJ 1286 : (1999) 1 ILR (Ker) 639

Hon'ble Judges : K. Narayana Kurup, J;AR. Lakshmanan, J

Bench : Division Bench

Advocate : T.V. Prabhakaran and T. Ravikumar, for the Appellant; P. Gopalakrishnan Nair and P.K. Ravikrishnan, G.P. for Respondent Nos. 1 and 2 and Antony Dominic, for the Respondent

Final Decision : Dismissed

Judgement

AR. Lakshmanan, J.—Heard Mr. T. V. Prabhakaran and Mr. T. Ravikumar for the appellant; Mr. P. Gopalakrishnan Nair for the first respondent and Mr. Antony Dominic for the third respondent.

2. This Writ Appeal is directed against the judgment of C. S. Rajan, J. in OP 7862 of 1998 dated 15-6-1998 dismissing the Original Petition filed by the appellant to quash Ext P 1 authorising Mr. Kallada Siikumaran, Director General of Prosecution (third respondent herein) as Special Public Prosecutor to conduct the prosecution in the Court of Special Judge at Ernakulam in the cases charged in connection with Crime No. 455/ Cr/88 investigated into and charge-sheeted by the Special Squad for Idamalayar Investigation, Trivandrum. The said appointment was made by the Government of Kerala in exercise of the powers conferred by Sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code") and in supersession of the Notification No, 185()/7/SSA2/97/Home dated 15-4-1997. The reason for quashing Ext. PI has been stated as bitter animosity of Mr. Kallada Sukumaran against the appellant, Mr. R. Balakrishna Pillai, a former Minister under the Government of Kerala.

3. Though the case was registered as Crime No. 455/CR/88 by the special Squad of the Police as per the order of the Government consequent on the recommendation of the Enquiry Commission (Justice Sukumaran Commission of Inquiry) appointed by the Government on 21-12-1985 to probe into the reasons and allied matters on the crack noticed in the power tunnel of the Idamalayar Hydro Power Project during the trial-run on 15-7-1985 and later registered as CC1 of 1991 before the Special Judge (Idamalayar Investigation), the case has not reached its finality and one party or the other is litigating in court. The legal battle is still on.

4. The State Government constituted a Special Squad headed by a Superintendent of Police to conduct the investigation of the crime. Final report of the case was filed by the Special Squad on 13-12-1990 against the appellant and other co-accused for offences involving criminal conspiracy, breach of trust, cheating, corruption etc. in respect of various transactions connected with the award and execution of contract for construction of tunnel lining and surge-shaft of the Idamalayar Hydro Electric Project, which led to loss to the State exchequer to the tune of several crores. According to the State, the appellant, who was the Minister for Electricity during the relevant time, entered into criminal conspiracy with the co-accused in the case and in pursuance thereof some of them including the appellant, who were public servants, by abusing their official position, enabled their co-conspirators to obtain huge pecuniary advantage by settling the above contract work to one among themselves at extraordinary huge rates of 188% above the estimate rate in the case of tunnel lining work and 162% in the case of surge-shaft work by introducing special conditions in the agreement and by doing substandard construction work and other acts of malfeasance and misfeasance as detailed in the final report. The case was taken on file by the Special Judge and Enquiry Commissioner, Trivandrum as CC 22 of 1990 which was later transferred and numbered as CC 1 of 1991 on the file of the Court of Special Judge, Ernakulam which was constituted by the Government for the trial of Idamalayar case. The names of Special Public Prosecutors appointed for conduct of prosecution in this case and the respective periods of their Office are shown below :

1. Mr. Kunhirama Menon till 26-7-1992.
2. Mr. P. V. Madhavan Nambiar- 27-7 1992 to 30-6-1994.
3. Mr. P. K. Appa Nair -4-8-1994 to 17 -9-1995., . ":
4. Mr. Balagopalan Nair- 13-10-1995 to 7-7-1996.
5. Mr. P. K. Asokan - 8-7-1996 to 17-11-1996.
6. Mr. K.K. Vijayan- 18-11 -1996 to 30-12-1996.
7. Mr. P. K. Haridas - 17-4-1997 to 21 -4-1998.
8. Mr. Kallada Sukumaran (Director General of Prosecution, Kerala) from

27-4-1998.

It is stated that prolonged adjournments of the trial of the case and frequent litigations at the instance of the parties and other accused and the pendency of the same in this Court and also in the Supreme Court caused delay in completion of the trial of the case.

5. The reason for filing the Original Petition and thereby to quash the order of appointment of the third respondent under Ext. P1 is the long standing enmity between the appellant, third respondent and one Mr. V.S. Achuthanandan. According to the appellant, he is very much aggrieved by the order appointing the third respondent to be in-charge of the prosecution as according to him, it is illegal and in violation of the provisions regarding appointment of Special Public Prosecutors. In support of his contention that there is ill-feeling and enmity between the appellant and the third respondent, the appellant has cited a few instances. The first instance is the filing of an application as CrI. M. P. 64 of 1994 in CC 1 of 1991 for discharge (of the appellant) u/s 239 of the Code. The said petition was posted for hearing. At that time, the third respondent filed a detailed objection on behalf of Mr. V. S. Achuthanandan, the then Opposition Leader, Kerala Legislative Assembly and argued against the plea of discharge of the appellant. The Special Judge considered the question whether a third party/Mr. Achuthanandan can be allowed to intervene in the hearing of the case. He held that the objection filed by the third party through the third respondent against the discharge of the appellant is entertainable and that the third party must be given an opportunity for being heard. Ext. P2 is the said order of the special Judge. The order of the Special Judge was challenged in this Court and this Court, by order dated 17-11-1994, held that a third party cannot be permitted to trespass into the region of the rights of the accused and, therefore, held that the Special Judge has committed an illegality in holding that an opportunity can be given to Mr. Achuthanandan for being heard. The said judgment is reported in Balakrishna Pillai v. State of Kerala 1994 (2) KLT 1017 and marked as Ext. P 3 herein. It is seen from Ext. P2 that Mr. Achuthanandan was being represented by the third respondent on different stages of the trial and before the Commission of Enquiry also. Therefore, it is said that the third respondent is a very interested person as far as the appellant is concerned to see that the appellant is convicted.

6. The second instance as narrated by the appellant is that when he was in the Cabinet, the third respondent represented to the Government his apprehension that his life is at risk for conducting effectively the Idamalayar investigation on behalf of Mr. Achuthanandan against the appellant. This issue was also raised in the Assembly by the C. P. I. (M). Consequently police protection was given to the third respondent by the Government which appeared in the prominent newspapers also. According to the appellant, this will show the bitter animosity of the third respondent against the appellant. The third contention is that as per Section 24(8) of the Code, which provides for appointment of a Special Public Prosecutor, the Government, instead of appointing the third respondent as a

Special Prosecutor, has authorised him to conduct the prosecution in the Court of special Judge at Ernakulam. Section 24 of the Code provides for appointment of Public Prosecutors which includes Special Public Prosecutors as well. Under the said Section, the State Government, after consultation with the High Court, shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for conducting in such Court any prosecution, appeal or other proceedings on behalf of the Central Government or State Government, as the case may be. Sub-section (8) enables the Central Government or the State Government to 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. The expression used in Section 24(8) of the Code is "appoint". According to the appellant, third respondent was not appointed as per Section 24(8) and, therefore, he is not empowered to conduct the prosecution by virtue of Ext. P 1 notification since he is not "appointed", but only "authorised" to conduct the prosecution. It is represented that the said objection was rejected by order dated 27-5-1998 by the Special Judge. . However, this order was not challenged by the appellant before this Court.

7. Fourthly, it is submitted that it is not open to the Government to appoint a person who has already appeared for a private party in the same proceedings against the accused persons as a Special Prosecutor. In the instant case, the third respondent has clearly shown his interest by appearing" for a third party in the very same proceedings which has been disallowed by this Court. Therefore, he cannot be appointed as a Special Public Prosecutor with a view to secure conviction. According to the appellant, third respondent has been appointed only to vindicate the grievance of the party for whom he had been appearing in the very same proceedings. This apart it is clear from Ext. P2 that the third respondent has great interest in the case and that he has been appearing for a private person in the very same proceedings. According to the appellant, he is not having an unbiased mind.

8. Lastly, it is submitted that the "prosecutor" is an officer of the Court expected to assist the Court to arrive at the truth. Since the third respondent has already appeared for a private party in order to ensure that the appellant is convicted and if such a person is appointed as Special Public Prosecutor, it will only provide a chance to the third party to vindicate his vendetta against the appellant, who is his political rival. The very appointment itself is politically motivated as Mr. V.S. Achuthanandan, for whom the third respondent appeared before the Special Judge, represents the present ruling party.

9. The above are the grievances expressed by the appellant in the Original Petition and reiterated in the Writ Appeal.

10. Appellant also filed CMP 18962 of 1998 along with Ext. P4, which is the Vakalath dated 12-10-1995 on behalf of P. W. 7 in CC 1 of 1991 on the file of the Special Judge for Idamalayar Investigations, Ernakulam and Ext. P5, true copy of the petition and affidavit filed along with Ext. P4 on behalf of P. W. 7.

11. The State did not prefer any counter affidavit in the Original Petition. Third respondent filed a counter affidavit in the Original Petition. It has been stated that his appearance in the case on behalf of Mr. Achuthanandan does not in any way imply or constitute any bias on his part as counsel. He also denied that he has bitter animosity against the appellant as baseless. According to the third respondent, there were threats against his life for appearing on behalf of Mr. Achuthanandan and, therefore, the State has provided police protection to him and in no proceedings in the Idamalayar case, he appeared against the interest of the prosecution. He also denied that he was appointed by the State to vindicate the grievance of the private party for whom he had been appearing. The challenge is on a wrong -assumption that his appointment as Special Public Prosecutor is made with a view to secure conviction of the appellant at any cost. The allegation against the third respondent that he will have only the idea of securing conviction is also baseless and misconceived and that the third respondent, who is now holding the post of Director General of Prosecution under the Government, is bound to comply with Ext. P1 order and discharge his duties as per Ext. P1 as well. Third respondent has already taken charge of the conduct of the prosecution and appeared before the Court on several dates when the case was posted. In conclusion he said that none of the contentions raised by the appellant is tenable nor sustainable.

12. The Original Petition was finally heard by C.S. Rajan, J. and the learned Judge, by his impugned judgment dated 15-6-1998, dismissed the Original Petition for the following reasons:

3. The third respondent has filed a counter affidavit. In the above counter affidavit it has been stated that he had no special interest in the case. The allegation of bias on the part of the third respondent is also denied. It was admitted in the counter affidavit that the third respondent was appearing on behalf of the then Leader of the Opposition in a public interest litigation in the same case. The third respondent was also engaged by the very same person against discharge from prosecution of not only the petitioner but also against other accused who filed similar petitions for discharge before the Special Court. The allegation of bitter animosity against the petitioner was also denied as baseless. It was further stated in the counter affidavit that the conviction and awarding of sentence in a criminal case are matters vested with the Court and do not depend upon the attitude of the Public Prosecutor. It was further submitted that as a Public Prosecutor he will be representing the interest of the Government and not of any other private individual.

4. The learned Senior Government Pleader appearing on behalf of the Government also supported the appointment of the third respondent as per Ext. P1. There was nothing wrong in appointing the third respondent, who is presently holding the post of Director General of Prosecutions as a Special Prosecutor to conduct the prosecution.

In conclusion, the learned Judge has said that there is no justification for the

apprehension on the part of the appellant that the third respondent is biased against him and that the third respondent will take all steps to get a conviction for him at any cost and that the appellant has not made out any case for quashing Ext. P1 notification.

13. Being aggrieved by the judgment of the learned single Judge, the petitioner preferred this Writ Appeal and the same was admitted by a Division Bench on 24-6-1998. The State was directed to file a counter affidavit in the matter. Appellant also filed his reply affidavit.

14. Learned counsel for the appellant has submitted that:

(1) Since the third respondent has admitted all the statements made against him in the Original Petition in his counter affidavit, the learned single Judge went wrong in dismissing the Original Petition.

(2) The learned Judge has failed to consider Ext. PI as it has been issued not in accordance with the provisions of Section 24(8) of the Code.

(3) It is the duty of the prosecution not to secure by any unfair means conviction in a case, but to bring out the truth.

(4) Because the third respondent has already expressed his views regarding the case by appearing for a private person for assisting the prosecution and also obtained police protection as against the appellant, it is apparent that the appellant will not be able to get a fair trial if the third respondent is allowed to handle the prosecution.

(5) Public Prosecutor is an officer and like every advocate practising in the Court owes an obligation to the Court to be just and fair and must not introduce any personal interest in the prosecution nor must he be anxious to secure conviction at any cost.

15. Mr. P. Gopalakrishnan Nair appeared on behalf of the State. He denied all the above contentions and submitted that because of the appellant the matter is being delayed and the Special Court, though constituted for the conduct of this case, is not in a position to complete the trial. Further, he pointed out that though the appellant challenged the order of the Special Judge in Crl. M. C. 73 of 1994 before this Court by filing Crl. R. P. 1010 of 1994, the same was dismissed on 6-12-94 confirming the decision of the Special Judge. Appellant filed SLP No. 6 of 1995 before the Supreme Court on 3-1 -1995 and the same was disposed of. During the pendency of the SLP before the Supreme Court, counsel for the appellant obtained five adjournments of (the trial of the case till 30-5-1995 on which date the Special Court expressed its view that arguments can be heard on the question of framing charges against the accused since there was no stay against further proceedings of the trial of the case. Appellant challenged the above order of, the Special Court in Crl. R.P. 1294/95 before this Court and the same was dismissed on 21-9-1995. The conduct of the prosecution case during that period was criticised by this Court in its Order. Thereafter, a number of

persons were appointed as Special Public Prosecutors and all of them tendered their resignations. Finally, the third respondent was authorised to conduct the prosecution as per Ext. P1 notification. According to the State, there is nothing illegal or irregular in the issuance of Ext. PI notification. The unsatisfactory state of affairs in the conduct of the prosecution brought about by the frequent resignations of the Special Public Prosecutors appointed in the case and consequent dislocation of the trial of the case-prompted the Government to authorise the Director General of Prosecutions to conduct and complete the prosecution work of the case in the exercise of their power u/s 24(8) of the Code. According to learned counsel for the State that the appellant is under a mis-apprehension that he will not get a fair trial and justice from the court of law. Therefore, it is submitted that the appointment of the third respondent is perfectly in order and cannot be questioned by any one and particularly by an accused, in the case.

16. We have given our anxious consideration to the rival submissions made by the parties to the proceedings, We have carefully perused the entire pleadings and also the judgment under appeal. We are of the opinion that none of the contentions raised by the appellant in the Original Petition as well as in the Writ Appeal merit any acceptance. It is contended by learned counsel for the appellant that the learned Judge went wrong in dismissing the Original Petition since- the third respondent has admitted all the statements contained in the Original Petition in his, counter affidavit. We are unable to appreciate this contention. Third respondent has specifically denied the averments contained in the Original Petition with, particular reference to the case put forward by the appellant in regard to enmity between him and the appellant and also with reference to the conduct of the case. Third respondent has only narrate the Court proceedings which were initiated by the appellant and the steps taken by him in that regard. This apart, all these proceedings are matters of record. Therefore, the contention raised by the appellant that the third respondent has admitted all the statements in his counter is baseless and also farfetched.

17. Learned counsellor the appellant submitted that Ext. PI has not been issued in accordance with the provisions contained in the Code. As already noticed, the third respondent under Ext. P1 was authorised 10 appear and conduct the case on behalf of the State. In Blacks "Law Dictionary", Sixth Edition, the word "appoint" is defined as follows :

Appoint :- To designate, choose, select, assign, ordain, prescribe, constitute or nominate. To allot or set apart. To assign authority to a particular use, task, positron or office.

Term is used where exclusive power and authority is given to one person, officer or body to name persons to hold certain offices. It is usually distinguished from "elect" meaning to choose by a vote of the qualified voters of the city; though this distinction is not invariably observed.

The word "authorise" is given the following meaning in the said dictionary :

Authorize:-To empower to give a right or authority to act. To endow with authority or effective legal power, warrant or right. To permit a thing to be done in the future. It has a mandatory effect or meaning implying a direction to act.

"Authorized" is sometimes construed as equivalent to "permitted" or "directed" or to similar mandatory language. Possessed of authority that is, possessed of legal or rightful power; the synonym of Which is competency.

The word "appoint" means to assign authority to a particular use, task, position or office. Likewise, the word "authorise" means to empower or to give a right or authority to act or effective legal power. So, in our view both the words "appoint" and "authorise" have to be considered as equivalent.

18. In this case, the third respondent was specifically authorised to conduct the special case on behalf of the State. Though the word "appoint" is used in Section 24(8) of the Code, the use of the word "authorised" will not stand in the way of the third respondent in discharging his duties as a Special Public Prosecutor in the conduct of the case. He will have all the powers of a Special Public Prosecutor to conduct the case as per law. This apart, the very same point was urged by the appellant before the Special Court and the Special Judge, by order dated 27-5-1998, rejected the said contention which was not challenged by the appellant before this Court at the appropriate time. We are of the view that Ext. P1 appointment order has been issued in accordance with the provisions of the Code and the Special Public Prosecutor will have all the powers of Public Prosecutor for conducting the prosecution, on behalf of the State Government. The accused in this case cannot object to the appointment of a particular person, namely, the third respondent as Special Public Prosecutor on the ground of apprehension of bias. This contention, therefore, fails.

19. There cannot be any two opinion that the duty of the prosecution is not to secure, by any unfair means conviction in a case, but to bring out the real untarnished truth. The apprehension of bias, in our opinion, is not only premature but also baseless. The grievance, at this stage, appears to our mind as only imaginary since the trial is yet to commence. We need not say or reiterate that a Public Prosecutor can function or discharge his duties as a Prosecutor only within the framework of Section 24 and other allied provisions of the Code. He cannot misuse or abuse his official position or travel beyond his arena of jurisdiction or power vested in him. Above all, the Presiding Officer is there to protect the interest of both parties. No Presiding Officer will allow any question which is not germane to the question at issue and will not allow any unwanted questions to be put to the witnesses. Therefore, we are of the opinion that the apprehension expressed by the appellant is nothing but imaginary.

20. Third respondent's appearance in Court on behalf of a third party and obtaining police protection will not be aground for removing him, who was appointed by the State for the conduct of this case. In fact, the case put forward

by Mr. Achuthanandan against the discharge of the appellant was accepted by the Court and police protection was given to the third respondent by the State considering his apprehension that his life is at risk for conducting effectively the Idamalayar investigation on behalf of Mr. Achuthanandan. There was nothing wrong or illegal on the part of the Government in granting police protection to the third respondent considering his claim. Likewise, the allegation made by the appellant of the third respondent's personal bias against him cannot also be accepted as a ground for quashing Ext. P1. It is expected of any Public Prosecutor to adopt fairness in exercise of his power as a Prosecutor. If the Prosecutor exceeds his authority and acts unfairly, the Court will always come to the aid of the party who is likely to be affected. We are of the opinion that we have not reached that stage. We are still on the beginning stage. The judgment of the Special Court has to be rendered by it in an unbiased manner. The Special Court is expected to hold the scale even. In the event of the case being decided either way, it is always open to any party to the proceedings to knock at the doors of this Court for redressal of their grievance and may also approach the Apex Court in the event of their being not satisfied with the verdict.

21. We are of the opinion that the State Government has made the appointment of the third respondent under the statutory powers conferred on it. It is the discretionary power vested in the Government. The Government is the largest litigant in the country. The Government, like any other private party, can choose and appoint authorise any advocate to appear on their behalf in any Court of law. It is not open to an accused in the case to suggest to the Government that it should not appoint/authorise the third respondent as their counsel since there is enmity between him and the third respondent which has nothing to do with the conduct of the case by the third respondent. It is also not in dispute that in no proceedings in the Idamalayar case the third respondent appeared against the interest of the State/prosecution. There is no basis for the allegation that the third respondent has been appointed to vindicate the grievance of the third party for whom he had been appearing. The said allegation is not only baseless but also unsupported by any materials on record.

22. In support of his contention, learned counsel for the appellant cited few reported decisions. The first one is reported in Abdul Khader v. Government of Kerala 1992 (2) KLT 948 : 1993 Cri LJ 1249. That case is not applicable to the facts of this case and is distinguishable. In that case, this Court held that any private counsel engaged by the injured or any advocate briefed by the relatives of the deceased is not entitled to conduct the prosecution in Sessions Courts. In the case on hand, the grievance of the appellant is that since the Special Public Prosecutor was engaged by a third party to conduct on his behalf against the discharge of the appellant from the case on hand, he cannot be appointed as Special Public Prosecutor to conduct the case against the appellant. In the very judgment, Thomas, J. (as His Lordship then was) has held thus (at page 1251 of Cri L J):

A special feature of the administration of justice in the field of Criminal Law in India is that an accused before a Sessions Court is conferred with a privilege that the case against him can be prosecuted only by a public prosecutor. This is reflected in the mandate contained in Section 225 of the Code. There is no exception of this rule. Any private counsel engaged by the injured, or any advocate briefed by the relatives of the deceased, however influential they may be, is not entitled to conduct the prosecution in Sessions Courts. This system is the glaring acknowledgement of the special status and position which the office of Public Prosecutor is expected to wield in our legal system. Thus, special status and position as well as great powers have been conferred on the office of public prosecutor. Every public prosecutor must remind himself constantly of this eviable position of trust and responsibility.

In *Abdul Khader Musliar Vs. Government of Kerala and Others*, , cited by learned counsel for the appellant, U.L. Bhat, J. has held that Special Public Prosecutor cannot be appointed with a view to secure conviction at all costs and that the Special Public Prosecutor could be appointed only when public interest demands it and not to vindicate the grievances of a private, person such as close relation of the deceased. The above case has also no application to the facts and circumstances of the case on hand. The third decision cited by learned counsel for the appellant is the one reported in *Sheonandan Paswan Vs. State of Bihar and Others*, . The above judgment deals with the discretion of the Court in granting consent for withdrawal from prosecution. The case also deals with the prosecution initiated against a Chief Minister by the successor Government after his ministry went out of power. The Supreme Court held that that by itself cannot support the inference that initiation of the prosecution was actuated by political vendetta or mala fides because it is quite possible that there might be material justifying the initiation of prosecution against the erstwhile Chief Minister and the successor Government might have legitimately felt that there was a case for initiation of prosecution and that is why the prosecution might have been initiated. The Supreme Court held that there would be nothing wrong on the part of the successor Government in doing so and the prosecution cannot be said to be vitiated on that account. The Supreme Court also explained the role and autonomy of the Public Prosecutor as to whether he should act solely on the advice of the Government or whether he can satisfy himself on the legitimacy of the ground. The Supreme Court has pointed out the alternatives opened to him. This judgment, in our opinion, will be of no assistance to the appellant.

23. Mr. P. Gopalakrishnan Nair, learned counsel appearing for the State, has cited the decision reported in *V.S. Achuthanandan Vs. R. Balakrishna Pillai and others*, That also is a case of the Special Public Prosecutor seeking withdrawal of the prosecution on the ground of paucity of evidence. The Special Judge declined to grant consent on the ground that the Special Public Prosecutor has not applied his mind to the materials in support of the prosecution as a free agent uninfluenced by irrelevant and extraneous considerations. The Supreme Court held that the Special Judge has applied the correct test and the High Court was

not justified in setting aside the order of the Special Judge declining to grant consent for withdrawal of the prosecution. The Supreme¹ Court held that the opinion of the Public Prosecutor is alone material and the grounds stated by him are open to review and the direction given by the High Court to consider withdrawal of prosecution against other accused for whom no proposal to withdraw the prosecution was made, was held to be unsustainable. The Supreme (Court also held that where grounds for withdrawal of prosecution is found to be non-existent and there being prima facie material to support the prosecution, motive for launching prosecution is immaterial.

24. In *Ajay Kumar Vs. State and Another*, a learned single Judge of the Delhi High Court has held that the appointment of private party's counsel as a Special Public Prosecutor does not by itself militate against the principles that State action must be just, fair and reasonable, and would not, without anything more, either vitiate a trial or deprive the trial for the reason alone of the appearance of a fair trial. Such appointment is not liable to be voided on that ground alone. The learned Judge also observed that a fair trial does not necessarily mean that it must be fair only to the accused; it must be fair to the victim also and it must be fair to all.

25. Learned counsel for the appellant further argued that a Public Prosecutor owes an obligation to the Court to be just and fair and he should not introduce any personal interest in the prosecution; nor should he be anxious to secure conviction at any cost. It is no wonder that the third respondent, as a counsel engaged by the State, would take interest in conducting the case for his client. It is not correct to say that if a person who was appearing in the case in support of the prosecution, was later appointed as Special Public Prosecutor would act only with a view to secure conviction of the accused at all costs. We are of the opinion that conviction and awarding of sentence in a criminal case are powers conferred on the Court concerned depending upon the sufficiency of the evidence to the satisfaction of the Court and as provided under law. The fact that the third respondent appeared on behalf of Mr. V.S. Achuthanandan earlier in certain stages of the case cannot be interpreted by the appellant as a ground for alleging that at the appointment of the third respondent as Special Public Prosecutor as per Ext. P1 is politically motivated since the said Mr. Achuthanandan now represents the ruling party of the State as Convenor of the Left Democratic Front. In our opinion, none of the grievance expressed by the appellant has any merit either on facts or on law.

26. For the foregoing reasons, we are of the opinion that there are no merits in the Writ Appeal. As already noticed, the crime was registered in the year 1983 and later registered as CC 1 of 1991 before the Special Judge, Ernakulam. The present appointee (third respondent herein) is the eighth in the line of Special Public Prosecutors appointed by the State. The previous appointees have resigned from the post due to some reason or the other. This apart, the matter was pending before the Special Court, this Court and also before the Supreme

Court on few occasions earlier which also caused the delay in disposal of the case. Third respondent was appointed as the Special Public Prosecutor after the resignation of Mr. P. K. Haridas. Frequent litigations between the parties is also one of the reasons for the delay. in completion of the trial. In this case, the final report of the Special Squad was filed on 13-12-1990 against the appellant and other co-accused Therefore, any further delay would only cause irreparable injury to the prosecution as well as to the appellant. We, therefore, direct the Special Judge at Ernakulam to dispose of CC 1 of 1991 as expeditiously as possible. Subject to the above direction, the Writ Appeal is dismissed. No costs.