

(2016) 08 KAR CK 0098

In the Karnataka High Court

Case No : Writ Petition No. 37559 of 2014 (GM-RES)

R. Lokesh

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 30-08-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 24

Karnataka Law Officers (Appointment and Condition of Service) Rules, 1977 — Rule 30

Citation : (2017) 1 KantLJ 53

Hon'ble Judges : A.S. Bopanna, J.

Bench : Single Bench

Advocate : Sri K. Raghavendra, Advocate, for the Petitioner; D.S. Ramachandra Reddy, Advocate, for the Respondent No. 3; Sriyuths Y.D. Harsha, Additional Government Advocate, for the Respondent Nos. 1, 2 and 4; M. Narayana Reddy for M/s. M.N. Reddy and Company, for

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J. - The petitioner is before this Court assailing the order dated 26-6-2014 impugned at Annexure-A to the petition.

2. The petitioner 1 is the husband of the respondent 5, the petitioners 2 and 3 are the parents-in-law of the 5th respondent while the other petitioners are their other relatives. Pursuant to a complaint filed by the 5th respondent, the proceedings had been initiated and the case in S.C. No. 7 of 2014 is pending before the Court below. On the request of the 5th respondent, the 3rd respondent has been appointed as the Special Public Prosecutor in the said case through the notification dated 26-6-2014. The petitioners herein, who were arrayed as the accused in the said case claiming to be aggrieved by the said order are before this Court contending that such appointment has been made without application of mind and also the said order is not in public interest and further that such order directing the private party to pay the professional charges to the Public Prosecutor is not sustainable in law.

3. The respondents 1 and 2 have filed their objection statement. In addition, the respondent 5 has also filed the objection statement. In that light, the matter requires consideration.

4. Having heard the learned Counsel for the parties as also the learned Government Advocate, I have perused the petition papers. Since the learned Counsel for the parties have relied on the precedents of this Court as well as the Hon"ble Supreme Court, it is necessary to advert to that aspect of the matter at the outset.

5. The learned Counsel for the petitioner has relied on the decision in the case of K.V. Shiva Reddy v. State of Karnataka and Others, 2005 Cri. L.J. 3000 (Kar.) and the order passed in Yogish Kode M.S. v. State of Karnataka and Others, 2015 (4) Kar. L.J. 80, W.P. No. 1202 of 2012, dated 1-6-2015 wherein this Court had essentially relied on the decision in the case of K.V. Shiva Reddy and on taking note of the provisions contained under Section 24 of Cri. P.C. and Rule 30 of the Karnataka Law Officers (Appointment and Conditions of Service) Rules, 1977 had arrived at the conclusion that on facts, the appointment of the Special Public Prosecutor as made is not justified.

6. On the other hand, the learned Counsel representing the 3rd respondent has relied on the decision of this Court in the case of Jagadish Chidanand Kore v. State of Karnataka, Department of Law, Rep. by its Secretary and Others, ILR 2010 Kar. 3540 and the order dated 17-2-2011 in W.P. No. 6552 of 2011, wherein the learned Judges of this Court, after referring to the very same decision in the case of K.V. Shiva Reddy has taken a different view with regard to the appointment of a Special Public Prosecutor and to hold the that accused cannot assail such order and does not have locus standi in that regard. The learned Counsel has also referred to the decision in the case of Rajiv Ranjan Singh "Lalan" and Another v. Union of India and Others, 2006 AIR SCW 4287 and in the case of State of Maharashtra and Others v. Prakash Prahlad Patil and Others, AIR 2010 SC 463.

7. At the outset, it is necessary to notice that in the decision of the learned Single Judge of this Court in K.V. Shiva Reddy's case, the entire conspectus of the appointment of the Special Public Prosecutor was taken into consideration after referring to certain decisions of the Hon"ble Supreme Court. In that circumstances, when in the subsequent decisions, the learned Single Judges were considering the matter, the said decision though distinguished in those facts, in the present facts, I am of the opinion that it still has the value of a precedent and the subsequent decisions have not altered the position. Be that as it may, ultimately the conclusion reached in the said orders is also to effect that in appropriate case, the State Government could exercise its power to appoint the Special Public Prosecutor on application of its mind to the fact situation and the requirement.

8. Further, even in the decision of the Hon"ble Supreme Court referred to by the

learned Counsel for the 3rd respondent, the conclusion reached therein is that it is the prerogative of the State Government to appoint the Special Public Prosecutor depending on the necessity in the case and when such orders are made, this Court is not required to make a detailed consideration of the correctness or otherwise of the order as if sitting in an appeal, which indicates that such orders should at least prima facie satisfy the need for passing such order to appoint the Special Public Prosecutor. Therefore, even if all the decisions cited by either of the parties are kept in view, the ultimate issue necessary to be noticed by this Court is with regard to the nature of the consideration that is made by the Government before an order to appoint the Special Public Prosecutor is made.

9. In that light a perusal of the impugned order dated 26-6-2014 would disclose the that name of the Special Public Prosecutor is indicated as appointed therein and a direction is issued the that professional fee payable shall be paid by the private party. In order to take note of the situation which prompted the Government to make such appointment and for the prima facie satisfaction of this Court the dire need which prompted the Government to pass the order it is necessary to take note of the objection statement filed herein. A perusal of the paragraph 5 of the objection statement would indicate that except for taking note of the request made by the 5th respondent to appoint the Special Public Prosecutor, no other consideration is indicated. Further, in paragraph 6 all that has been stated therein is the that procedure as contemplated under the Karnataka Law Officers (Appointment and Conditions of the Service) Rules, 1977 has been followed.

10. Insofar as the appointment, certainly the said Rules would be relevant. However, insofar as the need for appointing a Special Public Prosecutor, the mere request of a person would not be sufficient without application of mind to accept such request as otherwise the very scheme of representation in criminal justice delivery system will stand altered. Through the very decision relied on by the learned Counsel for the 3rd respondent also it has been indicated that both the interest of the accused as well as the victim is a matter to be kept in view by the Government even in circumstances where the appointment of Special Public Prosecutor becomes necessary. Therefore, if the contention as taken by the respondents 1 and 2 is taken into consideration, there is absolutely no consideration with regard to the interest of the accused, the need for which the Special Public Prosecutor is required to be appointed and the reason for which the Regular Public Prosecutor, who is conducting the said case is not competent enough to prosecute the matter. Therefore, if these aspects of the matter are kept in view, certainly there is absolutely no application of mind pointed out on behalf of the respondents 1 and 2 before arriving at the conclusion to appoint a Special Public Prosecutor. In such circumstances, both in the earlier order passed by me in an earlier petition as well as in the case of K.V. Shiva Reddy, though this Court had taken the view the that orders are not sustainable, liberty had been left to the respondents 1 and 2 to take an appropriate decision in

accordance with law. Therefore, in the present circumstances, when I find the that order dated 26-6-2014 is without application of mind and without indication of any reasons either in the order or in the objection statement and is passed in a routine manner, the same cannot be sustained.

The order dated 26-6-2014 is accordingly quashed.

Liberty is however, reserved to the respondents 1 and 2 to pass fresh orders if need be and if they find that it is expedient for them to appoint a Special Public Prosecutor in the instant case, for the reasons to be recorded.

The petition is accordingly disposed of.