
(1992) 02 MP CK 0031

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 3544 of 1991

Sunil Kumar @ Chander Salariya and Others

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 07-02-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 24(8), 301(2)

Citation : (1992) 2 MPJR 98 : (1992) 37 MPLJ 772 : (1992) MPLJ 772

Hon'ble Judges : P.N.S. Chouhan, J;K.M. Agarwal, J

Bench : Division Bench

Advocate : Surendra Singh and R. K. Gupta, for the Appellant; A.S. Jha, Government Advocate, Y.K. Gupta and Anil Khare, for the Respondent

Final Decision : Allowed

Judgement

K.M. Agarwal, J.

By this petition under Article 226 of the Constitution, the petitioners are challenging the order dated 1-3-1991 (Annexure F) made by the State Government in exercise of its powers u/s 24(8) of the Code of Criminal Procedure, 1973, whereby the respondent No. 2 Shri S. C. Dutt was appointed as a Special Public Prosecutor for conducting the prosecution of the petitioners in Sessions Trial No. 341/90, pending in the Court of Additional Sessions Judge, Jabalpur.

Facts are not in dispute. One Aditya Kumar alias Babban Choukse died on 23-5-1990 as a result of injuries caused to him in the incident dated 18-5-1990. The offence u/s 307, Indian Penal Code initially registered against the petitioners was converted into an offence u/s 302, Indian Penal Code. The deceased himself had criminal antecedents and in one of the criminal cases registered against him for an offence u/s 302, Indian Penal Code, the respondent No. 2 Shri S. C. Dutt had obtained anticipatory bail for him. In the present Case, after being arrested for an offence u/s 307, Indian Penal Code in connection with the said incident

dated 18-5-1990, the petitioner No. 1 Sunil Kumar obtained bail from the Court of Additional Chief Judicial Magistrate, Jabalpur. When the offence was converted into one u/s 302, Indian Penal Code after the death of Aditya Kumar on 23-5-1990, an application for cancellation of bail was moved by the respondent No. 3. The respondent No. 2 was the counsel engaged by the respondent No. 3 for the purpose. After the initial offence u/s 307, Indian Penal Code was altered into one u/s 302, Indian Penal Code, the petitioner No. 1 again applied for anticipatory bail in the Court of Sessions Judge. This application was also opposed by the respondent No. 2 as counsel for the respondent No. 3, who happened to be the brother or a very close relation of the deceased. After the bail was granted by the Sessions Court and the application filed by the respondent No. 3 for cancellation of bail was rejected, an application was moved in the High Court for cancellation of bail and in that case also, the respondent No.

2 appeared to press the application for cancellation of bail. So also the applications for bail moved by other petitioners were -opposed by the respondent No. 2 as counsel for the relatives of the deceased. In this background, the petitioners alleged that the respondent No. 2 was highly interested in securing conviction of the petitioners for the murder of Aditya Kumar alias Babban Choukse. Accordingly they questioned the legality and propriety of appointment of Shri S. C. Dutt as Special Public Prosecutor, allegedly at the instance of the respondent No. 3, even though Shri Arun Das, Additional Government Pleader had already been appointed as Public Prosecutor for conducting the said trial against the petitioners.

Having heard the learned counsel for the parties, we are of the view that the impugned order dated 1-3-1991 (Annexure F) of the State Government deserves to be quashed. Section 125, Criminal Procedure Code says that in every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor. The term "Public Prosecutor" has been defined u/s 2(u) Criminal Procedure Code mean any person appointed u/s 24 "and includes any person acting under the directions of a Public Prosecutor." As against Section 302, Criminal Procedure Code which empowers any Magistrate inquiring into or trying a case to "permit the prosecution to be conducted by any person other than a police officer below rank of Inspector", Section 301(2) thereof specifically provides as follows:

"If in any such any case private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court submit written arguments after the evidence is closed in the case."

In the light of these provisions, we are of the view that only in exceptional cases and for reasons to be recorded, the State Government can exercise its powers u/s 24(8), Criminal Procedure Code and appoint a Special Public Prosecutor. In the

present case, we find that no reasons have been given in the impugned order (Annexure F) for appointment of the respondent No. 2 as Special Public Prosecutor in the case. The impugned order specifically says that the State Government would not pay any fees to Shri Dutt for conducting the said prosecution and its endorsement would show that copies of the order were also sent to the respondent No. 2 and Shri Atul Chouske, the respondent No. 3. These facts naturally lead to an inference that the respondent No. 2 was appointed as Special Public Prosecutor not of any necessity, but just to please and satisfy the relations of the deceased. As Shri Dutt could act under the directions of the Public Prosecutor or Assistant Public Prosecutor in charge of the case for conducting the prosecution by virtue of Section 301(2), Criminal Procedure Code, there was no necessity of making him in charge of the case independently by making an order of appointment in his favour as a Special Public Prosecutor. The view we are taking is supported by P.G. Narayanankutty Vs. State of Kerala and Others, , Mukul Dalal and Others Vs. Union of India (UOI) and Others,

In the result, this petition succeeds and it is hereby allowed. The impugned order dated 1-3-1991 (Annexure F) of the State Government is quashed. We, however, make it clear that the respondent No. 2 Shri S. C. Dutt shall be at liberty to participate and act in the trial of the case against the petitioners in the manner provided in Section 301(2), Criminal Procedure Code. In the circumstances of the case, we make no order as to costs of this petition.