

(1996) 12 AP CK 0051

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 1271 of 1996

Surapaneni Ram Prasad

APPELLANT

Vs

V. Ramesh Chandra Bau and Others

RESPONDENT

Date of Decision : 06-12-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 20, 24, 6, 7

Citation : (1997) 2 ALD 805 : (1997) 1 ALD(Cri) 180 : (1997) 1 ALT 78 : (1997) 1 ALT(Cri) 528 : (1997) CriLJ 677

Hon'ble Judges : V. Rajagopala Reddy, J;Prabha Shankar Mishra, J

Bench : Division Bench

Advocate : P. Kamalakar, for the Appellant; S. Satyanarayana Prasad and Govt. Pleader, for the Respondent

Judgement

V. Rajagopala Reddy, J.—Challenging the order of a learned single Judge in W.P. No. 6353 of 1996 quashing the Government Order and setting aside the appointment of the 3rd respondent-appellant as Additional Public Prosecutor (for short A.P.P.) in the Court of the Additional District and Sessions Judge-cum-Metropolitan Sessions Judge, Vijayawada, this writ appeal is brought under Clause 15 of Letters Patent.

2. The following few facts have to be stated for the disposal of this appeal : The term of the petitioner-1st respondent expired on 20-8-1994 as A.P.P. to the Court of the Addl. District & Sessions Judge-cum-Metropolitan Sessions Judge, Vijayawada. The appointment to the post of the A.P.P. is required to be made in accordance with Section 24 of the Code of Criminal Procedure (for short, "the Code"). In the panel sent by the District Magistrate in August, 1994, the Government, the 2nd respondent herein, the petitioner-1st respondent figured at Sl. No. 2. The panel was not acted upon. Hence, a fresh panel was called for. Accordingly, a fresh panel was sent and in the said panel the 3rd respondent-appellant was chosen and appointed as A.P.P., which was assailed in the writ petition. Accepting the contention of the learned counsel for the petitioner-1st

respondent that Section 24 of the Code has not been complied with, in as much as the panel, out of which the appellant was chosen, was sent by the District Magistrate without consulting the Addl. District & Sessions Judge-cum-Metropolitan Sessions Judge, Vijayawada being a metropolitan area but only consulting the District Judge, Krishna, the learned single Judge allowed the writ petition and quashed the order of appointment of the 3rd respondent-appellant.

3. The learned senior counsel Sri E. Manohar appearing for the appellant, contends that the Addl. District & Sessions Judge-cum-Metropolitan Sessions Judge, Vijayawada, was not the concerned Judge to be consulted in the appointment of A.P.P., but only the District & Sessions Judge, Krishna, is the concerned Judge and that Section 7 of the Code deals with territorial division and the proviso to sub-section (1) of Section 7 of the Code should be confined only to such territorial divisions and it cannot be read into sub-section (4) of Section 24 of the Code and therefore the learned single Judge was not right in setting aside the appointment of the appellant. It was mainly contended by the learned counsel for the 1st respondent that the provisions of Section 24 have not been complied with and therefore the appointment of the appellant is wholly illegal and it was rightly set aside.

4. The learned single Judge has extracted the provisions of Ss. 6, 7 and 24 of the Code, which are relevant provisions to be noticed in this case. It is not in dispute that the provisions of Section 24 of the Code are strictly to be complied with and breach of the same would vitiate the order of appointment of the appellant. It is also not in dispute that as per sub-section (4) the District Magistrate shall consult the Sessions Judge of the District to prepare a panel of names of persons for the appointment of Public Prosecutors or Addl. Public Prosecutors for the District. As per sub-section (4) no person shall be appointed as Public Prosecutor or Addl. Public Prosecutor of the District, unless his name appears in the panel of names prepared by the District Magistrate. In the instant case the appointment relates to the post of A.P.P. for the Court of Addl. District & Sessions Judge-cum-Metropolitan Sessions Judge, Vijayawada. It is not in dispute that Vijayawada is a Metropolitan area. Hence, the question that crops up is whether the consultation under sub-section (4) of Section 24 of the Code is with the Metropolitan Sessions Judge of Vijayawada or with the District & Sessions Judge, Krishna. For this purpose it is necessary to examine Section 7 of the Code, which is extracted hereunder :

"7. Territorial divisions :- (1) Every State shall be a sessions division or shall consist of sessions divisions, and every sessions division shall, for the purpose of this Code, be a district or consists of districts :

Provided that every metropolitan area shall, for the said purpose, be a separate sessions division and district.

(2) The State Government, may after consultation with the High Court, alter the limits or the number of such divisions and districts.

(3) The State Government may, after consultation with the High Court, divide any district into sub-divisions and may alter the limits or the number of such sub-divisions.

(4) The Sessions divisions, districts and sub-divisions existing in a State at the commencement of this Code, shall be deemed to have been formed under this section."

5. As per sub-section (1) of Section 7 of the Code, the State is divided into several Sessions divisions for the purpose of this Code, every State shall have a Sessions division or shall comprise of more than one Sessions division and every Sessions division shall be a district or consists of more than one district. The proviso to sub-section (1) of Section 7 of the Code is significant and is crucial for this case. It says that every metropolitan area shall be a separate Sessions division and district. Basing upon this proviso, the learned single Judge has rightly held that since every metropolitan area in the State shall be deemed to be a separate Sessions division and district, the Metropolitan Sessions Judge, Vijayawada, is the Judge within the meaning of the expression "Sessions Judge" under sub-section (4) of Section 24 of the Code, to be consulted in the instant case for the preparation of panel of names for the appointment of A.P.P. for the Court of Addl. District & Sessions Judge-cum-Metropolitan Sessions Judge, Vijayawada. We have no hesitation in accepting this finding and nothing is suggested to doubt this conclusion. Admittedly the 2nd panel in which the appellant's name finds place was sent by the District Magistrate only in consultation with the District & Sessions Judge, Krishna, but not with the Metropolitan Sessions Judge, Vijayawada. Hence, it was rightly quashed by the learned single Judge. The contention of the learned counsel for the appellant that Section 7 of the Code deals only with the territorial division and it cannot be read into Section 24, has no substance. Sub-section (1) of Section 7 of the Code clearly states that the divisions of the State into Sessions divisions were for all purposes under this Code. A combined reading of Ss. 7 and 24 of the Code leaves no doubt to hold that for any metropolitan area, the Metropolitan Sessions Judge is the Judge that is to be consulted under sub-section (4) of Section 24 of the Code.

6. Another aspect need to be noticed : Section 20 of the Code empowers the State Government to appoint Executive Magistrate in every district and in every metropolitan area and to appoint one of them as District Magistrate. Sub-section (2) of Section 20 says that the State Government may appoint any Executive Magistrate as Addl. District Magistrate and such Magistrate shall have such of the powers of a District Magistrate under this Code as are directed by the State Government. There is no material on record to show whether the District Collector or the Commissioner of Police is the District Magistrate for Vijayawada metropolitan area. It is also submitted at the bar, that the Police Commissioner is normally appointed as the District Magistrate of the metropolitan area. Hence both the panels sent by the District Magistrate, viz., the District Collector, in this

case under sub-section (4) of Section 24 can be faulted. Since there is no material before this Court to hold that District Collector is not the District Magistrate for Vijayawada metropolitan area, we do not propose to give any finding on this issue.

7. For the aforesaid reasons the order of the learned single Judge is affirmed.

8. Though there is a finding by the learned single Judge that the first panel was sent by the District Magistrate after ascertaining the names from the Metropolitan Sessions Judge, Vijayawada, that fact is seriously disputed by the learned counsel for the appellant. We, however, do not wish to probe into this. Much water has flown since the first panel was sent in 1994. Due to passage of time it has lost its currency. We are of the opinion that a fresh panel should be called for from the concerned District Magistrate of the metropolitan area of Vijayawada, who should send it after consulting with the Addl. District & Sessions Judge-cum-Metropolitan Sessions Judge, Vijayawada.

9. There shall, therefore, be a direction to the 2nd respondent to call for a fresh panel from the District Magistrate of the metropolitan area of Vijayawada to be sent after due consultation with the Addl. District and Sessions Judge-cum-Metropolitan Sessions Judge, Vijayawada, and to make the appointment of Addl. Public Prosecutor as per law. This exercise shall be done within one month from the date of receipt of a copy of this order. Until fresh appointment is made, the present arrangement shall continue.

10. With the above direction, the appeal is dismissed. In the circumstances, no costs.

11. Appeal dismissed.