

(2015) 06 KAR CK 0292

In the Karnataka High Court

Case No : Writ Petition No. 1202 of 2012 (GM-RES)

Yogish Kode M.S.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 01-06-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 24

Citation : (2015) 4 KarLJ 80

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

Bench : Single Bench

**Advocate : K. Raghavendra for C.V. Nagesh Associates, for the Appellant;
Pramodhini Kishan, High Court Government Pleader, Advocates for the
Respondent**

Final Decision : Allowed

Judgement

A.S. Bopanna, J.—The petitioner is before this Court assailing the order dated 25-4-2011 impugned at Annexure-A to the petition. By the impugned order, the third respondent has been appointed as the Special Public Prosecutor to appear in the proceedings arising out of Crime No. 239 of 2011. The petitioner herein has been arrayed as accused in the said proceedings. The petitioner therefore claiming to be aggrieved by the same is before this Court. The primary contention urged on behalf of the petitioner to assail the order dated 25-4-2011 is that the order does not disclose the reasons for which the Government had thought it expedient to appoint the third respondent as Special Public Prosecutor in the instant case. It is further pointed out that the order on the face of it is not sustainable since it provides that the remuneration to the Special Public Prosecutor is to be paid by Smt. Rashmi Madhav, a private litigant which is not permissible in law.

2. To substantiate the contention put forth on behalf of the petitioner, the learned Counsel for the petitioner has relied on the decision rendered by a learned Single Judge of this Court in the case of K.V. Shiva Reddy Vs. State of Karnataka and

Others, (2005) CriLJ 3000 : (2005) ILR (Kar) 4780 : (2005) 4 KarLJ 22 . Learned Counsel for the petitioner further contended that the third respondent in fact has been appearing for Smt. Rashmi Madhav in the private litigations between the petitioner and the said Smt. Rashmi Madhav who is the wife of the petitioner. Therefore the third respondent cannot be considered as an independent Counsel who could represent the State in the said proceedings.

3. Learned Government Advocate would seek to sustain the order passed by respondents 1 and 2. It is contended that in addition to the power available under Section 24 of Criminal Procedure Code, 1973, the respondents 1 and 2 are also entitled to appoint a Special Counsel even in a criminal case as provided under Rule 30 of the Karnataka Law Officers (Appointment and Conditions of Service) Rules, 1977. It is therefore contended that in exercise of the power available, appointment of the third respondent has been made as it was found expedient to appoint him as the Special Public Prosecutor.

4. The respondents have not filed their objection statement to sustain their action. Even if the provisions as contained in Section 24 of the Cr.P.C. and Rule 30 of the Rules, 1977 are kept in view, the said provisions also qualify the manner in which such power is to be exercised. In the absence of there being an objection statement indicating the procedure that was followed and further taking note of the fact that the order dated 25-4-2011 impugned herein does not indicate that such procedure has been followed, the order is not sustainable.

5. Even otherwise, as noticed from the decision relied on by the learned Counsel for the petitioner, even if the Government had found it expedient to appoint a Special Public Prosecutor, it cannot be said that the procedure as contemplated has been followed. At the outset, it is seen that the Government had appointed the third respondent as the Special Public Prosecutor and has directed that the professional charges payable to the third respondent be paid by a private party which is not sustainable as indicated in the decision cited supra. Furthermore as pointed out by the learned Counsel for the petitioner, the said Counsel is representing the wife of the petitioner in other private litigations and therefore he cannot be considered as a competent person to represent the State, which is one of the requirements as indicated for the decision cited supra. Therefore, if these aspects are kept in view, at the outset, the order dated 25-4-2011 cannot be sustained. The same is accordingly quashed. However, the respondents 1 and 2 are at liberty 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 and if such consideration is made in accordance with law.

In terms of the above, the petition stands allowed.