

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 14TH DAY OF DECEMBER 2020 / 23RD AGRAHAYANA, 1942

WP(C).No.24561 OF 2020(U)

CRIME NO.1414 OF 2013 OF CHANGANASSERY POLICE STATION

PETITIONER:

VICTIM

PARTY-IN-PERSON

RESPONDENT:

STATE OF KERALA
REPRESENTED BY THE SECRETARY TO HOME DEPARTMENT,
GOVT SECRETARIAT,
THIRUVANANTHAPURAM

R1 BY SRI.SUMAN CHAKRAVARTHY, SENIOR GOVT.PLEADER

OTHER PRESENT:

PP SRI.S.SAJJU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01-12-2020, THE COURT ON 14-12-2020 DELIVERED THE FOLLOWING:

JUDGMENT

Petitioner is the defacto complainant in Crime No.1414 of 2013 of Changanassery Police Station for offences punishable under sections 376, 377, 506(i) r/w 34 of the Indian Penal Code.

2. The allegation was that, first accused brutally raped the defacto complainant. Thereafter, when it was complained to his mother/second accused, she was criminally intimidated by the second accused. On the basis of the FIS lodged, crime was registered and on completion of investigation, final report was laid. Cognizance was taken by the Sessions Court, Kottayam as S.C.No.153 of 2016. Thereafter, contending that, accused had threatened her on various occasions, an application was filed as Tr.P(Crl).No.112 of 2018 before this Court for transfer of the case from Kottayam Sessions Court to another Court of competent jurisdiction. By order in the above transfer petition, case was transferred to Sessions Court, Ernakulam. After the transfer, it was numbered as S.C.No.56 of 2019 and is pending before the Sessions Court, Ernakulam. In the meanwhile, petitioner approached this Court in O.P(Crl).No.228 of 2020 for a direction for early disposal of the Sessions case and this Court directed the Sessions Court to dispose of S.C.No.56 of 2019 by December 2020.

3. Petitioner claiming that she was not satisfied with the performance of the Public Prosecutor and alleging that, he did not bring to the notice of the Court the grievances of the petitioner and that, accused were granted bail without affording an opportunity to the prosecution to raise objections, victim/petitioner approached the Government for appointment of a Special Prosecutor under section 24(8) of the Cr.P.C. Ext.P1 is the representation submitted by the petitioner. She contended that, she was a rape victim and she finds it extremely difficult to pursue the proceedings and justice can be dispensed with only by the appointment of a Special Prosecutor. It was claimed by her that, she was not satisfied with the performance of the Public Prosecutor in charge of the case and that, she wants a lawyer of considerable standing to effectively pursue the prosecution. She claimed that a lawyer whom she knew and who is a retired District Judge has consented to be the Special Prosecutor. He was appointed as Public Prosecutor in another case also. The above application filed by the petitioner before the Government was pending consideration for quite sometime. Hence, she approached this Court by filing an original petition for a direction for early disposal of the above application. By order in O.P(CrI).No.228 of 2020, Government was directed to dispose of it as expeditiously as possible. Records reveal that, pursuant to that, the opinion of the Director General of Prosecution was sought and by Ext.P5, he opined that, no Public interest was involved for the appointment of a Special

Prosecutor and that the request made by the petitioner did not satisfy Ext.P6 guidelines laid down by the Government for appointment of Special Prosecutor in accordance with Section 24(8) of the Cr.P.C. By Ext.P7 order, Government rejected her request holding that claim made by the petitioner did not fall within Ext.P6 guidelines.

4. Aggrieved by Ext.P7 order, petitioner has approached this Court. It was contended by the petitioner that, Ext.P6 was opposed to, violative of and consistent with, the substantive law under S.24(8) of the Cr.P.C. It was contended that, Ext.P6 did not contain the spirit of S.24(8) of the Cr.P.C and hence was not sustainable. It also denied the valuable rights of the victim. It was also contended that, Ext.P6 was not sustainable and liable to be struck off. Another contention of the petitioner was that, Ext.P7 was passed by the Government without proper application of mind and without considering relevant matters. Hence, petitioner prayed to quash Ext.P6 Circular as opposed to, violative of and in conflict with S.24(8) of the Cr.P.C and also to the Kerala Government Law Officers (Appointment and Conditions of Service) and Conduct of Cases Rules, 1978.

5. Heard the petitioner in person who effectively represented herself and placed relevant facts.

6. Answering the contentions of the petitioner in person, learned Senior Government Pleader contended that, S.24(8) Cr.P.C enabled the Government to appoint Special Prosecutor in special circumstances.

Ext.P6 guidelines were accordingly formulated to ensure that the above provision was used uniformly and in appropriate cases only. Learned Government Pleader referred to Ext.P6 which stated that appointment of Special Public Prosecutor can be made by the Government either suo moto or on the basis of application by any aggrieved person only when public interest demanded it and not to vindicate private grievances. The Rule further provided that, such appointment shall be made only on being satisfied that the case cannot be adequately handled by any of the duly appointed Public Prosecutors and the case is highly sensational and generates extensive public interest of such magnitude as to necessitate the appointment of a more competent Advocate of good standing as a Special Public Prosecutor.

7. It was contended by the party in person that the relevant consideration should not have been whether the case was sensational or generated extensive public interest. According to her, even assuming that, those guidelines are valid, in her case, all the above conditions were satisfied. She referred to the various publications including dailies which specifically referred to crime against her. Petitioner referred clause (I) of guidelines (b) which provided that, it will apply to cases such as heinous murder or kidnapping or rape, particularly of minor and which are gruesome in character. According to the petitioner, first accused violently raped her, she was injured and was taken to the hospital by the neighbours. The above issue was published in newspapers on several

days. It was also contended that, it was gruesome in the sense that, it was the case of rape on a innocent victim who thereafter suffered mental trauma and had to be treated in a mental hospital. She was harassed and persecuted by the family of the accused. She contended that the gravity of offence should be the predominant constituent of consideration and should not be superceded by the requirement that it should be sensational also.

8. There cannot be any doubt that, public interest is the predominant underlying principle of S.24(8) of the Cr.P.C. Though S.24(8) of the Cr.P.C enables the Government to appoint Special Prosecutor for a single case, or a batch of cases, it does not require the Government to appoint Special Prosecutor for every case since it may adversely affect the exchequer. Predominant public interest is to ensure justice to all, including a fair and impartial investigation and a fair trial.

9. The opening words of clause (b) of Ext.P6 indicates that the various instances mentioned as (i) to (viii), among other categories, shall ordinarily be considered for appointment of Special Prosecutor. Evidently, categories (i) to (viii) are not exhaustive. In all those categories of cases ordinarily considered for appointment of Special Public Prosecutor, there should also be an element of a public interest. Even though the guidelines states that the matter should be highly sensational one and should generate extensive public interest, it was contended by the petitioner, that the situations may change. Ultimately, it is for the

Government to apply its mind and decide whether in the given facts and circumstances of the cases, appointment of Public Prosecutor was justified.

10. It is seen that the petitioner had to move this Court on few occasions to keep the matter moving. It is also seen that the lawyer who have given consent to be appointed as the Special Public Prosecutor had now by communication produced as Ext.P8 offered to render his services pro bono. Hence, financial constraint will not be there on the Government. Ext.P9 is an application submitted by the petitioner before the Sessions Court wherein it is specifically stated that, she has lost confidence in the Government Pleader who according to the her, was not effectively prosecuted her case. It seems that, these aspects were not considered before passing Ext.P7 order.

11. Definitely, every case may be peculiar in its own nature but, distinct cases have to be considered distinctly. Having evaluated these facts, it appears that, Government has not taken into consideration the various relevant factors including the fact that the petitioner is a rape victim, that, she has been actively prosecuting the case for several years, counsel who was sought to be engaged as Special Prosecutor had agreed to conduct the case, after appointed pro bono and that, she has specifically asserted that she has lost confidence in the Prosecutor. Petitioner contended that the element of public interest should be the most important criteria as laid down in decisions reported in ***Yousuf***

K.M. v. State of Kerala and Others (2014(3) KHC 413), Jigesh P and Another v. State of Kerala and Another (2013(1) KHC 601) and Kuriachan Chacko and Ors. v. Secretary to Government and Ors. (2012(3) KHC 614).

12. Having considered the above facts, I am inclined to set aside Ext.P7 order. However, I do not find any ground for interfering in Ext.P6 Government circular, which does not prima facie offend S.24(8) of the Cr.P.C. Accordingly, there will be a direction to the respondent to consider Ext.P1 in the light of the observations made above and also the relevant factors which have been highlighted in this judgment. Respondent shall pass fresh orders as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a copy of this judgment. Trial court shall thereafter try S.C.No.56 of 2019 as expeditiously as possible and complete the trial within a period of four months from the date of receipt of a copy of the order by the Government on Ext.P1.

Writ Petition is disposed of as above.

sd/-

SUNIL THOMAS

JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1	COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER.
EXHIBIT P2	COPY OF THE LETTER ISSUED BY THE GOVT TO ADV RAGHUNATH SEEKING CONSENT
EXHIBIT P3	CONSENT LETTER BY ADV. V.T RAGHUNATH
EXHIBIT P4	COPY OF THE JUDGMENT IN OP(CRL) 228 OF 2020 DT 05-08-2020
EXHIBIT P5	COPY OF THE OPINION BY THE DIRECTORATE OF PROSECUTION
EXHIBIT P6	COPY CIRCULAR NO. 264/C4/2017/HOME DT 18-09-2017
EXHIBIT P7	COPY OF GO(RT) NO.2557/2020/HOME DT 02-11-2020
EXHIBIT P8	LETTER BY ADV. V.T RAGHUNATH DT 07-11-2020
EXHIBIT P9	COPY OF CMP 1198 OF 2020 IN SC 56/2019 AGAINST THE REGULAR PUBLIC PROSECUTOR WHO WAS HANDLING THE CASE
EXHIBIT P10(a)	COPY OF PAPER CUTTING TIMES OF INDIA DT 8-3-2018
EXHIBIT P10(b)	COPY OF PAPER CUTTING MATHRUBHUMI DT 21-2-2018
EXHIBIT P11	CD DISC DETAILED NEWS REPORT REGARDING CASE