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Court : Madhya Pradesh

Decided On : Mar-12-1998

Reported in : 1999(2)MPLJ606

Judge : R.P. Gupta, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 24

Appeal No. : Cri. Rev. No. 205 of 1998

Appellant : Babbi @ Prashant

Respondent : State of M.P. and ors.

Advocate for Def. : B.P. Athya, Adv., ;B.C. Dubey, Adv. for Non-applicant No. 2 and ;Ashish Tiwari, Adv. for Non-applicants Nos. 3 to 8

Advocate for Pet/Ap. : V.K. Tiwari, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

R.P. Gupta, J.

1. The parties counsel concede that the petition be disposed off finally at the present stage. The petitioner has felt aggrieved by the order dated 8-10-1997 of

the trial Court, namely 2nd Additional Sessions Judge, Jabalpur whereby the trial Court declined permission to the Special Public Prosecutor Shri A. K. Soni, to participate in his capacity as a special Public Prosecutor in trial of Sessions Case No. 474/91. The appointment as special prosecutor had been made by the State on 11-8-1997 when most of the trial of the case had been completed, even the statement of the accused had already been recorded and the case was at the stage of defence evidence.

2. The trial Court felt that it could adjudicate upon the propriety of appointment of special prosecutor. The trial Court felt that when in a particular case on a writ petition, this High Court had set aside the appointment of special prosecutor on the ground that the case was not a special case, the trial Court, in any case, could also look into the propriety of such appointments. The respondent No. 2 in this case is the Additional Public Prosecutor appearing in that Court. It is clear that the trial Court has totally misunderstood the intent of the High Court in the case of Sunil Kumar v. State of M. P. cited at 1992 MPLJ 772. It was a case of writ petition against the appointment of special prosecutor. In deciding such a writ, considerations are entirely different e.g., whether the State action is bonafide or within the bounds of law. These considerations are not available to the trial Court. A special prosecutor is appointed by State under Section 24, Criminal Procedure Code. The trial Court is not to look into the propriety or justifiability of that appointment. It should not refuse permission to the special prosecutor to conduct the case. The trial Court is not concerned with the stage at which the special prosecutor is appointed. The trial Court may look into the genuineness of the appointment, but no more. If the appointment letter is genuine, then the trial Court has to abide by the fact that the concerned advocate has become specific prosecutor in the concerned case. If any party is aggrieved by such appointment, then it is not the concern of the trial Court as to what remedies that party adopts. In this view of the matter, it is apparent that the order refusing permission to the special prosecutor Shri A. K. Soni, to appear and conduct the case on behalf of prosecution in this case, was unjustified and is set aside.

3. The counsel for the parties say that no effective order has been passed after the impugned order by the trial Court except that an order has been passed to recall a

particular witness on the application of Additional Public Prosecutor, respondent No. 2.

4. I may mention here that it is unfortunate that the petitioner's counsel thought it proper to implead the additional Government Pleader as respondent No. 2 in such a revision petition. The Additional Government Pleader cannot be made a party. The petition against him is dismissed. Such impleadment of Government Advocate borders on to an attempt to harass and the counsel should stay their hands off such practice.

5. With the above finding and observation, this petition is dismissed against the respondent No. 2. But the petition against the other respondents succeeds. The Special Public Prosecutor Shri A. K. Soni, Advocate (it is an admitted fact that he was appointed as a Special Public Prosecutor by State Government, as per law) shall be allowed by the trial Court to act as a Special Public Prosecutor in this case. However, this is without prejudice to all orders and proceedings which have been taken so far in this case.

A copy of this order shall be sent to the trial Court.

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