

Phool Singh Vs. the State of Rajasthan and ors.

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Court : Rajasthan

Decided On : May-03-1993

Reported in : 1993(2)ALT(Cri)22; 1993CriLJ3273; 1993(2)WLC464

Judge : Rajendra Saxena, J.

Acts : Indian Penal Code (IPC) - Sections 302; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 2(4), 24, 24(8) and 225; [Constitution of India](#) - Articles 14 and 21

Appeal No. : S.B.C.W.P. No. 2962/1992

Appellant : Phool Singh

Respondent : The State of Rajasthan and ors.

Advocate for Def. : S.K. Vyas, Addl. Govt. Adv. for Respondent No. 1 and; Pradeep Shah, Adv. for Respondent No. 3

Advocate for Pet/Ap. : N.N. Mathur, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Rajendra Saxena, J.

1. The petitioner by means of this writ petition has prayed that the order dated 2-12-1991 (Annex. 1) issued by the Joint Legal Remembrancer & Director, Litigation Government of Rajasthan, Jaipur appointing Shri Ram Chandra Deopura, Advocate, Rajsamand (respondent No. 2) as Special Public Prosecutor in Sessions Case No. 119/91, State v. Bhanwar Singh and Ors., under Section 302, I.P.C. pending in the Court of Sessions Judge, Rajsamand and directing that all the expenses incurred by respondent No. 2 shall be paid by Shri Nand Lal Rawal (respondent No. 3), be quashed and that a further direction be given to proceed de novo in the said Sessions trial with the assistance of an independent Public Prosecutor.

2. The petitioner is the son-in-law of one of the accused persons namely Bhanwar Singh, who is facing the aforesaid Sessions trial along with 7 other accused persons. The petitioner has challenged the impugned order/letter dated 2-12-1991 (Annex. 1) on the ground that since Nand Lal (respondent No. 3), the brother of deceased Sunder Lal in the aforementioned Sessions case, has been directed to pay the remuneration to the Special Public Prosecutor instead of the State Government, the dignity, impartiality & efficiency of the said Special Public Prosecutor shall not be properly maintained. According to him, the State Government has, thus, made an effort to legalise the corrupt practice of allowing the private party to pay the remuneration to the Special Public Prosecutor. It has been contended on behalf of the petitioner that since an offence is committed against the entire society and not against an individual person, therefore, it is the duty of the State to maintain peace and security in the society, to prosecute the accused and that the complainant has no independent right to prosecute the accused. It has been further contended that if the prosecution is given in the hands of the complainant, whose only interest is to see that the accused is any how convicted, then the object to conduct the prosecution of an accused person by the State shall stand defeated. It has also been contended that if a Special Public Prosecutor, is paid remuneration by the complainant, then he is always likely to conduct the case in a manner which will ultimately satisfy his client, and thus, such a Special Public Prosecutor is likely to tamper with the witnesses and documentary evidence resulting in vexatious prosecution and unnecessary harassment of the accused person. It has further been contended that the

appointment of a Special Public Prosecutor in a particular case is also discriminatory and offends the fundamental right of the equality before law as enshrined and guaranteed under Article 14 of the [Constitution of India](#).

3. A return has been filed on behalf of the State of Rajasthan (respondent No. 1), wherein it has been averred that this writ petition does not involve any question of substantial public importance and as such the petitioner has no locus standi. It has been denied that any assistance rendered by the Special Public Prosecutor misleads the trial Judge or harasses the accused persons or that the Special Public Prosecutor does not act impartially. It has been asserted that the State Government has a statutory right to appoint a Special Public Prosecutor under Section 24(8) of the Cr. P.C. and that the vague allegation that the Special Public Prosecutor is likely to tamper with the witnesses or the documents is baseless, misconceived and devoid of any merit. It has also been asserted that there is no violation of provisions of Article 14 or any provisions of the Cr. P.C. in appointing a Special Public Prosecutor and directing respondent No. 3 to pay his remuneration. On the other hand, respondent No. 2 has been in practice as an Advocate for a period more than ten years and as such he is fully qualified and entitled to be appointed as a Special Public Prosecutor.

4. No reply has been filed on behalf of respondents Nos. 2 & 3 despite service.

5. I have heard the learned counsel for the parties and the learned Additional Government Advocate at length.

6. At the very outset, it may be mentioned that the petitioner has not levelled/imputed any personal allegation against Shri Ram Chandra Deopura, Advocate (respondent No. 2), who has been appointed as the Special Public Prosecutor in the Sessions Case No. 119/91, State v. Bhanwar Singh and Ors. under Section 302, I.P.C. The petitioner has also neither pleaded nor given any material particulars/details about any bias, prejudice or undue interestedness on the part of respondent No. 2 towards the accused persons. He has also not cared to refer/disclose any incident to show even prima facie that the respondent No. 2 will either tamper with the prosecution witnesses or documents or protract the trial with a view to harass the accused persons. On the other hand, he has simply averred

that this writ petition involves a question of substantial public importance connected with the public faith in the public office of a Special Public Prosecutor. To my mind, in absence of such material particulars, it cannot be inferred or presumed that the appointment of a Special Public Prosecutor and directing a private party to pay his remuneration legalises a corrupt practice or undermines the dignity, impartiality or efficiency of Special Public Prosecutor.

7. Section 2(4) of the Code of Criminal Procedure, 1973 defines 'Public Prosecutor', which means any person appointed under Section 24, and includes any person acting under the directions of the Public Prosecutor. Section 225, Cr. P.C. lays down that in every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor. Section 24 deals with the appointment of Public Prosecutor, which inter alia provides that for every District, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the District from the panel of names of persons prepared by the District Magistrate in consultation with the Sessions Judge of the District, who are in his opinion fit to be appointed as Public Prosecutors or the Additional Public Prosecutors for the District. It further provides that a person shall be eligible to be appointed as Public Prosecutor or an Additional Public Prosecutor only, if he has been in practice as an Advocate for not less than seven years. Section 24(8), Cr. P.C. further provides that the Central Government or the State Government may appoint for the purposes of any case or class of cases, a person, who has been in practice as an Advocate for not less than ten years as a Special Public Prosecutor. It is not the case of the petitioner that the respondent No. 2 does not possess the requisite experience of practice as an Advocate for ten years for his appointment as a Special Public Prosecutor.

8. A Public Prosecutor is a public servant. The office of Public Prosecutor involves duties of public nature and is of vital interest to the public. In criminal cases, the State is the prosecutor. The State through the Public Prosecutor is the party and not the complainant. The role of the Public Prosecutor in any criminal trial, whether at the instance of the State or of a private party, is to safeguard the interest of the complainant as well as the accused. The right to be heard includes a right to be represented by an able spokesman of one's confidence. This right belongs both to

the accused and the complainant. It is not only the accused, who is in need of an assistance and protection of his rights, but also the complainant. In fact, it is to vindicate the rights and grievances of the complainant and through him, of the State, that the prosecution is launched whether by the State or by the private party. The object and purpose of criminal prosecution is to bring home the guilt of the accused and to ensure that he is adequately punished. The prosecutor has, therefore, to discharge his duties diligently, without fear or favour and without ill-will or mala fide. A prosecutor, who fails in and neglects his duties cannot import effective and substantial service to the administration of justice. In the discharge of his duties as a prosecutor, he is ordained by law, by professional ethics and by his role as an officer of the Court, to employ only such means as are fair and legitimate, and to desist from resorting to unjust and wrongful means. This so whether the prosecutor is private or appointed by the State and whether he is paid by the State or his appointment is made at the request of a private party as a Special Public Prosecutor and the State requires such private party to pay his remuneration. The duties of the prosecutor and the requirements of a fair trial do not vary from case to case. Moreover, there is always the Court to safeguard the interests of the accused and the complainant, to control the proceedings and to check the omissions and commissions of the prosecutor. It is needless to mention that the Court is not a moot spectator in a criminal trial, but an active participant therein. Therefore, by no stretch of imagination, it can be held that where Special Public Prosecutor is appointed whether paid by the State or the Private Party, the prosecution and the trial should be presumed to be biased, partial or unfair.

9. In *Dilip Bhai Chhota Lal v. State of Gujarat*, 1971 (12) Guj LR 999, it has been held that though the Public Prosecutor/ Special Public Prosecutor would be incharge of and is required to conduct the prosecution before the Court of Session, the control of proceedings before the Court is ultimately in the hands of the Presiding Judge and that it would not be unreasonable to assume that if there is unnecessary prolongation of the trial and consequential harassment of the accused at the hands of the Public Prosecutor, the Court would always intervene and protect the accused and ensure a fair trial. It has been further held that it cannot be assumed that the State Government would not make a proper choice while appointing a Special Public Prosecutor even when his remuneration is to be

paid directly by a private complainant. It has also been held that there is no legal bar in the Cr. P.C. for directing a private party to pay fees of such appointed Special Public Prosecutor and that such arrangement is not violative of Article 21 of the [Constitution of India](#).

10. In the Rajasthan Law & Judicial Department Manual, 1952 also there is no legal impediment in directing the private complainant to pay the legal remuneration to the Special Public Prosecutor appointed by the State Government.

11. In *Vijay Valia v. State of Maharashtra*, 1986 Cri LJ 2093, the appointment of Special Public Prosecutor under Section 24(8), Cr. P.C. was challenged on the ground that since Section 24(8) does not lay down any guidelines as to when any Special Public Prosecutor should be appointed, there is excessive delegation of powers, and hence the power conferred to the State is arbitrary and violative of Article 14 of the Constitution. The other ground of challenge was that the appointment of Special Public Prosecutor at the instance of the complainant and paid for by him is bound to act to the prejudice of the accused because the prosecutor so appointed will be inclined in favour of the complainant and against the accused, and will further not conduct the prosecution impartially. The learned D.B. of Bombay High Court negating the said challenges held that Section 24(8), Cr. P.C., lays down sufficient guidelines for appointment of Special Public Prosecutors and the same is not violative of Article 14 of the Constitution because there is neither any excessive delegation nor arbitrariness and that it cannot be argued that where Special Public Prosecutors are appointed and paid by the private parties, the prosecution trial must be presumed to be biased or unfair.

12. A similar view has been taken in *Ajay Kumar v. State*, 1986 Cri LJ 932 of Delhi High Court.

13. Therefore, in my considered opinion, the conduct of Special Public Prosecutor appointed by the State under Section 24(8), Cr. P.C. and paid by the private party does not affect his capacity and ability to perform his role as a Public Prosecutor, because to accept such a generalised proposition will invalidate all private prosecutions. By no stretch of imagination, it can be assumed that such a public prosecutor will act as a de facto complainant and will not be as impartial as a

public prosecutor appointed and paid by the State to conduct the prosecution.

14. Hence, for the reasons mentioned above the apprehension of the petitioner that the Special Public Prosecutor shall not be impartial or is likely to tamper with the witnesses and the documents or will protract the trial to harass the accused persons is manifestly baseless, misconceived and devoid of any substance and merit.

15. Hence, for the reasons mentioned above, the impugned letter dated 2-4-1991 (Annex. 1) appointing the respondent No. 2 as Special Public Prosecutor is neither unjust nor unfair nor illegal, nor the same undermines nor adversely affects the dignity and impartiality of the office of the Special Public Prosecutor and as such it warrants no interference. Sufficient & valid grounds also do not exist for quashing the proceedings undertaken by the Sessions Judge, Rajsamand in Sessions Case No. 119/91 and for ordering a de novo trial.

16. In the premise of above discussion, this writ petition is hereby dismissed. No order as to costs.