

Plating Chemicals Vs. Dy. Chief Controller of Imports and Exports

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Court : Chennai

Decided On : Nov-11-1988

Reported in : 1992(61)ELT595(Mad)

Judge : K.M. Natarajan, J.

Acts : Imports and Exports (Control) Act, 1947 - Sections 5 and 6; [Code of Criminal Procedure \(CrPC\)](#) , 1973 - Sections 2(1), 24(8), 25, 25(1A), 173, 198, 210(1), 301(1), 302 and 495; [Customs Act, 1962](#)

Appeal No. : Crl. Rev. Case Nos. 523-526/85, Crl. Rev. Petition Nos. 519-522/85 and Crl. M.P. Nos. 6654/84, 7577/

Appellant : Plating Chemicals

Respondent : Dy. Chief Controller of Imports and Exports

Advocate for Def. : V. Sriamulu, Spl. Public Prosecutor

Advocate for Pet/Ap. : N.T. Vanamamalai, Adv. for ;V. Gopinath, Adv. ;K. Selvarangan, ;P.M. Sundaram, ;K.A. Panchapagesan and ;A. Raghunathan, Advs.

Judgement :

ORDER

K.M. Natarajan, J.

1. Since common questions were raised in all these matters, they were heard together and disposed of by a common judgment. The facts which are necessary for the disposal of these matters can be briefly stated as follows :- The Deputy Chief Controller of Imports and Exports instituted private complaints under Section 6 of the Imports and Exports (Control) Act, 1947 (hereinafter referred to as the Act), against these petitioners, for offence committed under Section 5 of the Act, read with various sections under the Indian Penal Code. The petitioners filed objections stating that they being private complaints instituted by the Deputy Chief Controller of Imports and Exports and the Collector of Customs as the case may be, the prosecution should not be conducted by the Senior Public Prosecutors and the Special Public Prosecutors of the C.B.I. police, and that the authorisation by the said complainant to the Public Prosecutor to conduct prosecution is invalid as he is not empowered to do so. Even if there is any authorisation, such authorisation is illegal since the said Special Public Prosecutor is not a pleader to appear for any Department other than the Central Government. Even as per the terms of the appointment order, they are not empowered to conduct prosecution on behalf of the complainant in these cases. Another contention raised is that in respect of these offences, first-information-reports had been registered by the C.B.I. police and that no final report was filed so far; but the private complaints have been filed. In view of Section 210(1), Code of Criminal Procedure, the complainant's proceedings have to be stayed till the receipt of final reports from police and that the Court below should call for a report from the police officer who has registered the case. The Additional Chief Metropolitan Magistrate overruled these objections. Aggrieved by the same, these revisions and Crl.M.Ps. were filed for setting aside the order as well as quashing the proceedings.

2. As far as the first question is concerned whether the Senior Public Prosecutor, C.B.I. can appear on behalf of the complainant, it is submitted by the learned counsel appearing for the petitioner that under Section 25(1A) Code of Criminal Procedure, the Central Government may appoint one or more Assistant Public Prosecutors for the purpose of conducting any case or class of cases in the Courts of Magistrates. Under Section 24(8) of the Code also, the Central Government or the State Government may appoint, for the purposes of any case or class of cases, person who has been in practice as an advocate for not less than ten years

as a Special Public Prosecutor. Relying on the said provisions, it was argued that Public Prosecutors can conduct prosecution only on behalf of the Central Government and not in any other case. Further, it is only the Central Government which can authorise the Special Public Prosecutors or Public Prosecutors to appear in any case or class of cases on their behalf and not on behalf of the complainant who is the Deputy Chief Controller in these cases. In this connection, the learned counsel also pointed out Section 2(1)(u) of the Code wherein it is defined that Public Prosecutor means any person appointed under Section 24, and includes any person acting under the directions of a Public Prosecutor. Under Section 301(1) of the Code, it is provided that the Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal. According to the learned counsel, it cannot be said that the Special Public Prosecutor in these cases was placed in charge of the case by a competent authority and as such, he cannot appear without any written authority before the said Court. Under Section 302 of the Code any magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of Inspector and no person, other than the Advocate-General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission. According to the learned counsel, no such permission was granted by the Court to conduct prosecution and no requisition was also given. In the absence of any written permission, it cannot be said that merely because the Special Public Prosecutors conduct cases, they are authorised by Court to conduct the same. In support of his contentions, the learned counsel invited my attention to certain decisions. In *Kannappan v. Abbas and Others* 1985 L.W. (Cri.) 159 it was held :

'Under Section 25 of the Criminal Procedure Code, A.P.Ps. are appointed by the Government only for conducting prosecutions in the Courts and they are full-time Government servants. In other words, they are not advocates or legal practitioners entitled to practise as advocates, and their duty, as their designation itself mentions, is only to conduct prosecution on behalf of the State. To put it differently they have no right to practise or take briefs to defend the accused in criminal cases. It is clear from the very scheme of the Code of Criminal Procedure that the

A.P.P. cannot defend an accused as there is no provision for the same in the Code. Of course, Rule 69 of the Criminal Rules of Practice gives the magistrate a discretion to permit persons other than legal practitioners authorised by any law to practice in such Court to appear in the criminal proceedings before him. But, this rule deals with only 'private pleaders' and it has no application to the A.P.Ps. who are statutorily appointed under the provisions of the Code of Criminal Procedure, by the State Government.'

3. Ultimately it was held in that case that the magistrate has no jurisdiction to permit the A.P.P. II appointed under Section 25 of the Criminal Procedure Code to defend the accused even though the accused may be police officers. The said decision is not at all helpful for deciding the matter involved in these petitions. There the question that arose was whether the Public Prosecutor can defend the accused when he has been appointed under Section 25 of the Code of Criminal Procedure only for conducting prosecution in Courts as full time Government servant. Here the question is whether conducting prosecution, on behalf of Government servant who instituted proceedings under statutes, by Public Prosecutor is valid and proper, or not. Yet another decision relied on by the learned counsel is the one reported in *Naganna v. Krishna Murthy* - : AIR 1965 AP320 . That was also a case where in a private complaint filed against two police constables, the A.P.P. Grade I filed a memo urging that he was instructed by the Collector to defend the accused in the case. It was held :

'The A.P.P. Grade I must obviously be a qualified legal practitioner in view of the system of recruitment to that office. But, when he was recruited as A.P.P. Grade I, he must have suspended his practice upon entering Government service as a whole-time Government servant. When he is functioning as A.P.P. Grade I, he cannot be in the position of an advocate practising in the bar. Therefore, he cannot appear for the accused in his capacity as a practising advocate as his practice is suspended. Such being the case, he cannot lawfully appear for the accused merely on the ground that the Collector is competent to give authority to the A.P.P. Grade I to defend a Government servant who is accused in a private case or on the ground that there are Government orders to that effect.'

4. The above case is also distinguishable from the case before us. As already stated, that is a case not for conducting the case by the Special Public Prosecutor or the Public Prosecutor, but that is a case for defending the accused by the Public Prosecutor. The learned counsel then relied on the decision *Jai Pal Singh v. State of U.P.* - . In that case it was held :

'the U.P. Government Order dated 15-3-1975, placing the Assistant Public Prosecutors under the administrative and disciplinary control of the Superintendent of Police at the district level and the Inspector General of Police at the State level is inconsistent with Section 25 of the Code and hence liable to be set aside.'

5. It is pointed out by Mr. Sriramulu, Special Public Prosecutor for C.B.I. that the said decision was reversed by a Division Bench in *State v. Jai Pal Singh* - 1978 All.L.J. 936. Hence, no reliance could be placed on the said decision. In view of the fact that the said decision was reversed, no reliance could be placed on the same. Yet another decision cited by the learned counsel is *K.C. Sud v. S.C. Gudimani* - 1981 Cri.L.J. 1779. In that case also, it was held :

'Public Prosecutor cannot appear against State as well as on behalf of the accused even in complaint case.'

The observations made in the said judgment would be useful for deciding this case :

'The Public Prosecutor whether retained or salaried can work for only one client, that is, the State. To yield to any other position, will be to damage the dignity, impartiality or efficiency of the office.'

6. Here in this case, the Public Prosecutors and Special Public Prosecutors are authorised only to conduct prosecution instituted by the officers of the Central Government who were authorised to institute such complaints. In this connection, the Special Public Prosecutor, Mr. Sriramulu, produced the order dated 1-12-1965, i.e., Government Order No. 10/65, Government of India, Ministry of Commerce, Import Trade Control wherein the Central Government in exercise of the powers conferred by Section 6 of the Imports and Exports (Control) Act, 1947 (18 of 1947)

and in supersession of the earlier Order No. 11/60 dated 1-8-1960, authorises the Joint Chief Controller of Imports and Exports, the Deputy Chief Controller of Imports and Exports, the Customs Collectors and the Officers of the Customs under the [Customs Act, 1962](#) (52 of 1962), the Iron and Steel Controller, the Deputy Iron and Steel Controller and the Superintendents of Police in the Economic Offences wing of the Central Bureau of Investigation to make complaints in writing in Courts in respect of any offence punishable under Section 5 of the said Act. Mr. Sriramulu, learned Special Public Prosecutor, submitted that there are three categories of Public Prosecutors in Central Bureau of Investigation in Madras region and they are (1) Deputy Legal Advisors who appear in Criminal cases on behalf of C.B.I., (2) Senior Public Prosecutors and (3) Public Prosecutors. Under Section 24(8), Cr.P.C., Senior Public Prosecutors have been appointed as Special Public Prosecutors now and once they are appointed, they are working within the meaning of Section 2(u). As a matter of right, in all cases they can appear without filing memos on behalf of the Government under Section 301 Cr.P.C. Even otherwise any Public Prosecutor or Special Public Prosecutor of C.B.I. can appear on behalf of the accused in view of the various decisions of this Court and other High Courts. Accordingly to Mr. Sriramulu, Special Public Prosecutor for C.B.I., even in sessions cases which were instituted on complaints and committed, Public Prosecutors alone can appear for the prosecution of the sessions trial. In all these petitions, the accused were prosecuted for cognisable offences by the Joint Controller of the Imports and Exports after the same was investigated by the C.B.I. and submitted reports under Section 173, Cr.P.C. According to the learned counsel, under Section 6 of the Import and Export (Control) Act, 1947 the officers authorised in this behalf by the Central Government by general or special order alone are competent to file complaints for offences punishable under Section 5 of the Act and the Court is also empowered to take cognisance upon such complaint in writing. It is only by virtue of the above provision, these complaints were filed by the Joint Controller of Imports and Exports. According to the learned counsel, the Central Government is empowered to appoint Special Public Prosecutor who has got a minimum standing practice of ten years at the Bar. The learned counsel submitted that even if it is construed that those complaints were not filed by the Central Government and the appointment of

the Public Prosecutor was made for the conduct of any case or class of cases, yet by virtue of Section 302, Cr.P.C. the Court has got ample power to permit any person to conduct prosecution and as per the Court below, it is clearly mentioned that the Special Public Prosecutor was permitted to conduct prosecution. It is also pointed out by the Special Public Prosecutor that along with the complaint, such authorisation was also filed. In most of these case, a number of witnesses were also examined and no objection was taken at the initial stage. Further, the officers who filed the complaints belong to the Government Departments of the Import and Export, which are one of the wings of the Central Government. Learned counsel also submitted that all cases arising under various Acts were conducted by Public Prosecutors of the High Court and there was no need for appointing Public Prosecutors for any particular case. According to the learned counsel, there is no statutory bar for Public Prosecutors conducting those prosecutions. In this connection, the learned counsel drew my attention to the decision of this court reported in *Kadiresan v. Kasim* - 1987 L.W. (Cri.) 64 wherein it was held :

"Public Prosecutor' as per definition under Section 2(u), Cr.P.C. means any person appointed under Section 24 Cr.P.C., and includes any person acting under the directions of the Public Prosecutor. Section 24, Cr.P.C. provides that the Government may appoint Public Prosecutors for conducting any prosecution, appeal or other proceedings on behalf of the Government. In fact there are certain Government agencies which file private complaints and which are represented by Special Public Prosecutors. In that way, there may be Prosecutors or Assistant Public Prosecutors, for private complaint cases as well as for cases on police report.'

7. The said view was affirmed by P. K. Sethuraman, J. in Cr.M.P. No. 12752 of 1986 dated 19-2-1988 [*S.P. Shanti Swarup v. Collector of Customs, Madras* - : 1989(39)ELT29(Mad)]. The learned Judge considered these two questions and held against the petitioner by holding that the Customs Department and the Imports and Exports Department are only departments of the Central Government and that the prosecution being conducted by the Special Public Prosecutor of the Special Police Establishment cannot be said to be wrong. Further, Section 210, Cr.P.C. is not attracted in these cases on the ground that there is no provision for

investigation under the [Customs Act, 1962](#) as well as the Import and Export Act, 1947 by any of the officers concerned. Though the report is shown to have been filed by the Collector of Customs and the case was investigated by the Special Police Establishment, in view of the provision under Section 6 of the Import and Export (Control) Act, 1947, cognizance can be taken only on a complaint in writing made by an officer authorised in this behalf by the Central Government by general or special order and the question of filing charge-sheet or filing report under Section 173(2) does not arise. Mr. Sriramulu, Special Public Prosecutor for C.B.I. would submit that in all these cases only after the investigation was completed and after getting reports, in view of the prohibition under Section 6 of the Act, the complaint is filed by the officer concerned and as such the filing of charge-sheet at a later stage by police is not contemplated and consequently, Section 210 Cr.P.C. is not attracted. In *Food Inspector, Paravathipuram Municipality v. Ganta China Sriramulu and Another* - 1988 (1) Crimes 70, Food Inspector filed a complaint under the Prevention of Food Adulteration Act, and the same ended in acquittal. An appeal was filed against the order of acquittal through Public Prosecutor. Then the question arose whether memo of appearance is to be filed on behalf of the Food Inspector. It was held :

'whenever any public servant filed a complaint and in the event of acquittal if he wants to prefer an appeal and he entrusts the same to the Public Prosecutor, the insistence of the memo is not expected and is not desirable in view of Section 301(1), Cr.P.C. If any advocate other than the Public Prosecutor is engaged, the insistence of a memo of appearance of behalf of the public servant is a must.'

8. The Special Public Prosecutor, Mr. Sriramulu, relied on the above decision for the proposition that Public Prosecutor can appear in a case instituted by Government servant under Section 301(1) Cr.P.C. without filing memo of appearance even in appeal. In *State of Rajasthan v. Pukh Raj* - it was held at page 199,

'The object of Section 495, Cr.P.C. (corresponding to new Section 302, Cr.P.C.) is to authorise a magistrate inquiring into or trying a case to permit the prosecution to be conducted by any person, but no such permission is necessary in the case of

an Advocate General, Standing Counsel, Government Solicitor, etc. Section 495 does not control the definition of a Public Prosecutor as contained in Section 4(1)(t), Cr.P.C. [corresponding to Section 2(u) of the new Cr.P.C.]'

9. The Special Public Prosecutor relied on the decision in *Ashwin v. State of Maharashtra* - : 1967 CriLJ943 where the word 'any person' referred to in Section 495 of the old Code was considered. It was held in the above decision :

'The words 'any person' would indubitably include the mother of the complainant in a case such as this. Section 198 itself contemplates that a complaint may be made by a person other than the person aggrieved and there seems to us no valid reason why in such a serious case we should hold that the death of the complainant puts an end to the prosecution.'

10. Thus it is clear that even after the death of the complainant, the Trial Court has got ample power to empower any person to conduct the case for the offence under Section 302 I.P.C. Hence, after considering the materials placed before me, I have no other option except to hold that there is no force in the contention of the learned Counsel appearing for the petitioners that the Special Public Prosecutor is not authorised to conduct prosecution on behalf of the complainant in these cases and the order passed by the Court below rejecting the objection cannot be said to be in any way illegal or improper.

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