



CNR: KAHC010015192024

NC: 2026:KHC:41267
WP No. 1452 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU



DATED THIS THE 5TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 1452 OF 2024 (GM-RES)

BETWEEN

1. FR. ELIAS DANIEL
S/O LATE SHRI. SUSAINATHAN,
AGED ABOUT 55 YEARS,
NAVACHETANA,
C/O ARJUN GUTTEDAR,
KASTURI, BEHIND PETROL BUNK,
ALANDA, GULBARGA-585302
(AS PER POLICE CASE)

NOW AT CARMEL NIKETHAN,
NO.1/7, GEDDALAHALLI, KOTTHANUR POST,
BANGALORE-560077

2. FR. WILLIAM PATRICK
S/O SHRI. THOMAS,
AGED ABOUT 55 YEARS,
ASSISIYA SAINT FRANCIS CHURCH,
KENGARI UPANAGARA, BANGALORE-562117

NOW AT ST. TEREAS SANITORIUM,
DR. RAJKUMAR ROAD, 1ST BLOCK
RAJAJINAGAR, BANGALORE-560010

3. SHRI. CARMEL PETER @ PETER
S/O SHRI. LOUIS,
AGED ABOUT 35 YEARS,
TATUGUPPE MARIYAPURA VILLAGE,
KAGGALIPURA POST, KANAKAPURA POST,
BANGALORE-562117

...PETITIONERS

(BY SRI: M.S. SHYAM SUNDAR., SR. COUNSEL FOR
DR. VANDANA P.L., ADVOCATE)





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AND

1. DEPARTMENT OF INTERNAL ADMINISTRATION
(POLICE SERVICES)
KARNATAKA GOVERNMENT SECRETARIAT,
VIDHANA SOUDHA, BANGALORE-560001
REP. BY ITS PRINCIPAL SECRETARY.
2. DEPARTMENT OF HOME AFFAIRS
KARNATAKA GOVERNMENT SECRETARIAT,
VIDHANA SOUDHA, BANGALORE-560001
REP. BY ITS PRINCIPAL SECRETARY.
3. THE DIRECTORATE OF PROSECUTION
DEPARTMENT OF PROSECUTION AND
GOVERNMENT DISPUTES,
CAUVERY BHAVAN, K.G.ROAD,
BANGALORE-560001, REP. BY ITS DIRECTOR.
4. THE STATION HOUSE OFFICER
YESHWANTHPUR POLICE STATION,
YESHWANTHPUR, BANGALORE-560022.
5. MR. SADASHIVA MURTHY
FORMER DIRECTOR OF PROSECUTION AND
ADVOCATE PRESENTLY APPOINTED AS
SPECIAL PUBLIC PROSECUTOR,
IN RESPECT OF CRIME NO.157/13,
(PRESENTLY PENDING IN SC NO.1439/2014)
OF YESHWANTHPUR PS,
BANGALORE, R/AT 127, 1ST STAGE,
2ND MAIN, BEML LAYOUT,
BASAVESHWARANAGAR,
BANGALORE-560079
6. THE SECRETARY
ST. PETERS PONTIFICAL SEMINARY,
61, 8TH MAIN, 18TH CROSS,
MALLESHWARAM WEST POST,
BANGALORE-560003

...RESPONDENTS

(BY SRI: SHAMANTH NAIK., HCGP FOR R1 TO R4;
SRI. MELANIC SABASTIAN., ADVOCATE FOR R5;
SRI. C.S. PRADEEP., ADVOCATE FOR R6)



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THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE AN APPROPRIATE WRIT IN THE NATURE CERTIORARI QUASHING THE IMPUGNED NOTIFICATION VIZ GOVERNMENT NOTIFICATION DTD 15.09.2023 BEARING NO.OE 126 PPE 2020 VIDE ANNEXURE-A TO THE PETITION UNDER WHICH THE R5 IS APPOINTED AS SPECIAL PUBLIC PROSECUTOR IN RESPECT OF SC NO.1439/2014 PENDING ON THE FILE OF THE HONBLE PRINCIPAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE ARISING OUT OF CRIME NO.157/13 OF YESHWANTHPUR POLICE STATION, BANGALORE, WHICH PROSECUTION WAS BROUGHT AGAINST THE PETITIONERS HEREIN FOR THE OFFENCES PUNISHABLE U/S 302, 201, 149 R/W SECTION 120(B) OF IPC BY ARRAIGNING THEM AS ACCUSED 1 TO 3 RESPECTIVELY VIDE ANNEXURE-B AND ETC.

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 12.06.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CAV ORDER

1. The Petitioners are before this Court seeking for the following reliefs;
 - a. *Issue an appropriate writ in the nature Certiorari quashing the impugned notification viz Government Notification dated 15.09.2023 bearing No. OE 126 PPE 2020 vide Annexure-A to the petition under which the Respondent No.5 is appointed as Special Public Prosecutor in respect of SC No. 1439/2014 pending on the file of the Hon'ble Principal City Civil and Sessions Judge, Bangalore arising out of Crime No. 157/13 of Yeshwanthpur Police Station, Bangalore, which prosecution was brought against the Petitioners herein for the offences punishable under sections 302, 201, 149 r/w section 120(B) of IPC by arraigning them as Accused 1 to 3 respectively vide Annexure-B.*



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- b. Issue a writ in General Direction that at the time of appointing Special Public Prosecutor in respect of a particular case or class of cases in terms of Section 24(8) of Cr.P.C, the accused person be notified or heard of his objections if any; and the court concerned be kept abreast of such contemplation or deliberation of the Government; and*
 - c. Pass such other order or orders deemed fit to be granted in favor of the Petitioner in the interest of justice and equity.*
- 2. On 01.04.2013, one Mr.Patrick Xavier lodged a written complaint before the Yeshwanthpur Police Station alleging the murder of one Fr. Thomas K.J., who was then serving as the Rector of St. Peter's Pontifical Seminary.
- 3. In the complaint, it was stated that on 31.03.2013 at about 7.30 p.m., the complainant, the deceased Fr.Thomas.K.J. and another priest, namely Fr.G.Joseph, had supper together and were conversing till about 9.00 p.m., after which they retired to their respective rooms. It was further stated that at about 2.30 a.m., the complainant heard screams from outside his room and also heard someone attempting to break open the doors of his office. According to him, he apprehended that certain miscreants, taking advantage of the rain, had



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entered the premises with an intention to commit extortion and, therefore, he did not open the door.

4. The complainant had further stated that at about 5.00 a.m., when he came out of his office, he noticed that the office door had been damaged. Upon stepping outside, he noticed blood stains near the staff room as well as on the tar road. On entering the room, he found the dead body of Fr.Thomas.K.J. lying in a semi-nude condition with blood stains on his body. He thereafter proceeded to the Rector's office and found that the cupboard and the safe locker had been opened and that the documents kept therein had been ransacked. Entertaining a strong suspicion that unknown persons had illegally trespassed into the seminary premises and murdered Fr. Thomas K.J., he lodged the aforesaid complaint seeking appropriate action.
5. Based on the said complaint, Crime No.157 of 2013 came to be registered by the Yeshwanthpur Police Station for offences punishable under Sections 302 and 201 of the Indian Penal Code against unknown persons. Subsequently, on the basis of the statements of certain witnesses recorded during the course of investigation, the petitioners herein and



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two others came to be arrayed as accused persons in the case.

6. Accused Nos.1 and 2, who are priests by vocation, were arrested on 21.03.2014. Accused No.3 was arrested on 20.03.2014, whereas accused Nos.4 and 5 were shown as absconding. Claiming innocence and alleging that the investigation was not being conducted fairly, the accused approached this Court seeking investigation by the Central Bureau of Investigation by filing a writ petition. However, by that time, the police had already filed the charge sheet and, consequently, the said writ petition came to be dismissed.
7. It is contended that the initial charge sheet came to be filed on 17.06.2014 and that the same contained the statements of as many as 96 witnesses. Though several other allegations and factual assertions have been made in the pleadings, what is relevant for the present proceedings is that the accused had earlier approached this Court by filing petitions under Section 482 of the Code of Criminal Procedure. During the pendency of those proceedings, cognisance came to be taken on the charge sheet,



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and the matter was registered as S.C. No.1439 of 2014.

8. It is alleged that there existed certain disputes between Kannada-speaking Christian priests and priests belonging to other linguistic groups. It is further alleged that several influential persons had involved themselves in the said dispute. According to the petitioners, the non-Kannada Christian groups predominantly comprised Malayalam, Tamil and Konkani-speaking Christians.
9. After the filing of the charge sheet, the Secretary of the Seminary, namely the complainant organisation, requested that Sri Sadashiva Murthy be appointed as the Special Public Prosecutor to conduct the prosecution. The said request was accepted by the State Government and, by Notification No.OE 145 PPE 2014 dated 07.05.2014, Sri Sadashiva Murthy came to be appointed as the Special Public Prosecutor.
10. It is alleged by the petitioners that, from the date of assuming charge as Special Public Prosecutor, Sri.Sadashiva Murthy acted in an overtly partisan manner and was determined to strengthen what the petitioners describe as a false case, even to the



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extent of seeking implication of several innocent persons as accused. It is further alleged that he acted at the instance of non-Kannada-speaking Christian groups and made several false statements before the learned Principal District and Sessions Judge. According to the petitioners, certain statements made by him in open Court, when the accused were present, were intended to instil fear in them.

11. It is also alleged that Sri.Sadashiva Murthy made several adverse and ill-intentioned remarks against the advocates appearing for the accused. According to the petitioners, it was at his insistence that the Investigating Officer filed an additional charge sheet on 26.10.2015 under Sub-section (8) of Section 173 of the Code of Criminal Procedure, implicating several persons who had not originally been arrayed as accused.
12. The petitioners contend that the additional charge sheet was actuated by malice and was intended to falsely implicate innocent persons, thereby perpetuating injustice. The additional charge sheet was challenged before this Court in Criminal Petition Nos.18062 of 2016, 2551 of 2016, 2917 of 2016,



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2549 of 2016, 4272 of 2016 and 2550 of 2016. It is contended that the said petitions came to be allowed and the proceedings initiated against the petitioners therein in Crime No.157 of 2013, pending in C.C.No.27574 of 2015 on the file of the XXV Additional Chief Metropolitan Magistrate, Bengaluru, came to be quashed.

13. Aggrieved thereby, the State preferred Special Leave Petition No.2755 of 2017 before the Hon'ble Supreme Court. The Hon'ble Supreme Court, by order dated 16.11.2022, dismissed the Special Leave Petition while reserving liberty to the Trial Court to summon the said persons in accordance with law, should evidence recorded during trial disclose their involvement.
14. The petitioners contend that Sri.Sadashiva Murthy was appointed as the Special Public Prosecutor at the instance of respondent No.6-the Secretary of the Seminary, only with the object of suppressing the truth and prosecuting a false case. It is further alleged that, prior to such appointment, Sri.Sadashiva Murthy had served as the Director of Prosecution in the State Government and that his appointment was made at the behest of the then



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Home Minister, who allegedly belonged to the Malayalam Christian community.

15. The petitioners further allege that, from the very inception of his appointment, Sri.Sadashiva Murthy indulged in excessive and partisan conduct and was instrumental in securing the implication of several innocent persons as additional accused. It is further alleged that he deliberately delayed the progress of the trial so as to ensure that the accused continued to suffer the consequences of the criminal proceedings without their innocence being established.
16. According to the petitioners, several complaints had been lodged against him and, despite the same, no substantial progress had been made in the trial. Thereafter, Sri.Sadashiva Murthy came to be removed as the Special Public Prosecutor and in his place Sri.Chinnappa Harsoor was appointed as the Special Public Prosecutor by Notification dated 08.09.2020, which was communicated to the Trial Court on 21.09.2020. Since the trial was not progressing, the Trial Court, by order dated 28.09.2021, observed that the matter would be



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prosecuted by the regular Public Prosecutor attached to the Court.

17. In view of certain disputes regarding representation of the State in the said proceedings, Sri.Chinnappa Harsoor filed a memo expressing his willingness to continue as the Special Public Prosecutor. Subsequently, by Notification dated 19.07.2022, Sri Chinnappa Harsoor was removed as the Special Public Prosecutor and the matter was entrusted to the regular Public Prosecutor. The said decision was communicated to the Trial Court on 04.08.2022.
18. Following the said decision, respondent No.6 - Seminary once again submitted fresh representations dated 16.12.2022 and 05.01.2023 requesting the State Government to reappoint Sri.Sadashiva Murthy as the Special Public Prosecutor to conduct the prosecution on behalf of the State. The said request, however, came to be rejected by the Government by its order dated 17.03.2023.
19. Despite such rejection, the impugned Notification dated 15.09.2023 subsequently came to be issued, whereby Sri.Sadashiva Murthy was once again appointed as the Special Public Prosecutor. The said notification was communicated to the Trial Court on



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12.10.2023 and, pursuant thereto, Sri.Sadashiva Murthy filed his memo of appearance on 02.11.2023. It is challenging the said Notification dated 15.09.2023 that the petitioners are before this Court.

20. The submission of Sri.M.S.Shyam Sundar., learned Senior Counsel appearing for the petitioners is that;

20.1.Learned Senior Counsel submits that the impugned notification is *ex facie* illegal and has been issued only with the intention of circumventing the due course of justice. According to him, the re-appointment of Sri.Sadashiva Murthy as the Special Public Prosecutor is likely to result in a serious miscarriage of justice and, therefore, Sri.Sadashiva Murthy is liable to be removed from the office of Special Public Prosecutor.

20.2.He relies on Sub-section (8) of Section 24 of the CrPC, which is reproduced hereunder for easy reference;

24(8)*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.*



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20.3. By referring to Sub-section (8) of Section 24 of the CrPC, learned Senior Counsel submits that, though Sri Sadashiva Murthy may satisfy the eligibility requirement relating to the length of practice, the statutory power under Sub-section (8) of Section 24 of the Cr.P.C. is required to be exercised in a fair, reasonable and objective manner. According to him, in the facts and circumstances of the present case, none of the requirements warranting appointment or re-appointment of Sri.Sadashiva Murthy as a Special Public Prosecutor stood satisfied. It is therefore contended that his re-appointment is arbitrary, unreasonable and contrary to law.

20.4. Learned Senior Counsel further submits that Sri.Sadashiva Murthy had earlier been removed from the office of Special Public Prosecutor and, thereafter, when respondent No.6 - Seminary sought his re-appointment, the said request itself had been specifically rejected by the Government by order dated 17.03.2023. In that background, it is contended that the State Government could not have subsequently issued the impugned notification dated 15.09.2023 re-appointing Sri.Sadashiva Murthy



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as the Special Public Prosecutor, particularly in the absence of any fresh circumstances justifying such appointment.

20.5. Learned Senior Counsel therefore submits that the impugned notification dated 15.09.2023 is arbitrary, suffers from non-application of mind and is liable to be quashed.

20.6. He relies on ***Sri K.V. Shiva Reddy vs. State of Karnataka Rep. by its Secretary and Others***¹ more particularly para 32 and 35 thereof, which are reproduced hereunder for easy reference;

32. *In the matter of remuneration payable to the Special Public Prosecutor, ordinarily the Special Public Prosecutor should be paid out of the State funds even when he appears in support of a private complainant. But there may be some special cases where Special Public Prosecutors remuneration may be collected from private source. The rate of fees should be prescribed and the complainant should be called upon to deposit the fees in advance to the Government and the Special Public Prosecutor be paid out of the said amount by the Government. To leave the complainant to pay to the Special Public Prosecutor would indeed not be appropriate. If he looks to a private party for his remuneration, his capacity and ability to perform his role as Public Prosecutor properly will be endangered. Government cannot appoint Special Public Prosecutor on such terms, abdicating their financial responsibility or directing him to receive his remuneration from any private*

¹ ILR 2005 Kar. 4780



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individual. Then it introduces an advocate-client relationship, a personal element from which the Public Prosecutor must be considered immune. He is above the personal loyalty. He does not have a dual capacity.

35. *The aforesaid note makes it very clear it is the MLA who is behind this appointment of a Special Public Prosecutor. The subsequent note shows a P.A. to a Minister is interested in serving the order of appointment on the Special Public Prosecutor personally. It also shows the name of the second respondent is suggested by the said MLA and it is he who states that the complainant would bear the advocates fee. In the records I do not find any consent letter given by the second respondent for appointment. On the contrary MLA informs ALS-3 that the second respondent has given his consent for appointment. It is on the basis of the said representation the order of appointment is made by the Law Minister. Therefore, it is clear from the aforesaid material there is no application of mind by any one concerned before an order of appointment of Special Public Prosecutor is made. There is no indication in the entire record to show why a Special Public Prosecutor was appointed for the case. In the absence of a specific request from the complainant and a consent for such appointment by the second respondent how an order came to be passed appointing second respondent as the Special Public Prosecutor is not discernable from the records. Though under the provisions of the Code of Criminal Procedure, 1973 the Government has the power to appoint a Special Public Prosecutor in a case, it does not mean that such an appointment could be made by the Government as a matter of course, at the request of total strangers and in the absence of a request by the complainant and consent by the learned Advocate to be appointed as the Special Public Prosecutor and without any reasons. It is clear, appointment of Special Public Prosecutor is made in a mechanical way without there being any reason. It is not that the order appointing a*



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Special Public Prosecutor should disclose the reasons for such appointment and it should disclose any special circumstances for such appointment. But, once such an appointment is challenged before the Court an obligation is cast upon the State to justify the appointment by making available the records. The said records should disclose the special circumstances justifying such appointment. If the record do not disclose any such special circumstances then the order of appointment cannot be sustained and is liable to be quashed. The letter of the MLA do not disclose the reasons for appointment. The order of the Hon'ble Minister do not disclose the reasons. The record also do not disclose any other material justifying such appointment. The letter discloses a request is made to the Chief Minister. On the basis of the letter Hon'ble Law Minister has directed the Law Secretary to take steps to appoint Special Public Prosecutor. Therefore, from the records no reasons for dislodging the services of the Public Prosecutor is made out. No special circumstances justifying such appointment is forth coming. The Government had no intention of appointing the Special Public Prosecutor on its own. It did not notice that no request for such appointment came from the relatives of the victims. It failed to notice the request is from an M.L.A. of Srinivasapura Taluk and Chairman of Mysore Sales International Limited, which did not disclose his relation to the victim nor any reasons and that he has nothing to do with the crime number referred to by him in his letter.

20.7. By relying on the **K.V. Shiva Reddy** case, his submission is that the appointment of a Special Public Prosecutor cannot be made as a matter of course or merely at the request of private individuals or interested parties. Such an appointment, according to him, can be made



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only when special circumstances exist warranting displacement of the regular Public Prosecutor.

20.8. Learned Senior Counsel further submits that, once the appointment of a Special Public Prosecutor is challenged before this Court, the State is under an obligation to place the original records before the Court and demonstrate the existence of special circumstances which necessitated such appointment. In the absence of any such material on record, it is contended that the appointment cannot be sustained.

20.9. It is his submission that, in the present case, neither the impugned notification nor the records produced by the State disclose any special or exceptional circumstances warranting the re-appointment of Sri.Sadashiva Murthy as the Special Public Prosecutor. According to him, there is no material on record to indicate any deficiency in the conduct of the prosecution by the regular Public Prosecutor or any other circumstance justifying the appointment of a Special Public Prosecutor.



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20.10. Learned Senior Counsel therefore contends that the impugned notification has been issued mechanically, without any application of mind and solely at the instance of respondent No.6 - Seminary. Such an appointment, according to him, is contrary to the principles laid down in ***K.V. Shiva Reddy*** and is therefore liable to be set aside.

20.11. It is thus submitted that the impugned notification dated 15.09.2023 appointing Sri Sadashiva Murthy as the Special Public Prosecutor is arbitrary, unsupported by any special circumstances and consequently liable to be quashed.

20.12. He relies on ***Mukul Dalal Vs. Union of India***² more particularly para 9 and 10 thereof, which are reproduced hereunder for easy reference;

9. Two questions have now to be dealt with- whether as a rule whenever there is a request made by a private complainant for the appointment of a Special Public Prosecutor, should the same be accepted and whether such Special Public Prosecutor should be paid by the private party availing his services. In most of the States, as we have already observed, the Remembrancer of Legal Affairs looks after the State litigations. He is a responsible officer and normally with judicial experience. When an application for the services of

² AIR Online 1988 SC 19



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a Special Public Prosecutor or an Assistant Public Prosecutor is made in a given case the power would be vested in him to examine the facts and take decision as to whether the case merits the appointment of a Special Public Prosecutor or an Assistant Public Prosecutor. It would not be appropriate to accept the position that whenever an application is made it should be allowed and a Special Public Prosecutor should be appointed would be contrary to the spirit of the scheme of the Code. There may be cases where a powerful complainant may have begun a proceeding to victimize his opponent. If in such a case the State concedes to the request for appointment of a Special Public Prosecutor there will be travesty of justice. Without screening on the basis of guidelines prescribed or to be prescribed, the services of a Special Public Prosecutor should not be made available to a private complainant. The primacy given to the Public Prosecutor under the scheme of the Code has a social purpose and the same would be lost if the procedure adopted by Rule 22 of Maharashtra Rules referred to above is accepted or what the High Court has indicated is adopted. We are inclined to observe that the request for appointment of a Special Public Prosecutor should be properly examined by the remembrancer of Legal Affairs and only when he is satisfied that the case deserves the support of a Public Prosecutor or a Special Public Prosecutor that such a person should be appointed to be incharge of the case.

10. *The next question would be whether the Special Public Prosecutor should be permitted to be paid by the private complainant. There is considerable force in what has been stated by the Kerala High Court in the case we have referred to above. There may be certain cases where exception may be made, such as where the prosecutor is a public sector undertaking, a bank whether nationalised or not, an educational institution and the like. The rate of fees should be prescribed and the private complainant should be*



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called upon to deposit the fees either with the Remembrancer of Legal Affairs or a prescribed State agency from where the fees would be drawn by the Special Public Prosecutor. To leave the private complainant to pay to the Special Public Prosecutor would indeed not be appropriate. We would make it clear that we do not support the conclusion of the High Court that as a rule whenever there is request of appointment of a Special Public Prosecutor or an Assistant Public Prosecutor, the same should be accepted. The Remembrancer of Legal Affairs should scrutinise every request, keeping a prescribed guideline in view and decide in which cases such request should be accepted, keeping the facts of such case in view. Ordinarily the Special Public Prosecutor should be paid out of the State funds even when he appears in support of a private complainant but there may be some special case where the Special Public Prosecutor's remuneration may be collected from the private source. In such cases the fees should either be deposited in advance or paid to a prescribed State agency from where the Special Public Prosecutor could collect the same. In view of these conclusions and our disagreeing with the view of the High Court, the appeals shall stand allowed. Rule 22 of the Maharashtra Rules, referred to above, in our view is bad and the State Government should properly modify the same keeping our conclusions in view. The Remembrancer of Legal Affairs of the Maharashtra Government will now decide as to whether in the three cases referred to here, the services of a Special Public Prosecutor, a Public Prosecutor or an Assistant Public Prosecutor should be provided and in case he comes to the conclusion that such provision should be made, he should decide as to whether the State administration should pay for such Public Prosecutor or the private complainant should bear the same. There would be no order as to costs.



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20.13. By relying on the ***Mukul Dalal*** case, learned Senior Counsel submits that the appointment of a Special Public Prosecutor cannot be made as a matter of routine merely because a private complainant or an interested party seeks such appointment. According to him, every request for appointment of a Special Public Prosecutor is required to be independently scrutinised by the competent authority, which must satisfy itself that the facts and circumstances of the case warrant such appointment.

20.14. Learned Senior Counsel further submits that the statutory scheme under Section 24 of the Cr.P.C. accords primacy to the office of the Public Prosecutor and that displacement of the regular Public Prosecutor can be justified only in exceptional circumstances. The appointment of a Special Public Prosecutor, therefore, must be founded upon objective considerations and special circumstances, which must be discernible from the records.

20.15. It is his submission that, in the present case, the re-appointment of Sri.Sadashiva Murthy has been made solely on the basis of repeated requests made by respondent No.6-Seminary



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and not on the basis of any independent satisfaction recorded by the State Government. There is nothing on record to indicate that the Government examined whether the nature of the case required appointment of a Special Public Prosecutor or whether the services of the regular Public Prosecutor were inadequate.

20.16. Learned Senior Counsel contends that the records do not disclose any guidelines having been followed, any special circumstances having been considered or any reasons having been recorded by the Government while issuing the impugned notification dated 15.09.2023. In the absence of such material, the impugned appointment, according to him, is arbitrary, mechanical and contrary to the law laid down by the Hon'ble Supreme Court in ***Mukul Dalal***.

20.17. Learned Senior Counsel therefore submits that the impugned notification re-appointing Sri.Sadashiva Murthy as the Special Public Prosecutor is liable to be quashed.

20.18. He relies on the decision of the Hon'ble Madhya Pradesh High Court in ***Pawan Kumar Saraswat & Anr., vs. State of Madhya***



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Pradesh and others³ more particularly para 8, 9 and 12 thereof, which are reproduced hereunder for easy reference;

8. *Supreme court in the matter of Mukul Dalal and others Vs. Union of India and others reported in (1988) 3 SCC 144 taking note of the fact that office of public prosecutor is public one has held that while considering the application for appointment of Special Public Prosecutor it is required to be examined whether the case merits the appointment of a Special Public Prosecutor and the preposition that whenever an application is made it should be allowed and a Special Public Prosecutor should be appointed is contrary to the spirit of the scheme of the Code. It has been noted that there may be cases where a powerful complainant may begin a proceeding to victimize his opponent and if in such a case the state concedes to the request for appointment of a Special Public Prosecutor there will be travesty of justice.*

9. *The Division Bench of this court in the matter of Sunil Kumar @ Chander Salariya Vs. State of MP and others reported in 1992 MPLJ 772 has held that State can exercise the power under Section 24(8) of Cr.P.C. only in exceptional cases and for the reasons to be recorded and if the appointment order does not disclose any reason for appointment of Special Public Prosecutor and the order further reads that government would not pay any fees to the public prosecutor, the conclusion would be that the public prosecutor was appointed not for any necessity but to please and satisfy the relations of the deceased.*

12. *Not merely this it is also the settled position in law that Special Public prosecutor should ordinarily be paid from funds of the State and only in special cases the remuneration of special public*

³ Writ No.2122 of 2017 dated 11.12.2017



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prosecutor can be collected from the private sources. Clarifying this position, the Supreme court in the matter of Mukul Dalal (supra) has held as under:

"10. The next question would be whether the Special Public Prosecutor should be permitted to be paid by the private complainant. There is considerable force in what has been stated by the Kerala High Court in the case we have referred to above. There may be certain cases where exception may be made, such as where the prosecutor is a public sector undertaking, a bank whether nationalised or not, an educational institution and the like. The rate of fees should be prescribed and the private complainant should be called upon to deposit the fees either with the Remembrancer of Legal Affairs or a prescribed State agency from where the fees would be drawn by the Special Public Prosecutor. To leave the private complainant to pay to the Special Public Prosecutor would indeed not be appropriate. We would make it clear that we do not support the conclusion of the High Court that as a rule whenever there is request of appointment of a Special Public Prosecutor or an Assistant Public Prosecutor, the same should be accepted. The Remembrancer of Legal Affairs should scrutinise every request, keeping a prescribed guideline in view and decide in which cases such request should be accepted, keeping the facts of such case in view. Ordinarily the Special Public Prosecutor should be paid out of the State funds even when he appears in support of a private complainant but there may be some special case where the Special Public Prosecutor's remuneration may be collected from the private source. In such cases the fees should either be deposited in advance or paid to a prescribed State agency from where the Special Public Prosecutor could collect the same. In view of these conclusions and our



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disagreeing with the view of the High Court, the appeals shall stand allowed. Rule 22 of the Maharashtra Rules, referred to above, in our view is bad and the State Government should properly modify the same keeping our conclusions in view. The Remembrancer of Legal Affairs of the Maharashtra Government will now decide as to whether in the three cases referred to here, the services of a Special Public Prosecutor, a Public Prosecutor or an Assistant Public Prosecutor should be provided and in case he comes to the conclusion that such provision should be made, he should decide as to whether the State administration should pay for such Public Prosecutor or the private complainant should bear the same. There would be no order as to costs."

20.19. By relying on the **Pawan Kumar Saraswat** case, he submits that the principles laid down in **Mukul Dalal** and **K.V. Shiva Reddy** have been reiterated.

20.20. He relies on **Rajendra Nigam vs. State of M.P. & Ors.**,⁴ more particularly para 9 and 10 thereof which are reproduced hereunder for easy reference;

9. *In the matter of Abdul Khader v. Government of Kerala, I (1993) CCR 347, Kerala High Court has observed that the mere fact that the accused in a particular case are engaging a leading criminal Lawyer is hardly sufficient to make it a special situation warranting appointment of a Special Public Prosecutor. If the norm is accepted by Government that a Special Public Prosecutor shall be appointed when accused engages a competent or leading Advocate, it is likely to bring about*

⁴ 1998 CrLJ 998



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anomalous situation because in very many Sessions trials accused would engage leading criminal Lawyers to defend them. The Government in such case would be obliged to appoint Special Public Prosecutor in all such cases where a leading Lawyer is defending the accused, if such a norm is accepted. The Court further observed that quite evidently that is not the purpose for which Section 24(8) of the Code is provided. The philosophy involved which can be discerned from the subsection is two-fold. First is, there should be special circumstances for making such appointment. Second for appointing a Special Public Prosecutor, Government shall consider a more experienced Advocate for the assignment. The very idea behind conferment of the power on a Special Public Prosecutor is to meet special situations. In other words, a Special Public Prosecutor is not to be appointed in ordinary circumstances. In the instant case applying the above principles, it does not appear that the case is of special importance or there are special reasons for appointing the Special Public Prosecutor. The order of the appointment issued by the State Government does not justify itself when it is tested at touchstone of fair trial or at touch stone of statutory requirements.

10. *It would be important to mention and consider that the respondent No. .3 is appearing for respondent No. 4 in Civil Suit No. 75-A/94, moved various applications in the said matter, appeared in Civil Revision No. 1573/95, also appearing in a private complaint instituted by the respondent No. 4 for charges punishable under Section 406, IPC read with Section 6(2) of the Dowry Prohibition Act, pending before the Judicial Magistrate, 1st Class, Jabalpur (Mr. Umesh Shrivastava) as Criminal Case No. 97/95, in Civil Suit No. 62-B/94 a matter relating to Guardians & Wards Act. Though this Court is not saying anything against the respondent No. 3, but as his appointment is under challenge, the Court has to consider that the justice should not only be done, but it should*



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appear to have been done. The appointment of respondent No. 3 as a Special Public Prosecutor would certainly lead to an apprehension in the mind of the accused that in place of a Prosecutor, a Persecutor has been appointed.

20.21. By relying on the ***Rajendra Nigam*** case, learned Senior Counsel submits that a Special Public Prosecutor can be appointed only in special circumstances and not in the ordinary course. Mere engagement of eminent counsel by the accused or the sensitivity of the case would not by itself justify such appointment.

20.22. Learned Senior Counsel further submits that the appointment of a person as a Special Public Prosecutor should not give rise to a reasonable apprehension in the minds of the accused that, instead of an independent prosecutor, a partisan persecutor has been appointed. According to him, justice should not only be done, but should also appear to have been done.

20.23. It is therefore contended that, in the facts of the present case, the re-appointment of Sri. Sadashiva Murthy gives rise to a reasonable apprehension of bias in the minds of the



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petitioners and, consequently, the impugned notification is liable to be quashed.

20.24. He relies upon the decision in ***Commissioner of Police, Bombay vs. Gordhandas Bhanji.***⁵ more particularly para nos. 8, 9, 10 and 11 thereof, which are reproduced hereunder for easy reference;

8. It will be necessary at this stage to determine whether this was a cancellation by the Commissioner of on his own authority acting in the exercise of some power which was either vested in him or of which he bona fide believed himself to be possessed, or whether he merely acted as a post office in forwarding orders issued by some other authority. We have no hesitation in reaching the conclusion that this is not an order of cancellation by the Commission- er but merely intimation by him of an order passed and made by another authority, namely the Government of Bombay.

9. An attempt was made by referring to the Commissioner's affidavit to show that this was really an order of cancellation made by him and that the order was his order and not that of Government. We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

⁵ AIR 1952 SC 16



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10. *Turning now to the language used, we are clear that by no stretch of imagination can this be construed to be an order which in effect says :--*

"I, so and so, by virtue of the authority vested in me, do hereby order and direct this and that." If the Commissioner of Police had the power to cancel the license already granted and was the proper authority to make the order, it was incumbent on him to say so in express and direct terms. Public authorities cannot play fast and loose with the powers vested in them, and persons to whose detriment orders are made are entitled to know with exactness and precision what they are expected to do or forbear from doing and exactly what authority is making the order.

11. *But if there is ambiguity or doubt in the language used here a glance at the surrounding circumstances will dispel it. What was the position at the time ? Permission was first refused and then granted, then suspended and the respondent was told to await, not the Commissioner's orders, but those of Government. Then comes the letter in question which conveys those orders. So also there is the conduct of the Commissioner not long after. The respondent's solicitors placed the same construction on the order of the 30th September as we do and asked the Commissioner how Government could interfere with a permission granted by him. They said on the 18th November 1947 :-*

"Our client has been advised that the authority to grant permission is in you acting in consultation with the Advisory Board. It is difficult to understand how the Government can interfere with the permission granted by you."

The Commissioner's reply dated 3/4th December, 1947, was:--



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"I write to inform you that permission granted to your client was cancelled under the orders of the Government who may be approached..."

20.25. By relying on the ***Gordhandas Bhanji's*** case, learned Senior Counsel submits that public orders passed by statutory authorities are required to speak for themselves and must be construed on the basis of the language employed therein. Such orders cannot subsequently be supplemented, explained or improved upon by way of affidavits or oral submissions.

20.26. Learned Senior Counsel further submits that where a statutory authority exercises power, the order must clearly disclose the authority under which such power is exercised as also the reasons which weighed with the authority while passing the order. In the absence of the same, the order would be liable to be held arbitrary and unsustainable.

20.27. It is his submission that the impugned notification does not disclose any reasons for the re-appointment of Sri. Sadashiva Murthy as the Special Public Prosecutor, nor does it indicate any special circumstances justifying



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such appointment. According to him, the validity of the impugned notification cannot be sustained on the basis of subsequent explanations offered by the respondents in their statement of objections or otherwise.

20.28. Learned Senior Counsel therefore contends that the impugned notification is liable to be tested only on the reasons contained therein and, since the notification does not disclose any reasons whatsoever for such re-appointment, the same is liable to be quashed.

20.29. Learned Senior Counsel submits that the appointment of a Special Public Prosecutor at the cost of a private party is impermissible in law. According to him, prosecution of criminal offences is a sovereign function of the State and cannot be outsourced to the complainant or any private party. The fact that respondent No.6-Seminary has agreed to bear the fee and remuneration payable to the Special Public Prosecutor, according to him, is contrary to law and opposed to the principles laid down by the Courts in the decisions referred to supra.



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20.30. Learned Senior Counsel further submits that a Public Prosecutor is not a mere mouthpiece of the State, much less of the complainant. A Prosecutor cannot act as a mechanical instrument for securing conviction. Being an officer of the Court, a Prosecutor owes a duty not only to the State but also to the accused and is required to ensure that a fair trial is conducted. The Prosecutor is therefore required to discharge his duties impartially, fairly and without fear, favour or external influence.

20.31. It is his submission that Sri.Sadashiva Murthy, having been appointed at the instance of respondent No.6 and being remunerated by the complainant institution, has already exhibited a partisan approach. According to him, such an appointment is likely to result in serious prejudice to the petitioners, who are accused in the criminal proceedings.

20.32. Learned Senior Counsel has also made several allegations regarding the conduct of Sri.Sadashiva Murthy and contends that he is inimically disposed towards the petitioners. It is submitted that, in view of his conduct, the petitioners have a reasonable apprehension



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that they would not receive a fair trial if Sri.Sadashiva Murthy continues as the Special Public Prosecutor. According to him, the petitioners, being accused, are presumed to be innocent until proven guilty and any conduct suggestive of a preconceived notion regarding their guilt is contrary to the basic principles of criminal jurisprudence.

20.33. Learned Senior Counsel further submits that Sri.Sadashiva Murthy was initially appointed as the Special Public Prosecutor in the year 2014 and that, despite the passage of several years, the trial has not substantially progressed. Referring to the order sheets and the details extracted in paragraph 27 of the petition, he submits that there was hardly any progress in the proceedings between the years 2015 and 2020. It is contended that, in view of the lack of progress, Sri.Sadashiva Murthy came to be removed as the Special Public Prosecutor in the year 2020. Thereafter, Sri.Chinnappa Harsoor was appointed, followed by entrustment of the matter to the regular Public Prosecutor. Before any substantial progress could be made, Sri.Sadashiva Murthy again came to be



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re-appointed as the Special Public Prosecutor on 02.11.2023. According to learned Senior Counsel, even thereafter there was no progress in the matter until this Court stayed the said appointment and entrusted the matter to the regular Public Prosecutor.

20.34. It is further submitted that, once the State had removed Sri.Sadashiva Murthy from the office of Special Public Prosecutor, his subsequent re-appointment was wholly unwarranted. According to learned Senior Counsel, the very fact of his removal indicates that the State had lost confidence in him. It is alleged that Sri.Sadashiva Murthy, by virtue of his influence as a former Director of Prosecution, secured cancellation of the appointment of Sri.Chinnappa Harsoor and procured his own re-appointment. Learned Senior Counsel submits that a Special Public Prosecutor should have no personal interest in the outcome of the case and must remain independent and detached. In the present case, according to him, such independence is absent. Learned Senior Counsel has also made allegations



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regarding sensationalisation of the case and tutoring of witnesses.

20.35. He submits that the power under Sub-section (8) of Section 24 of the Cr.P.C. is an exceptional power and can be exercised only in rare and exceptional circumstances. The said power, according to him, cannot be exercised merely to replace the regular Public Prosecutor at the request of an interested party. The Government, while exercising such power, is required to act with utmost care and only after due application of mind to the relevant facts and circumstances.

20.36. Learned Senior Counsel lastly submits that though an accused has no right to choose either the Court or the Prosecutor, every accused is constitutionally entitled to a fair trial. According to him, the petitioners entertain a reasonable apprehension that they would not receive a fair and impartial trial if Sri.Sadashiva Murthy continues as the Special Public Prosecutor. He submits that there is a legitimate expectation that a Prosecutor would act fairly, objectively and impartially, and that the role of the Prosecutor is to prosecute and



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not persecute. The petitioners therefore apprehend that they would be persecuted rather than prosecuted.

20.37. On all the aforesaid grounds, learned Senior Counsel submits that the writ petition deserves to be allowed and the reliefs sought for therein be granted.

21. Sri.C.S.Pradeep., learned counsel for respondent No.6 submits that;

21.1. Respondent No.6-St. Peter's Pontifical Seminary, Bengaluru, is a premier institution for the training of Roman Catholic priests and is governed by the Board of Bishops of Karnataka and Tamil Nadu. The Archbishop of Bengaluru is the Chairman of the Board of Bishops, while the Bishop of Dharmapuri serves as its Secretary. The Rector of the Seminary is appointed on the recommendation of the Board of Bishops with the approval of the Pope at the Vatican.

21.2. The homicidal death of the Rector, Fr.Thomas K.J., being a matter of grave concern, the Seminary has treated the issue with utmost seriousness.



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- 21.3. He further submits that the incident has also been viewed seriously by the Vatican. The complaint in the matter was lodged by the Procurator of the Seminary, who was residing adjacent to the deceased Rector. Having regard to the gravity and sensitivity of the incident, a Special Investigation Team was constituted by the Commissioner of Police to investigate the matter. According to him, the case has ramifications not only within the State but also for the Christian community at large.
- 21.4. Learned counsel submits that it was only after a thorough investigation that the charge sheet came to be filed implicating the accused persons. Considering the seriousness of the crime and the public interest involved, the Government appointed Sri.Sadashiva Murthy as the Special Public Prosecutor, taking into account his vast experience, expertise and his previous service as Director of Prosecution.
- 21.5. Elaborating on the credentials of Sri.Sadashiva Murthy, learned counsel submits that he enrolled as an Advocate in the year 1973 and commenced practice at Mysuru and Bengaluru. He joined Government service as an Assistant



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Public Prosecutor on 30.09.1977 and was subsequently promoted as Senior Public Prosecutor, Joint Director, Deputy Director and ultimately as Director of Prosecution. He has also conducted prosecution in several sensitive and high-profile criminal cases and retired from service in the year 2007 with an unblemished record.

21.6. Learned counsel submits that Sri.Sadashiva Murthy is an independent and competent prosecutor who has rendered nearly three decades of distinguished service without any adverse remarks. The allegations made against him by the petitioners are stated to be false, frivolous and vexatious and are made only with a view to avoid being prosecuted by an experienced prosecutor. It is submitted that as many as twenty-two bail applications filed by the accused before the Sessions Court and this Court were opposed by Sri.Sadashiva Murthy and were rejected. According to him, it is for this reason that the petitioners seek his removal.

21.7. Learned counsel further submits that the case records are voluminous and Sri.Sadashiva



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Murthy, having been associated with the matter for several years, has thoroughly studied the records and is fully conversant with all aspects of the case. According to him, any new prosecutor, including a regular Public Prosecutor, would require considerable time to acquaint himself with the records, thereby causing further delay in the trial.

21.8. It is his submission that the delay in the trial is attributable solely to the numerous proceedings initiated by the accused before this Court and the Hon'ble Supreme Court. According to him, the petitioners cannot take advantage of delays occasioned by their own actions and seek removal of the Special Public Prosecutor on that basis. It is also submitted that the quashing petitions, bail applications and appeals filed by the accused have all been successfully contested by Sri.Sadashiva Murthy, resulting in their dismissal.

21.9. Learned counsel further submits that though proceedings against certain additional accused came to be quashed, the Hon'ble Supreme Court has reserved liberty to the Trial Court to summon such persons under Section 319 of



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Cr.P.C., if evidence emerging during trial discloses their involvement. Thus, according to him, the issue regarding involvement of such persons has not attained finality.

21.10. Learned counsel submits that the removal of Sri.Sadashiva Murthy in the year 2020 was occasioned by a representation made by accused No.11 under the letterhead of an organisation, without disclosing that she herself was an accused in the case. Upon learning these facts, the Archbishop of Bengaluru requested the Government to re-appoint Sri.Sadashiva Murthy as Special Public Prosecutor. Though the request was initially rejected, the rejection was not on account of any deficiency in his competence or integrity.

21.11. It is submitted that the Government had directed respondent No.6 to bear the remuneration payable to the Special Public Prosecutor and the Board of Bishops agreed to the same by its communication dated 05.01.2023. Thereafter, the impugned notification dated 15.09.2023 came to be issued appointing Sri.Sadashiva Murthy as the Special Public Prosecutor.



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21.12. Learned counsel contends that the allegations made against Sri.Sadashiva Murthy are wholly baseless. It is pointed out that his initial appointment in the year 2014 was never challenged by the petitioners and that the present challenge has been mounted only when the matter has reached the stage of trial and Sri.Sadashiva Murthy is fully prepared to conduct the prosecution. It is further submitted that Sri.Sadashiva Murthy has conducted prosecution in several important and sensitive cases, including the Chamrajpet Gowramma case, the Serial Bomb Blast case and matters on behalf of the Lokayukta.

21.13. Learned counsel submits that the earlier rejection of the request for re-appointment was only because Sri.Sadashiva Murthy was then discharging his duties as Special Public Prosecutor for the Karnataka Lokayukta in several matters on a day-to-day basis. Upon his relinquishing those responsibilities, he became available for appointment in the present case. Hence, according to him, neither his earlier removal nor the rejection of the request for



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re-appointment has any bearing on his competence or suitability.

21.14. On the contrary, learned counsel submits that the very fact that Sri.Sadashiva Murthy was entrusted with important responsibilities by the Lokayukta demonstrates his integrity, competence and professional standing.

21.15. Learned counsel further submits that the case has remained pending for more than twelve years due to repeated applications and proceedings initiated by the accused and not on account of any act or omission on the part of

21.16. Sri. Sadashiva Murthy. According to him, if at all the delay has benefited anyone, it is the accused and not the complainant.

21.17. Insofar as remuneration is concerned, learned counsel submits that the fees payable to the Special Public Prosecutor are in accordance with the rates prescribed by the Remembrancer of Legal Affairs or the prescribed State authority. The remuneration is therefore not arbitrarily fixed and the payment by respondent No.6 is strictly in accordance with the directions issued by the State Government.



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21.18. On all the aforesaid grounds, learned counsel submits that the writ petition is devoid of merit and is liable to be dismissed.

21.19. He relies on the decision in ***P.L.G. Manu Vs. State of Karnataka and Others***,⁶ more particularly para 11 thereof, which is reproduced hereunder for easy reference;

11. The impugned notification issued by the State Government is perverse, contrary to all canons of interest of justice and liable to be quashed. He contended that, in view of the provisions of Section 24(8) of Criminal Procedure Code, 1973 Special Public Prosecutor can be appointed only under special circumstances, wherein public interest is involved. The Government does not have an unfettered power or discretion to make appointment. The appointment of Special Public Prosecutor in the present case is contrary to the judicial pronouncement made by this Court and the Hon'ble Supreme Court and the same cannot be sustained.

21.20. By relying on the ***P.L.G. Manu's*** case, learned counsel submits that the power under Sub-section (8) of Section 24 of the Cr.P.C., to appoint a Special Public Prosecutor can be exercised only in exceptional circumstances and where public interest so demands.

21.21. Learned counsel submits that the present case involves the homicidal death of the Rector of a

⁶ 2019 SCC Online Kar 3728



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premier religious institution and has significant ramifications for the Seminary and the Christian community at large. Having regard to the nature and sensitivity of the case, the State was justified in appointing an experienced Special Public Prosecutor.

21.22. He therefore contends that the impugned notification has been issued after considering the special circumstances of the case and cannot be said to be arbitrary or contrary to law. The appointment of Sri.Sadashiva Murthy, according to him, is fully justified in the facts and circumstances of the present case.

21.23. He relies on ***Sri.Pampavathy vs. State of Karnataka***⁷ more particularly para 12 thereof, which is reproduced hereunder for easy reference;

12. The other aspect is with regard to the Special Public Prosecutor not having any claim with the Government regarding his remuneration. In that regard para 32 of the aforesaid order states that ordinarily the Special Public Prosecutor should be paid out of the State funds even if he appears in support of a private complainant. But there may be some special cases where Special Public Prosecutors remuneration may be collected from private sources. In the instant case, taking note of the said observations of this court, the State

⁷ WP No.104234-104235 of 2018



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Government has stated in the impugned Notification that the Special Public Prosecutor would have no claim with the Government regarding his remuneration as he has been appointed at the instance of the applicants-respondent Nos.4 and 5 herein. As already noted, in the case of K.V.Shiva Reddy, it has been held that the complainant should be called upon to deposit the fees in advance to the Government and the Special Public Prosecutor be paid out of the said amount by the Government. By such a condition being prescribed in the impugned order, I do not think that there is any violation of the right of the accused towards a fair trial in the proceedings before this Court.

21.24. By relying on the ***Sri.Pampavathy's*** case, learned counsel submits that there is no legal prohibition against a private complainant or an interested institution bearing the remuneration payable to a Special Public Prosecutor, provided such payment is made in the manner approved by the State and in accordance with the rates prescribed by the competent authority.

21.25. Learned counsel submits that in the present case, the remuneration payable to Sri.Sadashiva Murthy is in accordance with the rates prescribed by the State and respondent No.6 has agreed to bear such expenditure only pursuant to the directions issued by the Government. Therefore, according to him, the mere fact that respondent No.6 is bearing the



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remuneration would not, by itself, give rise to any apprehension of bias or affect the fairness of the trial.

21.26. Learned counsel therefore contends that the payment of remuneration by respondent No.6 does not vitiate the appointment of Sri.Sadashiva Murthy as the Special Public Prosecutor and cannot be a ground for interference by this Court.

21.27. Learned counsel further submits that the decision in ***Sri Pampavathy v. State of Karnataka*** was rendered after considering the earlier decision of this Court in ***K.V. Shiva Reddy***. He therefore contends that the observations made in ***K.V. Shiva Reddy*** regarding the manner of payment of fees to a Special Public Prosecutor stand clarified by the subsequent decision in ***Sri Pampavathy***.

21.28. According to learned counsel, ***Sri Pampavathy*** has categorically held that where the Government directs that the remuneration of the Special Public Prosecutor shall be borne by the complainant and such remuneration is paid in accordance with the rates prescribed by the



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State, the same would not, by itself, infringe the right of the accused to a fair trial.

21.29. Learned counsel therefore submits that the contention of the petitioners that the appointment of Sri.Sadashiva Murthy is vitiated merely because respondent No.6 has agreed to bear his remuneration is liable to be rejected.

21.30. He relies on decision in ***Sri.Balachandra Prabhakar Kodlekare vs. State of Karnataka.***⁸ more particularly unnumbered para thereof, which is reproduced hereunder for easy reference;

The learned counsel for the petitioners remains absent though the matter is called out time and again. A request for adjournment is made. However, since this matter was specifically adjourned to this day at the instance of the learned counsel for the petitioners, the petitions are dismissed for non-prosecution.

21.31. By relying on the ***Sri.Balachandra Prabhakar Kodlekare's*** case, learned counsel submits that the conduct of the petitioners in repeatedly initiating proceedings and not diligently prosecuting the same disentitles them to any discretionary relief under Article 226 of the Constitution of India.

⁸ WP No.77242 of 2013 dated 26.08.2013



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21.32. Learned counsel therefore submits that the present petition, apart from being devoid of merit, is also liable to be dismissed on the ground that the petitioners have not approached this Court with bona fides and have adopted proceedings only with a view to delay the trial.

21.33. He relies on ***State of Maharashtra vs. Prakash Prahlad Patil***⁹ more particularly 2, 5, 6 and 7 thereof, which are reproduced hereunder for easy reference;

2. The basic grievance of Respondent 1 was that the appointment of Respondent 3 as a Special Public Prosecutor was in violation of the scheme of Section 24(8) of the Code of Criminal Procedure, 1973 (in short "the Code") and Rule 22 of the Rules for the Conduct of the Legal Affairs of the Government, 1984 (in short "the Rules"). It was also the stand of Respondent 1 that the view expressed by this Court in Mukul Dalal v. Union of India [(1988) 3 SCC 144 : 1988 SCC (Cri) 566] was not kept in view while making the appointment.

5. The scope for judicial review has been examined by this Court in several cases. It has been consistently held that the power of judicial review is not intended to assume a supervisory role or don the robes of the omnipresent. The power is not intended either to review governance under the rule of law nor do the courts step into the areas exclusively reserved by the suprema lex to other organs of the State. A mere wrong

⁹ 2009 (12) SCC 159



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decision, without anything more, in most of the cases will not be sufficient to attract the power of judicial review. The supervisory jurisdiction conferred upon a court is limited to see that the authority concerned functions within its limits of its authority and that its decisions do not occasion miscarriage of justice.

6. *The courts cannot be called upon to undertake governmental duties and functions. The courts should not ordinarily interfere with a policy decision of the State. While exercising power of judicial review the court is more concerned with the decision-making process than the merit of the decision itself.*

7. *In the instant case, acting on a petition filed by close relatives of a victim, decisions have been taken at various levels. The High Court was not justified to pick up stray sentences from the records to conclude that there was non-application of mind. In any event, the appointment of a Special Public Prosecutor to conduct a proceeding does not in any way cause prejudice to the accused. In that sense the writ petition before the High Court was wholly misconceived. The impugned judgment of the High Court is set aside. Since the trial appears to have been held up, we direct that the trial court shall make all possible endeavours to see that the trial is completed expeditiously and in any event not later than by the end of October 2009. The appeal is, accordingly, allowed. Criminal Miscellaneous Petition No. 4051 of 2009 also stands disposed of.*

21.34. By relying on the ***Prakash Prahla Patil's*** case, learned counsel submits that the scope of judicial review in matters relating to appointment of a Special Public Prosecutor is limited. According to him, while exercising



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jurisdiction under Article 226 of the Constitution, this Court is concerned primarily with the decision-making process and not with the merits of the decision itself.

21.35. Learned counsel submits that unless the decision is shown to be arbitrary, mala fide or one which results in miscarriage of justice, this Court ought not to interfere with the policy decision of the State in appointing a Special Public Prosecutor.

21.36. He further submits that the impugned appointment has been made after consideration at various levels in the Government and, therefore, it cannot be said that there has been any non-application of mind. According to him, stray notings in the Government file cannot be relied upon to contend otherwise.

21.37. Learned counsel lastly submits that the appointment of Sri.Sadashiva Murthy as Special Public Prosecutor does not, by itself, cause any prejudice to the petitioners and, therefore, the present writ petition is wholly misconceived and liable to be dismissed.



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21.38. He relies on the decision of this Court in ***Sri Jaikeshan Virwani vs. The State of Karnataka & Ors.***,¹⁰ more particularly para 2 and 3 thereof, which are reproduced hereunder for easy reference.

2. Learned counsel for the petitioner submits that absolutely no reasons are assigned in the impugned order Annexure-A to show the intention of the State Government as to why Special Public Prosecutor ('SPP' for short) is appointed in C.C. NO.22370/2009.

3. The above contention of the petitioner cannot be accepted. Under Section-24(8) of the Code of Criminal Procedure-1973, the State Government or the Central Government may appoint for the purposes of any case or class of cases, an advocate having practice of not less than ten years, as a SPP. The reasons could not be assigned for appointment of SPP. There is no doubt that all the administrative orders should be backed by the reasons. But in the matter on hand, the State Government has merely chosen to appoint the SPP to present its case. The petitioner cannot compel the State Government to appoint or not to appoint any person as SPP. It is for the State Government to decide appointment of SPP depending on the fact situation. Hence no interference is called for.

Petition fails and the same stands dismissed.

21.39. By relying on the ***Sri Jaikeshan Virwani's*** case, learned counsel submits that the petitioners cannot insist that reasons ought to

¹⁰ WP No.11623 of 2012 dated 29.08.2012



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have been expressly assigned in the notification appointing a Special Public Prosecutor.

21.40. Learned counsel submits that Sub-section (8) of Section 24 of the Code of Criminal Procedure confers discretion on the State Government to appoint a Special Public Prosecutor depending upon the facts and circumstances of a given case. The choice of a particular prosecutor, according to him, lies exclusively within the domain of the State Government and the accused cannot dictate either the appointment or non-appointment of a particular individual as a Special Public Prosecutor.

21.41. He therefore contends that merely because the impugned notification does not set out detailed reasons for the appointment of Sri.Sadashiva Murthy, the same cannot be said to be invalid or arbitrary. According to him, the impugned notification does not warrant interference by this Court in exercise of its writ jurisdiction.

21.42. On the basis of the aforesaid submissions, Sri.C.S. Pradeep, learned counsel appearing for respondent No.6, submits that the writ petition is devoid of merit and is liable to be dismissed.



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He further submits that the interim order of stay granted by this Court is required to be vacated so as to enable Sri Sadashiva Murthy to continue as the Special Public Prosecutor, he being, according to respondent No.6, the person best suited to conduct the prosecution in the present case.

21.43. Learned counsel further submits that the contention urged by the petitioners that Sri.Sadashiva Murthy is an interested person is wholly misconceived. Referring to the averments made in the petition that Sri.Sadashiva Murthy had appeared on behalf of the Archbishop in Crl.Misc.No.7830 of 2019 in his personal capacity, learned counsel submits that the mere fact that an advocate had earlier appeared for the Archbishop or for any person connected with the Seminary in an independent proceeding would not, by itself, disqualify him from being appointed as a Special Public Prosecutor in the present case. According to him, such prior professional engagement cannot be construed as giving rise to any bias or conflict of interest so as to invalidate his appointment as Special Public Prosecutor.



22. Learned AGA appearing for the State supports the appointment of Sri.Sadashiva Murthy as the Special Public Prosecutor in the present case.

22.1. Learned AGA reiterates that the appointment of a Public Prosecutor or a Special Public Prosecutor is entirely within the discretion of the State Government and that such discretion has been validly exercised in the present case.

22.2. He submits that the present case involves a large number of witnesses and voluminous documentary evidence. According to him, the prosecution of the case requires considerable time, effort and preparation. In view of the heavy workload already borne by the regular Public Prosecutor attached to the Court, the State considered it appropriate to appoint a Special Public Prosecutor to effectively conduct the prosecution.

22.3. Learned AGA further submits that the earlier removal of Sri.Sadashiva Murthy was occasioned at the instance of one of the co-accused and that the relevant facts in that regard were not within the knowledge of the



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Government at the relevant point of time. Subsequently, the Government desired to re-appoint Sri.Sadashiva Murthy as the Special Public Prosecutor. However, by then, Sri.Sadashiva Murthy had undertaken assignments on behalf of the Karnataka Lokayukta and was therefore unavailable. Now that he is no longer representing the Lokayukta and is available to conduct the present prosecution, the State has considered it appropriate to appoint him as the Special Public Prosecutor.

22.4. Learned AGA also submits that the delay in the trial cannot be attributed to Sri.Sadashiva Murthy. According to him, the delay has occurred on account of several proceedings initiated by the petitioners, repeated requests for adjournments and the filing of multiple petitions before various Courts. The petitioners, having contributed to the delay in the proceedings, cannot now rely upon the same as a ground to seek removal of the Special Public Prosecutor appointed by the State.



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- 22.5. Learned AGA submits that the prerogative of appointing a Prosecutor vests exclusively with the State. The accused have neither a right to seek appointment of a particular person as Prosecutor nor a right to object to the appointment of a person chosen by the State. According to him, the State has full faith and confidence in Sri.Sadashiva Murthy discharging his duties independently and in accordance with law. Having regard to his long experience of more than three decades as a Prosecutor, including his tenure as Director of Prosecution and his appearance in several important criminal matters, no fault can be found with the decision of the State in appointing him as the Special Public Prosecutor.
- 22.6. On the aforesaid grounds, learned AGA submits that the writ petition is devoid of merit and is liable to be dismissed.
23. Heard Sri.M.S.Shyam Sundar., learned Senior counsel appearing for the petitioners, Sri.Shamanth Naik., learned HCGP appearing for respondents No.1 to 4 and Sri.C.S.Pradeep., learned counsel appearing for respondent No.6. Perused papers.



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24. The points that would arise for determination are:

- (i) Whether the petitioners have made out a case for interference with the Notification dated 15.09.2023 issued by the State Government appointing respondent No.5 as the Special Public Prosecutor in exercise of powers under Sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973?***
- (ii) Whether the appointment/re-appointment of respondent No.5 as the Special Public Prosecutor is vitiated on account of non-application of mind, absence of special circumstances or arbitrariness in the exercise of power by the State Government?***
- (iii) Whether the fact that respondent No.6 has agreed to bear the remuneration payable to the Special Public Prosecutor renders the appointment illegal or gives rise to a reasonable apprehension of bias so as to affect the fairness of the trial?***
- (iv) Whether the petitioners have established a reasonable apprehension that continuation of respondent No.5 as the Special Public Prosecutor would result in denial of a fair and impartial trial?***
- (v) Whether, in the facts and circumstances of the case, the petitioners are entitled to a writ directing that accused persons be notified or heard before the***



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appointment of a Special Public Prosecutor under Sub-section (8) of Section 24 of the Code of Criminal Procedure?

(vi) What order?

25. This Court answers the above points as follows:
26. ***Answer to Point No.(i): Whether the petitioners have made out a case for interference with the Notification dated 15.09.2023 issued by the State Government appointing respondent No.5 as the Special Public Prosecutor in exercise of powers under Sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973?***
- 26.1. Sri.M.S.Shyam Sundar., learned Senior Counsel, submitted that the Notification dated 15.09.2023 re-appointing Sri.Sadashiva Murthy as the Special Public Prosecutor is, on the face of it, illegal and arbitrary. According to him, it has been issued only to get around the normal course of justice, and it deserves to be quashed.
- 26.2. He submitted that Sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 lays down only one minimum condition, namely ten years of practice as an advocate. This is only the starting eligibility. The power still has to be used in a fair, reasonable and honest manner.



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According to him, nothing in this case called for the appointment or re-appointment of a Special Public Prosecutor, and the re-appointment is therefore arbitrary and against the law.

26.3. He further submitted that this very Special Public Prosecutor had earlier been removed. The Seminary's request to re-appoint him had also been expressly rejected by the Government by order dated 17.03.2023. In spite of this, the Notification dated 15.09.2023 re-appointed him, without any fresh reason or new circumstance to justify it.

26.4. He submitted that an accused has no right to choose the Court or the Prosecutor, but that every accused has a right to a fair trial. He submitted that the petitioners have a real apprehension of being persecuted rather than prosecuted. On these grounds, he submitted that a clear case for interference is made out.

26.5. Sri.C.S.Pradeep., learned counsel for respondent No.6, submitted that the scope of judicial review in such matters is limited, that this Court is concerned only with the decision-making process and not with the merits of the



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decision, and that the appointment of a Special Public Prosecutor does not, by itself, cause any prejudice to the accused. He submitted that the petitioners have not come to this Court in good faith and are guilty of delay, and that the petition deserves to be dismissed and the interim stay vacated.

26.6. Sri.Shamanth Naik., learned High Court Government Pleader for respondents No.1 to 4, submitted that the appointment of a Public Prosecutor or a Special Public Prosecutor lies entirely within the discretion of the State Government, and that this discretion has been properly exercised. He submitted that the case has a large number of witnesses and a heavy volume of documents, and therefore needs a dedicated prosecutor. He submitted that the delay is caused by the accused. He also submitted that the accused have no right either to ask for a particular prosecutor or to object to the one chosen by the State.

26.7. Sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 reads as under:

24(8) *The Central Government or the State Government may appoint, for the purposes of any*



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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.

26.8. On a plain reading, the provision fixes only a minimum eligibility, namely ten years of practice. It does not make the appointment of a Special Public Prosecutor automatic. It also does not place such an appointment beyond the Judicial Review of this Court. The power is an enabling power. It has to be used fairly, and for reasons connected with a fair and impartial prosecution.

26.9. At the outset, this Court records that the competence and credentials of Sri.Sadashiva Murthy are not in question, and are, in fact, beyond doubt. He has had a long and distinguished career, has served as Director of Prosecution, and has retired with a clean record. What is under challenge is not the person, but the manner and the basis of the appointment, namely, that a named individual has been appointed at the specific request of respondent No.6-Seminary, who is the complainant.

26.10. On the scope of interference, this Court has considered ***State of Maharashtra vs.***



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Prakash Prahlad Patil [2009 (12) SCC 159], relied upon by the respondents. At paragraphs 5 and 6, it is held that judicial review is not meant to give the Court a supervisory role, that the Court is more concerned with the decision-making process than with the merits of the decision, and that the Court should not ordinarily interfere with a policy decision of the State. This Court respectfully accepts this as the correct limit of its power and does not sit in appeal over the State's choice.

26.11. At paragraph 7 of ***Prakash Prahlad Patil***, it was observed that the appointment of a Special Public Prosecutor causes no prejudice to the accused. But that observation was made in a case where decisions had been taken at several levels and no defect in the decision-making process had been shown. It does not protect an appointment made without application of mind or made on a wrong basis. The records here show only the complainant's request and its acceptance, and nothing else. On these facts, ***Prakash Prahlad Patil*** does not stand in the way of interference.



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26.12. In ***Mukul Dalal Vs. Union of India [AIR Online 1988 SC 19]*** at paragraph 9, the Hon'ble Supreme Court held that the office of the Public Prosecutor is a public office. It held that it is not proper to accept that a Special Public Prosecutor should be appointed every time an application is made. It further held that there may be cases where a powerful complainant starts a proceeding to victimise his opponent, and that to allow such a request would result in a travesty of justice. The Hon'ble Supreme Court explained that the primacy given to the Public Prosecutor under the scheme of the Code has a social purpose, which would be lost if such appointments were made merely on the request of a private complainant. This clearly shows that such an appointment can be interfered with when these safeguards are ignored.

26.13. On the objection of delay and lack of good faith, the respondents relied on ***Sri.Balachandra Prabhakar Kodlekare vs. State of Karnataka [WP No.77242/2013 dt. 26.08.13]***. That decision only records that certain petitions were dismissed for non-



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prosecution. It lays down no principle that takes away the right of the present petitioners. The Notification dated 15.09.2023 gives a fresh and separate cause of action, which the petitioners have challenged in time. The fact that the earlier appointment of the year 2014 was not challenged does not bar a challenge to the separate re-appointment of the year 2023, which was made after removal and after the express rejection dated 17.03.2023. There is, therefore, no bar of delay.

26.14. The main principle is simple. An accused has no right to choose, or to object to, the prosecutor who is to prosecute him. In the same way, a complainant can have no right to choose the prosecutor who is to prosecute the accused, and much less to have a particular person appointed by name. It is one thing for the State, on its own, to appoint a Special Public Prosecutor where the case needs special knowledge that the regular Public Prosecutor may not have. It is quite another thing for the State to appoint a named person at the specific request of the complainant. The first may be proper; the second is not, and it goes against



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the fairness that a criminal trial requires. It makes no difference whether the request comes from the complainant or from a third party. In ***Sri K.V. Shiva Reddy vs. State of Karnataka Rep. by its Secretary and Others [ILR 2005 Kar. 4780]***, Paragraph 29, the request had come from a third party, yet the same rule was applied, namely that the State must apply its mind and the records must show the reasons and the special circumstances for the appointment.

26.15. This Court answers Point No. (i) by holding that the petitioners have made out a case for interference with the Notification dated 15.09.2023 issued by the State Government appointing respondent No.5 as the Special Public Prosecutor in exercise of powers under Sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973.

27. **Answer to Point No.(ii): Whether the appointment/re-appointment of respondent No.5 as the Special Public Prosecutor is vitiated on account of non-application of mind, absence of special circumstances or arbitrariness in the exercise of power by the State Government?**



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- 27.1. Sri.M.S.Shyam Sundar., learned Senior Counsel, submitted that a Special Public Prosecutor cannot be appointed merely on the request of a private person or an interested party. He submitted that there must be special circumstances that justify setting aside the regular Public Prosecutor. He relied on ***Sri K.V. Shiva Reddy vs. State of Karnataka Rep. by its Secretary and Others***, paragraphs 32 and 35.
- 27.2. Relying on ***Mukul Dalal Vs. Union of India***, paragraphs 9 and 10, he submitted that such an appointment is not to be made as a routine matter, that every request must be examined on its own by the competent authority, and that primacy always stays with the regular Public Prosecutor.
- 27.3. Relying on ***Pawan Kumar Saraswat & Anr., vs. State of Madhya Pradesh [Writ No.2122/2017 dt. 11.12.2017]*** and others, paragraphs 8, 9 and 12, he submitted that these paragraphs follow ***Mukul Dalal*** and, referring to the Division Bench decision in ***Sunil Kumar @ Chander Salariya vs. State of M.P. [1992 MPLJ 772]***, Paragraph 3 held that



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the power under Sub-section (8) of Section 24 can be used only in exceptional cases and for reasons to be recorded.

27.4. Relying on ***Rajendra Nigam vs. State of M.P. & Ors [1998 CrLJ 998]***, paragraph 9, he submitted that a Special Public Prosecutor is not to be appointed in ordinary cases, and that the appointment order must justify itself when tested against the need for a fair trial and the requirements of the statute.

27.5. He submitted that a re-appointment made after removal needed a higher degree of care, and that no such reasons had been recorded. Relying on ***Commissioner of Police, Bombay vs. Gordhandas Bhanji [AIR 1952 SC 16]***, paragraphs 8 to 11, he submitted that the order must speak for itself and cannot be improved later by affidavits, objections or oral arguments. According to him, neither the records nor the order show any reason or special circumstance, and this shows non-application of mind and arbitrariness.

27.6. Sri.C.S.Pradeep., learned counsel for respondent No.6, relying on ***Sri Jaikeshan***



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Virwani vs. The State of Karnataka & Ors [WP No.11623/ 2012 dt. 29.08.12], paragraphs 2 and 3, submitted that reasons need not be given in the notification appointing a Special Public Prosecutor, and that the choice lies with the State. He submitted that special circumstances did exist, namely the murder of the Rector of a leading institution, which had an effect on the Christian community at large, along with the high credentials of the prosecutor. He relied on ***P.L.G. Manu Vs. State of Karnataka and Others [2019 SCC Online Kar 3728]***, paragraph 11. Relying on ***State of Maharashtra vs. Prakash Prahlad Patil*** paragraph 7, he further submitted that decisions had been taken at several levels, and that a few stray notings in the file cannot show non-application of mind.

27.7. Sri.Shamanth Naik., learned High Court Government Pleader for respondents No.1 to 4, submitted that the discretion lies with the State, and that the large volume of records justified a dedicated prosecutor. He submitted that the earlier removal had taken place at the instance of one of the co-accused, whose true



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position was not known to the Government at that time. He submitted that the prosecutor had later taken up work for the Karnataka Lokayukta and was not available then, but has since given up that work and is now available.

27.8. The main test comes from ***Sri K.V. Shiva Reddy vs. State of Karnataka Rep. by its Secretary and Others***. At paragraph 35, this Court held that, though the Government has the power to appoint a Special Public Prosecutor, such an appointment cannot be made as a matter of course. It held that, once the appointment is challenged, the State has a duty to justify it by producing the records, and that the records must show the special circumstances for the appointment. If they do not, the order cannot stand, and is liable to be quashed.

27.9. Applying this test, the records produced by the State show only three things

27.9.1. that respondent No.6-Seminary made a request,

27.9.2. that the request was accepted, and

27.9.3. that the impugned order was passed.



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27.10. Neither the note-sheet nor the order records any reason why a Special Public Prosecutor was needed in place of the regular Public Prosecutor. Nor do they show any special circumstance for setting aside the appointment of a regular Public Prosecutor or his replacement by a Special Public Prosecutor. The duty placed by **K.V. Shiva Reddy**, paragraph 35 to justify the appointment from the records, has therefore not been met.

27.11. This conclusion is supported by **Mukul Dalal vs. Union of India**, paragraph 9, which requires an independent examination by the competent authority and forbids appointment as a matter of course. It is also supported by **Pawan Kumar Saraswat & Anr., vs. State of Madhya Pradesh and others**, at paragraphs 8 and 9 of that decision, following **Sunil Kumar @ Chander Salariya [1992 MPLJ 772]**, paragraph 3, it is held that the power is to be used only in exceptional cases and for reasons to be recorded. It is further held that, where the order shows that the Government would not pay the fees, the inference is that the prosecutor was appointed



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not out of need, but to satisfy those who asked for him. That caution applies here, because the complainant-Seminary itself is to bear the fees.

27.12. In ***Rajendra Nigam vs. State of M.P. & Ors***, paragraph 9, it is held that a Special Public Prosecutor is not to be appointed in ordinary cases, that there must be special circumstances, and that the order must justify itself when tested against the need for a fair trial and the requirements of the statute. The impugned order does not justify itself in this way.

27.13. The respondents tried to supply, through the statement of objections and oral arguments, reasons that are not found in the order or in the records. These are the gravity of the offence, the credentials of the prosecutor, the workload of the regular Public Prosecutor, and the later availability of the prosecutor after his Lokayukta work. These later explanations cannot cure the defect.

27.14. In ***Commissioner of Police, Bombay vs. Gordhandas Bhanji***, paragraphs 9 and 10, the Hon'ble Supreme Court held that public orders



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made under statutory power must be read on the basis of the language used in the order itself and cannot be supported by later explanations of what the officer meant or intended. The impugned order must be judged on its own words, and on its own words it gives no reason.

27.15. The respondents' reliance on ***Sri Jaikeshan Virwani vs. The State of Karnataka & Ors***, paragraphs 2 and 3, does not help them. That decision holds that detailed reasons need not be written on the face of the notification, and that the accused cannot compel the State to appoint or not to appoint a particular person. It dealt with a simple appointment where no defect had been shown. It does not weaken the rule in ***K.V. Shiva Reddy*** that, once the appointment is challenged, the State must justify it from the records by showing special circumstances. The two operate at different stages, one at the stage of the notification, and the other at the stage of justification when the appointment is challenged. Here, even the records show no special circumstance, and the appointment is of a named person at the



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complainant's request, made after removal and after rejection. ***Jaikeshan Virwani's case*** is therefore different from the present case.

27.16. The respondents' reliance on ***P.L.G. Manu Vs. State of Karnataka and Others***, paragraph 11, in fact goes against them. That paragraph holds that a Special Public Prosecutor can be appointed only in special circumstances where public interest is involved, and that the Government does not have an unlimited power. Far from supporting this appointment, it strengthens the requirement of special circumstances, which are absent on the records here.

27.17. The caution in ***Prakash Prahlad Patil***, paragraph 7, against picking up stray sentences from the record to infer non-application of mind, is well taken. But the finding here does not rest on stray notings. It rests on the complete absence, in both the records and the order of any recorded reason or special circumstance. It also rests on the fact that the appointment is of a named person at the complainant's request, made after his removal and after the express rejection dated



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17.03.2023. This is not a case of a merely wrong decision. It is a case of an appointment made without the application of mind that the law requires.

27.18. It was submitted for the State that the earlier removal had taken place at the instance of one of the co-accused. Even so, the removal was made by accepting the reason given by that accused, and the re-appointment has now followed. In every criminal proceeding, fairness must be shown from the records and not left to inference. It is for this reason that even a Judge is required to step away from a matter where there is a chance of a conflict. The same standard of care applies to the appointment of a prosecutor.

27.19. The re-appointment, coming after removal and after rejection, called for recorded reasons of a higher order. None are available.

27.20. This court therefore answers Point No. (ii) by holding that the appointment/re-appointment of respondent No.5 as the Special Public Prosecutor is vitiated on account of non-application of mind, absence of special



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circumstances or arbitrariness in the exercise of power by the State Government.

28. **Answer to Point No.(iii): Whether the fact that respondent No.6 has agreed to bear the remuneration payable to the Special Public Prosecutor renders the appointment illegal or gives rise to a reasonable apprehension of bias so as to affect the fairness of the trial?**

28.1. Sri.M.S.Shyam Sundar., learned Senior Counsel, submitted that the prosecution of crime is a sovereign function, and that a Special Public Prosecutor must ordinarily be paid out of the State funds. He submitted that direct payment by the complainant is not allowed, because it creates an advocate-client relationship. He relied on ***Sri K.V. Shiva Reddy vs. State of Karnataka Rep. by its Secretary and Others***, paragraph 32, ***Mukul Dalal Vs. Union of India***, paragraph 10, and ***Pawan Kumar Saraswat & Anr., vs. State of Madhya Pradesh and others***, paragraphs 9, 10 and 12. He submitted that, in the present case, the State has directed respondent No.6-Seminary to pay the Special Public Prosecutor directly.



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28.2. Sri.C.S.Pradeep., learned counsel for respondent No.6, submitted that there is no legal bar to a complainant or an interested institution bearing the remuneration of a Special Public Prosecutor, so long as the payment is made at the rates fixed by the State. He relied on ***Sri.Pampavathy vs. State of Karnataka***, paragraph 12. He submitted that this decision was given after considering ***K.V. Shiva Reddy*** and explains it, and that the Special Public Prosecutor would have no claim against the Government, so that there is no breach of the right to a fair trial.

28.3. In ***Mukul Dalal Vs. Union of India***, at paragraph 10, the Hon'ble Supreme Court held that, ordinarily, the Special Public Prosecutor should be paid out of the State funds, even when he appears in support of a private complainant. It held that only in some special cases, such as where the complainant is a public sector undertaking, a bank or an educational institution, may the remuneration be collected from a private source. Even then, the fees must be deposited in advance with, or paid to, a prescribed State agency, from where



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the Special Public Prosecutor is paid. The Hon'ble Supreme Court held in clear terms that to leave the private complainant to pay the Special Public Prosecutor directly would not be proper.

28.4. In ***Sri K.V. Shiva Reddy vs. State of Karnataka Rep. by its Secretary and Others***, at paragraph 32, this Court held the same. It held that the complainant should be asked to deposit the fees in advance with the Government, and that the Special Public Prosecutor should be paid out of that amount by the Government. It cautioned that, if the prosecutor looks to a private party for his fees, his ability to perform his role will be affected. It further held that such direct payment creates an advocate-client relationship, a personal element from which the Public Prosecutor must stay free, since he is above personal loyalty and cannot act in a dual capacity.

28.5. In ***Pawan Kumar Saraswat & Anr., vs. State of Madhya Pradesh and others***, paragraph 12, the same position is repeated, namely that a Special Public Prosecutor should



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ordinarily be paid from the funds of the State, and only in special cases from a private source.

28.6. Applying these principles to the present case, the arrangement directs respondent No.6-Seminary, who is the complainant, to pay the Special Public Prosecutor directly. The fee is neither paid by the State nor deposited in advance with the State and drawn from there. Both parts of the settled rule are thus violated, the payment is not from State funds, and it is not routed through a prescribed State agency. This is exactly the kind of direct payment that was disapproved in ***Mukul Dalal*** and ***K.V. Shiva Reddy***.

28.7. The reliance of respondent No.6 on ***Sri.Pampavathy vs. State of Karnataka***, paragraph 12, is misplaced. In that case, the notification itself provided that the Special Public Prosecutor would have no claim against the Government, and the complainant was asked to deposit the fees in advance with the Government, in line with ***K.V. Shiva Reddy***. It was on that basis that no breach of the right to a fair trial was found. ***Pampavathy*** did not allow direct payment by the complainant to the



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Special Public Prosecutor. It approved payment through the fixed State route. Read correctly, it supports, and does not weaken, the requirement of advance deposit with the State. The present arrangement is one of direct payment, and so it falls outside **Pampavathy**.

28.8. This Court answers point No.(iii) by holding that the fact that respondent No.6 has agreed to bear the remuneration, together with the direction allowing that remuneration to be paid directly by respondent No.6 to the Special Public Prosecutor, creates an advocate-client relationship and gives rise to a reasonable apprehension of bias, so as to affect the fairness of the trial, thereby rendering the appointment illegal.

29. **Answer to Point No.(iv): Whether the petitioners have established a reasonable apprehension that continuation of respondent No.5 as the Special Public Prosecutor would result in denial of a fair and impartial trial?**

29.1. Sri.M.S.Shyam Sundar., learned Senior Counsel, submitted that the Special Public Prosecutor had added to the delay in the trial, that he shows no independence, and that bias is made out by the direct payment made by



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respondent No.6-Seminary. He further pointed out that the Special Public Prosecutor had earlier appeared for the Archbishop in Crl.Misc.No.7830 of 2019. The Archbishop is a person connected with respondent No.6-Seminary, which is the complainant at whose instance the prosecution is being carried on. He submitted that there is thus already an advocate-client relationship on record. He submitted that justice must not only be done but must also be seen to be done.

29.2. Sri.C.S.Pradeep., learned counsel for respondent No.6, relying on ***State of Maharashtra vs. Prakash Prahlad Patil***, paragraphs 2, 5, 6 and 7, submitted that judicial review does not give this Court a supervisory role, that a merely wrong decision, without anything more, does not attract judicial review, and that the appointment of a Special Public Prosecutor causes no prejudice to the accused. Relying on ***Sri Jaikeshan Virwani vs. The State of Karnataka & Ors***, he submitted that no reasons need be given in the notification. He submitted that what has to be shown is a reasonable apprehension. He further



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submitted that the earlier appearance of the prosecutor for the Archbishop was in an independent proceeding and in a personal capacity, and that such earlier appearance does not disqualify him or create any bias or conflict of interest.

29.3. Sri.Shamanth Naik., learned High Court Government Pleader for respondent Nos.1 to 4, submitted that the delay is caused by the accused, and that the State has full faith in the prosecutor to do his duty independently.

29.4. The test to be applied is well settled and narrow. The question is not whether the Special Public Prosecutor would in fact conduct an unfair trial. The question is whether there is a reasonable apprehension that a fair and impartial trial may not be conducted. In answering this, this Court casts no doubt at all on the integrity of the Special Public Prosecutor. It is guided only by the settled rule that justice must not only be done, but must also be seen to be done, and, as is often said, even Caesar's wife must be above suspicion.



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- 29.5. As already held under Point No.(iii), the direction allowing direct payment by the complainant to the Special Public Prosecutor creates an advocate-client relationship. In ***Sri K.V. Shiva Reddy vs. State of Karnataka Rep. by its Secretary and Others***, paragraph 32, this Court held that such a relationship gives rise to a reasonable apprehension that the prosecutor may not conduct a fair and impartial trial. That reasoning applies here.
- 29.6. There is a further and separate circumstance pointed out by Sri.M.S.Shyam Sundar., learned Senior Counsel, namely that the Special Public Prosecutor had earlier appeared for the Archbishop in CrI.Misc.No.7830 of 2019, the Archbishop being a person connected with respondent No.6-Seminary, which is the complainant. The submission of the respondents, that this earlier appearance was in an independent matter and in a personal capacity, does not remove the apprehension. The test at this stage is not actual bias, but reasonable apprehension. In ***Rajendra Nigam vs. State of M.P. & Ors***, paragraph 10, it was held that, where the proposed Special Public



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Prosecutor had earlier appeared for the complainant in connected proceedings, the appointment would create an apprehension in the mind of the accused that, in place of a Prosecutor, a Persecutor has been appointed, and that justice should not only be done but appear to have been done. That reasoning applies with full force to the present facts.

29.7. Looking at the matter as a whole, namely the first appointment, the later removal, the express rejection of re-appointment on 17.03.2023, and then the re-appointment of the very same person, read together with the direct payment by the complainant and the earlier appearance for the Archbishop connected with the Seminary, a reasonable apprehension of the denial of a fair and impartial trial stands established.

29.8. The respondents' reliance on **Prakash Prahlad Patil**, paragraph 7, that the appointment of a Special Public Prosecutor causes no prejudice, does not answer this point. That observation was made where no reasonable apprehension of bias had been shown and the decision-making process was not open to doubt. The



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propositions in paragraphs 5 and 6, about the limited scope of review, are respected, but they do not bar interference where the very fairness of the trial is placed in reasonable doubt. Likewise, ***Sri Jaikeshan Virwani vs. The State of Karnataka & Ors***, which holds that reasons need not be written in detail, does not meet the apprehension of bias arising from the payment arrangement and the earlier professional relationship.

29.9. This Court also observes that it was easily avoidable to appoint respondent No.5 in this matter and to expose him to allegations of this kind. Such allegations would continue not only during the trial but also in any appeal. In the considered opinion of this Court, it is better to settle the issue at the start, so that it does not grow larger than it is, and so that the Special Public Prosecutor is not put through such scrutiny. A stitch in time in this case would save nine.

29.10. This Court answers Point No. (iv) by holding that the petitioners have established a reasonable apprehension that the continuation of respondent No.5 as the Special Public



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Prosecutor would result in the probable denial of a fair and impartial trial, which is a good enough reason to interfere.

30. ***Answer to Point No.(v): Whether, in the facts and circumstances of the case, the petitioners are entitled to a writ directing that accused persons be notified or heard before the appointment of a Special Public Prosecutor under Sub-section (8) of Section 24 of the Code of Criminal Procedure?***

30.1. Sri.M.S.Shyam Sundar., learned Senior Counsel, submitted that the accused ought to have been notified of the proposed appointment, and heard, when the complainant made the request, before the Special Public Prosecutor was appointed.

30.2. Sri.C.S.Pradeep., learned counsel for respondent No.6, relying on ***Sri Jaikeshan Virwani vs. The State of Karnataka & Ors***, submitted that no reasons need to be given, and that therefore there is no question of hearing the accused before the appointment.

30.3. If the submission of the petitioners is accepted, it would mean that the accused chooses who is to be the Public Prosecutor. No such right is available to the accused, either to choose the



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Public Prosecutor or to object to one. In ***Sri Jaikeshan Virwani vs. The State of Karnataka & Ors***, paragraph 3, it is held that the accused cannot compel the State Government to appoint or not to appoint any person as Special Public Prosecutor, the decision depending on the facts and lying with the State.

30.4. Since the accused has no right to choose or to object to the prosecutor, the question of notifying or hearing the accused before the appointment of a Special Public Prosecutor does not arise, whether in the present case or as a general rule. The relief sought by way of a general direction, being prayer (b) of the petition, is therefore refused.

30.5. This Court answers Point No.(v) by holding that the accused in a criminal proceeding is not required to be notified of a request for the appointment of a Special Public Prosecutor, nor to be heard on who is to be appointed, under Sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973.



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31. **Answer to Point No.(vi): What order?**

31.1. In view of the answers to Points No.(i) to (v), namely that a case for interference is made out (i); that the appointment is vitiated by non-application of mind, absence of special circumstances and arbitrariness (ii); that the direction for direct payment by the complainant gives rise to a reasonable apprehension of bias and makes the appointment illegal (iii); that a reasonable apprehension of the denial of a fair and impartial trial has been established (iv); and that the accused is not entitled to be notified or heard before the appointment (v), the writ petition is allowed in part, this Court passes the following:

ORDER

- i. The writ petition is **allowed in part.**
- ii. A writ in the nature of *certiorari* is issued, and the impugned Government Notification dated 15.09.2023 bearing No.OE 126 PPE 2020 at Annexure-A, appointing respondent No.5 as the Special Public Prosecutor in S.C. No.1439/2014, is quashed.



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- iii. The prayer for a general direction that accused persons be notified or heard before the appointment of a Special Public Prosecutor under Sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973, is rejected.
- iv. It is left to the discretion of the State whether the prosecution be continued by the regular Public Prosecutor, or a Special Public Prosecutor be appointed afresh, by following the procedure considered by this Court and laid down by the Hon'ble Apex Court in ***Mukul Dalal Vs. Union of India*** and by the Co-ordinate Bench of this Court in ***Sri K.V. Shiva Reddy vs. State of Karnataka Rep. by its Secretary and Others***. Any such fresh appointment shall be made only for reasons to be recorded. If the remuneration is to be borne by the complainant, it shall be by way of advance deposit with the prescribed State authority, from which the Special Public Prosecutor shall be paid, and not by direct payment.

Sd/-
(SURAJ GOVINDARAJ)
JUDGE

SR
List No.: 3 Sl No.: 1