

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF NOVEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

WRIT PETITION NO.13035 OF 2021 (GM-RES)

BETWEEN

- 1 . CHERIYAN M C
S/O M D CHANDI
AGED ABOUT 41 YEARS,
- 2 . VINODHA CHENNAPPA
SRI CHANNAPPA
AGED ABOUT 30 YEARS
- 3 . SUDHAKARA
S/O SUNDARA POOJARI
AGED ABOUT 35 YEARS
- 4 . VENKATESHA
S/O MANEGOWDA
AGED ABOUT 40 YEARS

... PETITIONERS

(BY SRI MANJUNATH PRASAD H N, ADVOCATE)

AND

- 1 . STATE BY JAYAPURA POLICE STATION
KOPPA TALUK
CHIKKAMAGALURU-577123
REPRESENTED BY HCGP
HIGH COURT OF KARNATAKA
BENGALURU-560001

2 . R JANA VA

3 . DEPUTY COMMISSIONER
CHIKKAMAGALURU DISTRICT
CHIKKAMAGALURU-577201

4 . SRI B SATISH CHANDRA KALAVARKAR
ADVOCATE
KUNDAPURA
UDUPI DISTRICT-576201

... RESPONDENTS

(BY SRI R.D. RENUKARADHYA, HCGP FOR R1 AND R3
SRI K. SHRI HARI, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER SECTION 482 OF THE CODE OF WRIT PROCEDURE, PRAYING TO CALL FOR RECORDS ON THE FILE OF THE R3 AND PERUSE THE SAME. QUASH THE IMPUGNED ORDER AT ANNEXURE-A DATED 3.04.2021 PASSED IN CASE BY THE R3. GRANT AN INTERIM ORDER STAYING ALL FURTHER PROCEEDINGS IN SPL.C.C.NO.75/2020 PENDING ON THE FILE OF 1ST ADDITIONAL DISTRICT AND SESSIONS JUDGE, CHIKKAMAGALURU

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 17.10.2022 THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This writ petition is filed by the petitioners accused Nos.1 to 4 being aggrieved with the order of the Deputy

Commissioner, Chikkamagaluru, dated 03.04.2021 whereby the Deputy Commissioner has appointed the 4th respondent-advocate as Special Prosecutor under Rule 4(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (hereinafter referred to as 'SC/ST Rules') to conduct the special case on behalf of respondent No.2 in Special C.C. No.75/2020 pending on the file of I Additional District and Sessions Judge, Chikkamagaluru.

2. Heard the arguments of learned counsel for the petitioners and learned SPP and HCGP for the respondent Nos.1 and 3 as well as respondent No.2. Respondent No.4 served and unrepresented.

3. The case of the petitioners is that the petitioners are accused who are facing trial before the Special Court for the offences punishable under Sections 3(1)(g), 3(1)(p), 3(1)(2b), 3(1)(zc), 3(2)(v-a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as 'SC/ST Act') and Section 506 of

IPC on the complaint filed by respondent No.2 before the Jayapura police Station, Chikkamagaluru which is registered in Crime No.36/2019. Respondent No.2 approached the Deputy Commissioner of the district requesting to appoint respondent No.4-advocate as a Special Prosecutor to prosecute the matter. Accordingly, the Deputy Commissioner vide order dated 03.04.2021 appointed respondent No.4 as Special Public Prosecutor, which is under challenge in this writ petition.

4. Learned counsel for the petitioners has contended that the order of the Deputy Commissioner appointing respondent No.4 as Special Public Prosecutor on behalf of respondent No.2 is not correct. The State Government has already appointed the panel of advocates on behalf of the prosecution and the public prosecutor has already been appointed as per Rule 4(1) of SC/ST Rules. Such being the case, appointing respondent No.4, who is an advocate for respondent No.2 in civil case, is not correct. It is further contended that respondent No.4 is not a Senior Advocate

as contemplated under Rule 4(5) of SC/ST Rules. The Government of India has to spend more amount for appointing the advocates. Hence, prayed for setting aside the order of the Deputy Commissioner. In support of his case, he has relied upon the judgment of the Hon'ble Supreme Court as well as the judgment of the High Court of Delhi.

5. Per contra, learned counsel for respondent No.2 has objected the petition contending that appointment of respondent No.4 is in accordance with law. There is no bar in appointing respondent No.4 as counsel for respondent No.2. It is further contended that merely respondent No.4 is an advocate for respondent No.2 in civil case, that itself, is not a ground for setting aside the impugned order. Hence, prayed for dismissing the petition.

6. Learned SPP also submits that there is no bar for appointing respondent No.4 as counsel for respondent No.2 and the Hon'ble Supreme Court in a recent judgment has categorically held that there must be appointment of

eminent advocate for contesting the matter and it cannot be a simple formality for appointing any counsel either to prosecute the matter or to defend the case. Hence, prayed for dismissing the petition.

7. Having heard the arguments of learned counsel for the parties, perused the records.

8. It is not in dispute that the petitioners are the accused facing trial in Special C.C. No.75/2020 for the offences punishable under Sections 341, 504, 506, 334 of IPC and Section 3(1) of SC/ST Act. It is also an admitted fact that respondent No.2 is the defacto complainant, who has lodged the complaint against the petitioners. It is also an admitted fact that that respondent No.4 was an advocate of respondent No.2 in a civil matter and also that respondent No.4 said to be appeared on behalf of respondent No.2 in the bail matter when the notice was issued by the Court under Section 15(A)(5) of the SC/ST (POA) Act. It is also not in dispute that as per the Rules, the Government, by notification, appoints the panel of

advocates as Special Public Prosecutors and the Government also established Special Court for trying the offences under the provisions of Special Act and the SC/ST Act.

9. On perusal of Rule 4(1) of the SC/ST Rules, it empowers the State Government to appoint the eminent Senior advocates as panel advocates for Special Courts trying the SC/ST offences. Sub-Rule (5) to Rule 4 of the SC/ST Rules empowers that the District Magistrate or Sub-Divisional Magistrate may also appoint an eminent Senior Advocate for conducting cases in special Court irrespective of the advocates appointed under Sub-Rule (1) of Rule 4 of the SC/ST Rules. For convenience, Sub-Rule (5) of Rule 4 of the SC/ST Rules reads as under:

(5) Notwithstanding anything contained in sub-rule (1) the District Magistrate or the Sub-Divisional Magistrate may, if deem necessary or if so desired by the victims of atrocity engage an eminent Senior Advocate for [conducting cases in the Special Courts or

Exclusive Special Courts] on such payment of fee as he may consider appropriate.

10. Sub-Rule (6) to Rule 4 of the SC/ST Rules also empowers the State Government to fix fee to the panel advocates in the State.

11. On bare reading of the above said Rules, the District Magistrate or the Deputy Commissioner of a district are empowered to appoint any eminent senior advocate as special Counsel for prosecuting the matter on behalf of the victims for the offences under the provisions of the SC/ST Act and Rules. Therefore, the judgment of the Hon'ble Supreme Court relied on by the petitioners' counsel in case of **REKHA MURARKA VS. STATE OF WEST BENGAL AND ANOTHER** (in Criminal Appeal No.1727/2019 decided on 19.11.2019) will not be applicable to the case on hand as the provisions of the SC/ST Act itself empowers the State Government to appoint the Special Counsel rather appointment of the

Public Prosecutors under the Cr.P.C., for conducting the trials before the Sessions Court.

12. I have also perused the judgment of High Court of Delhi relied on by the petitioners' counsel in case of **SUNIL GROVER VS. GOVERNMENT OF NCT OF DELHI** (W.P. (C) No.729/2018 decided on 23.01.2019). I respectfully disagree with the decision rendered by the High Court of Delhi in the aforesaid case. When the legislature has framed the Special Acts and the Rules to safeguard the interest of the victims/downtrodden people of the offences under the SC/ST Act, denying the opportunity of appointment of the Counsel is against the object of the legislature in enacting Special Act and Rules.

13. The legislature is fully aware about the atrocities on the members of the SC/ST and have brought various amendments in the Act to safeguard the interest of the members of the SC/ST category. Not only barring the Court from granting any anticipatory bail under Section 18 of the Act, but also for the bail proceedings, including any

other orders, to be passed, the trial Court shall give an opportunity to victims to oppose the applications and the State has established Special Court as well as appointed special advocates for prosecuting the matter. The SC/ST Rules also empowers the Deputy Commissioner to appoint an eminent lawyer on behalf of the victim under clause (5) of Rule 4 of the SC/ST Rules. Therefore, it cannot be misunderstood that appointing an advocate on the request of the victim is against the SC/ST Act and Rules and the Government is burdened by spending more money towards the advocate fee, when the State itself wants to double safeguard the interest of the members of the SC/ST category people by preventing them from the harassment as well as atrocities over the SC/ST members. It is not only safeguarding interest but the legislature is very much aware of the atrocity on the SC/ST people and in order to defend their cases, it cannot be expected to appoint an ordinary advocate who is put into few years of practice. The SC/ST Rules provides appointment of an eminent senior advocate and therefore, the downtrodden people

may be able to prosecute the matter against the upper caste people effectively in the Court of law.

14. The learned SPP has also produced the judgment of the Hon'ble Supreme Court in the case of **RAMANAND @ NANDLAL BHARTI Vs. STATE OF UTTAR PRADESH** reported in **2022 Live Law SC 843**, wherein the Hon'ble Apex Court, at paragraph 126 of the judgment, has held as under:

" This case provides us an opportunity to remind the learned District and Sessions Judges across the country conducting sessions trials, more particularly relating to serious offences involving severe sentences, to appoint experienced lawyers who had conducted such cases in the past. It is desirable that in such cases senior advocate practising in the trial court shall be requested to conduct the case himself or herself on behalf of the undefended accused or at least provide good guidance to the advocate who is appointed as amicus curiae or an advocate from the legal aid panel to defend the case of the accused persons. Then only the effective and meaningful legal

aid would be said to have been provided to the accused."

15. In view of the decision rendered by the Hon'ble Supreme Court in *Ramanand Case (supra)*, when accused is entitled for an eminent advocate, the opportunity cannot be denied to the victim of the crime, therefore, the appointment of respondent No.4 by the Deputy Commissioner as special Counsel for respondent No.2, is in accordance with law. Even respondent No.4 is a better advocate to defend the case of respondent No.2 as he has already appeared on behalf of respondent No.2 in the bail matter of the petitioner. Therefore, the petition is devoid of merits and is liable to be dismissed.

Accordingly, the petition is dismissed.

**Sd/-
JUDGE**