

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.12.2023

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CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

W.P.(MD)No.29723 of 2023

R.Suresh Kumar

: Petitioner

Vs.

1.The Principal Secretary to Government,
Home Department,
Secretariat, Chennai – 600 009.

2.The Director General of Police /
Head of Police Force,

Dr.Radhakrishnan Road, Chennai – 600 004.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents herein to consider and issue necessary orders for appointing only regular cadre of Public Prosecutors / Additional Public Prosecutors in all District Courts also falling under the realm of Madurai Bench of Madras High Court as the State is empowered to do so as laid down in the said Code, on the lines of the petitioner's representation dated 07.12.2023, within the time stipulated by this Honourable Court.



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For Petitioner : Mr.S.I.Muthiah

For Respondents : Mr.Shunmugasundaram,
Advocate General

instructed by
Mr.A.Thiruvadi Kumar,
Additional Public Prosecutor

assisted by Ms.Shakeena

Mr.Hasan Mohamed Jinnah,
State Public Prosecutor

assisted by
Mr.A.Thiruvadi Kumar,
Additional Public Prosecutor and
Mr.S.Santhosh,
Government Advocate.

ORDER

[Order of the Court was made by **M.SUNDAR, J.**]

Captioned matter was listed in the Admission Board on 15.12.2023
and this Bench made the following order:



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M.SUNDAR, J.

and

R.SAKTHIVEL, J.

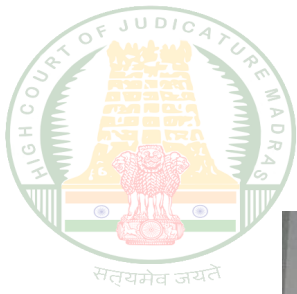
ORDER

[Order of this Court was made by M.SUNDAR, J.]

Captioned 'Writ Petition' ['WP' for the sake of brevity] has been filed in this Court on 11.12.2023 as a 'Public Interest Litigation' ['PIL' for the sake of brevity].

2.Short facts (shorn of granularity) are that the PIL petitioner who is a practicing Advocate is concerned *qua* appointment of Public Prosecutors / Additional Public Prosecutors in the District Courts within the territorial jurisdiction of this Madurai Bench; that the PIL petitioner is *inter alia* projecting an argument that as regards District Courts falling under Madurai Bench of Madras High Court, POCSO cases, MP / MLA cases and DVAC cases are handled by regular cadre Public Prosecutors; that District Public Prosecutors / Additional Public Prosecutors are being appointed by the Government without taking recourse to recruitment of cadre Public Prosecutors / Additional Public Prosecutors is the concern of the PIL petitioner; that captioned WP has been filed with a Mandamus prayer seeking to Mandamus the respondents to consider and issue necessary orders for appointing only

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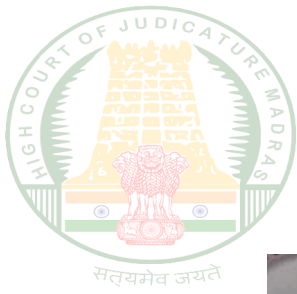
regular cadre Public Prosecutors / Additional Public Prosecutors in all District Courts falling under jurisdiction of Madurai Bench of Madras High Court.

3. In the admission board today, Mr.S.I.Muthiah, learned Counsel on record for the PIL petitioner who was before us in physical Court, reiterated the aforementioned points and submitted that Mandamus prayer is as captured in the factual matrix narrative supra. Learned Counsel submitted that sub-Section (6) of Section 24 of 'The Code of Criminal Procedure, 1973' [hereinafter 'Cr.P.C' for the sake of brevity] is the sheet-anchor of his case.

4. Issue notice.

5. Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor accepted notice for both respondents and he is present before us in this physical Court. Learned Advocate General of State of Tamil Nadu, Thiru.R.Shunmugasundaram, learned State Public Prosecutor Thiru.Hasan Mohamed Jinnah, appeared before us on a 'Video Conferencing' ['VC' for the sake of brevity] platform, the learned First Law Officer and learned State Public Prosecutor are leading Mr.A.Thiruvadi Kumar, who has accepted notice for both the respondents. To be noted, this is a hybrid hearing which is in vogue on a daily basis in Madras High Court and available for all cases.

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6. Considering the nature of the matter and considering the right of pre-audience for learned Advocate General vide Section 23 of the Advocates Act, 1961, we heard the learned First Law Officer [Advocate General] and the State Public Prosecutor in that order.

7. Attention of this Court was drawn to a State amendment i.e., an amendment to Cr.P.C. as applicable in Tamil Nadu as regards Section 24 Cr.P.C. Learned Advocate General and learned State Public Prosecutor pointed out that sub-section (6-A) was inserted / added between sub-sections (6) and (7), which received Presidential assent and came into force on and from 01.12.1980. Tamil Nadu amendment to Section 24 Cr.P.C reads as follows:

'(a) in sub-section (6), after the expression "sub-section (5)", insert "but subject to the provisions of sub section (6-A)";

(b) after sub-section (6), insert the following sub-section, namely:-

"(6-A) Notwithstanding anything contained in sub-section (6), the State Government may appoint a person who has been in practice as an advocate for not less than seven years, as the Public Prosecutor or Additional Public Prosecutor for the district and it shall not be necessary to appoint the Public Prosecutor or Additional Public Prosecutor for the district from among the persons constituting the Cadre of Prosecuting Officers in the State of Tamil Nadu and the provisions of sub-sections (4) and (5) shall apply to the appointment of a Public Prosecutor or Additional Public Prosecutor under this sub-section"; and

(c) in sub-section (7), after the expression "sub-section (6), insert "or sub-section (6-A)".

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8. After the above Tamil Nadu amendment, sub-sections (6), (6-A) and (7) read as follows:

(6) Notwithstanding anything contained in sub-section (5), but subject to the provisions of sub section (6-A), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre:

Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub-section (4).

[Explanation.-For the purposes of this sub-section,-

(a) "regular Cadre of Prosecuting Officers" means a Cadre of Prosecuting Officers which includes therein the post of a Public Prosecutor, by whatever name called, and which provides for promotion of Assistant Public Prosecutors, by whatever name called, to that post;

(b) "Prosecuting Officer" means a person, by whatever name called, appointed to perform the functions of a Public Prosecutor; an Additional Public Prosecutor or an Assistant Public Prosecutor under this Code.]

(6-A) Notwithstanding anything contained in sub-section (6), the State Government may appoint a person who has been in practice as an advocate for not less than seven years, as the Public Prosecutor or Additional Public Prosecutor for the district and it shall not be necessary to appoint the Public Prosecutor or Additional Public Prosecutor for the district from among the persons constituting the Cadre of Prosecuting Officers in the State of Tamil Nadu and the

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provisions of sub-sections (4) and (5) shall apply to the appointment of a Public Prosecutor or Additional Public Prosecutor under this sub-section;

(7)A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (6) or sub-section (6-A), only if he has been in practice as an advocate for not less than seven years.'

(Amendments are shown in bold and in different font for ease of reference)

9.A careful perusal of above brings to light that sub-section (6-A) opens with a non-obstante clause *qua* sub-section (6) which also opens with a non-obstante clause *qua* sub-section (5) alone but sub-section (6) is clearly controlled by sub-section (6-A) as the State amendment says that sub-section (6) is subject to the provisions of sub-section (6-A).

10.It was submitted that the scope of appointments of Prosecutors came up for consideration in ***Samarendra Das, Advocate Vs. The State of West Bengal and others reported in (2004) 2 SCC 274.***

11.In the aforesaid scenario, learned State Public Prosecutor requested for a short accommodation to appear in the physical Court before us, circulate further case laws to demonstrate that the powers of State Governments are intact, that sub-section (6-A) of Section 24 is

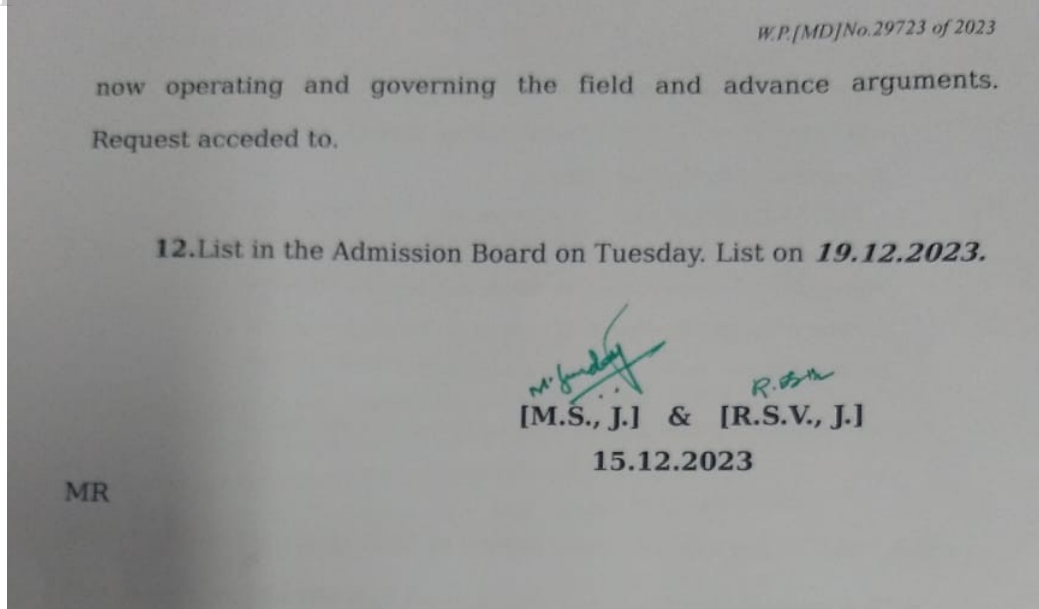
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2. Pursuant to the aforementioned 15.12.2023 proceedings / orders, captioned WP is before us today. Aforementioned 15.12.2023 Admission Board proceedings / orders shall now be read as an integral part and parcel of this order. This also means that the short forms, abbreviations and short references used in the aforementioned 15.12.2023 Admission Board order will continue to be used in the instant order also.

3. In the hearing today, Mr.S.I.Muthiah, learned counsel on record for PIL petitioner and Mr.Hasan Mohamed Jinnah, learned State Public



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Prosecutor, assisted by Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor and Mr.S.Santhosh, Government Advocate (Crl. Side) are before us. Considering the limited scope of the captioned WP and the acute angle on which the bone of contention turns, main WP was taken up and heard out with the consent of both sides. In this regard, we deem it appropriate to write that in adopting this course we have resorted to second limb of sub-Rule (3) of Rule 19 of Madras High Court Writ Rules, 2021. {it is made clear that 'Issue notice' in paragraph 4 of admission Board order in this case means that Rule Nisi has been issued}

4. In continuation of his earlier proceedings (captued in Admission Board order dated 15.12.2023), learned State Public Prosecutor made the following submissions:

a) identical question came up for consideration before Hon'ble Supreme Court in ***K.J.John's case (K.J.John Vs. State of Kerala and others)*** with regard to States of Kerala and Uttar Pradesh. This is vide a Writ Petition under Article 32 of the Constitution of India and the order made there at by a two member Hon'ble Bench has been reported in ***(1990) 4 SCC 191***.



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K.J.John's case is one where Uttar Pradesh Public Prosecutor's Association and an individual by way of two separate Writ Petitions brought up the controversy that regular cadre of Prosecuting officers exists and therefore, State Governments are bound to appoint Public Prosecutors and Additional Public Prosecutors only in this cadre vide Section 24(6) of Cr.P.C. {Cr.P.C. denotes 'the Code of Criminal Procedure, 1973 (2 of 1974)'}. After discussion and dispositive reasoning turning on sub-Section (6) as well as other sub-Sections of Section 24 of Cr.P.C., Hon'ble Supreme Court returned a categorical finding that State Governments are not bound to appoint Public Prosecutors or Additional Public Prosecutors only from among the persons constituting cadre under the Code of Criminal Procedure for conducting cases in the Sessions Court. In ***K.J.John's case*** reported in *(1990) 4 SCC 191* facts are captured in paragraph 3 and the ratio is set out in paragraph 21, which read as follows:

'3.The Writ Petition under Article 32 of the Constitution has been filed by the Uttar Pradesh Public Prosecutors' Association



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consisting the membership of Assistant Public Prosecutors, including Prosecuting Officers, Senior Prosecuting Officers, Deputy Director of Prosecution serving under the Government of Uttar Pradesh. Petitioner 2 is the President of the Association. In both the cases the controversy raised is that there exists a regular cadre of Prosecuting Officers and as such the State Government is bound to appoint Public Prosecutors and Additional Public Prosecutors only from among the persons constituting such cadre in view of Section 24(6) of the Code of Criminal Procedure, 1973.

.....

.....

21. In view of these circumstances we find that the Kerala High Court is right in taking the view that the expression "regular cadre of Prosecuting Officers" comprised a service with Assistant Public Prosecutor at the lowest level and Public Prosecutors at the top. In case a regular cadre of Prosecuting Officers did not go into Public Prosecutor at the top, the State Government cannot be considered as bound to appoint Public Prosecutor or Additional Public Prosecutor only from among the persons constituting such cadre under the Code of Criminal Procedure for conducting cases in the Sessions Court.'

b) Adverting to *Johri Mal's (State of UP and another Vs. Johri Mal)* case reported in *(2004) 4 SCC 714* it was submitted that the distinction between tenure prosecutors and



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regular prosecutors was explained but it may really not be necessary to delve into that aspect of the matter, is learned State Public Prosecutor's say;

c) In *Samarendra Das's case (Samarendra Das, Advocate Vs. The State of West Bengal and others)* reported in (2004) 2 SCC 274 (captured in paragraph 10 of our earlier Admission Board order dated 15.12.2023) a termination order terminating a Assistant Public Prosecutor came up for consideration and therefore, considering the crux and gravamen of the case on hand *Samarendra Das's case* is not really of any aid to either side in the case on hand;

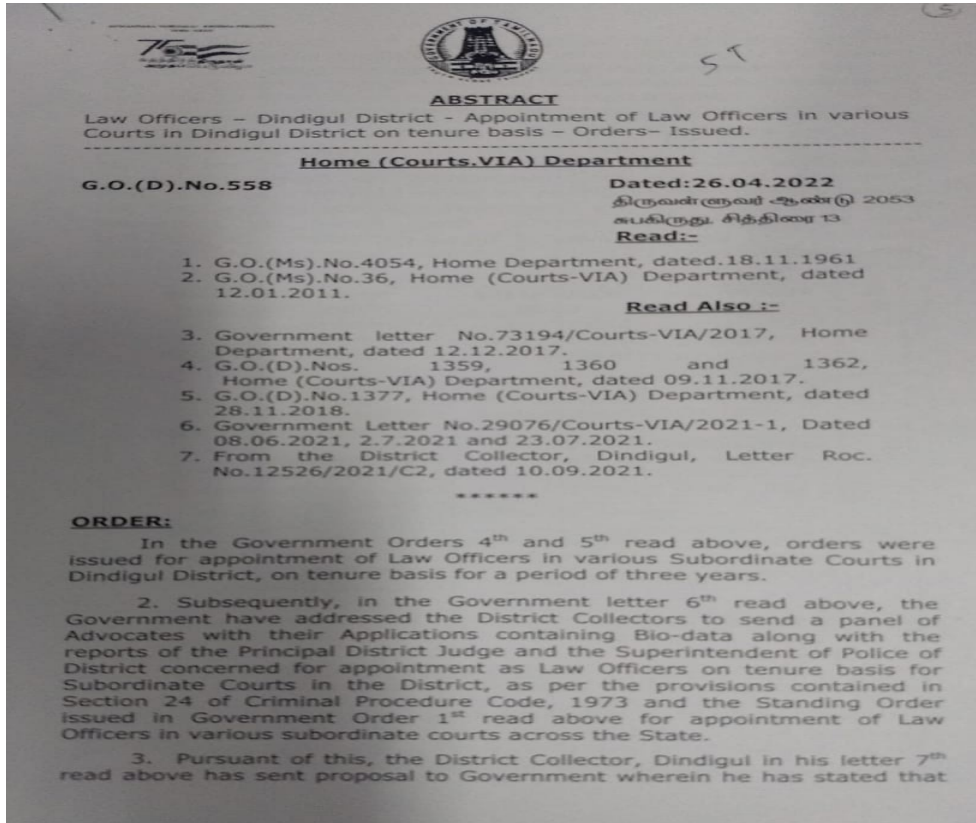
d) As regards *Brijeshwar Singh Chahal's case (State of Punjab and another Vs. Brijeshwar Singh Chahal and another)* reported in (2016) 6 SCC 1, though it has been placed before us as part of the compilation, it was not pressed into service and therefore, we refrain from embarking upon a discussion *qua* this case law;



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e) Reiterating the earlier stand that any appointment under sub-Section (6-A) of Section 24 of Cr.P.C. will be as per the provisions of sub-Sections (4) and (5) of Section 24 of Cr.P.C., learned State Public Prosecutor, as an illustration placed before us one such appointment made vide G.O. (MD)No.558, Home (Courts.VIA) Department, dated 26.04.2022 and a scanned reproduction of the same is as follows:





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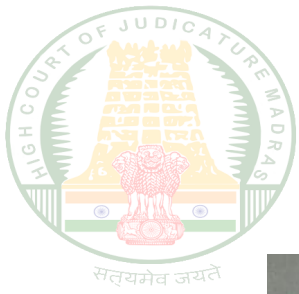
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notification was published inviting applications from eligible Advocates for appointment of Law Officers for Subordinate Courts in Dindigul District. He has forwarded the panel of Advocates with his specific remarks/recommendation in the prescribed format along with original applications(in duplicate), and the reports/remarks of the Principal District Judge, Dindigul and the Superintendent of Police, Dindigul.

4. The Government, after careful examination of the proposal of the District Collector, Dindigul, terminate the services of Law Officers appointed on tenure basis in the Government Orders 4th and 5th read above with immediate effect. Accordingly, the Government hereby appoint the following Law Officers on tenure basis for a period of three years as detailed below. The Government also relax the maximum age limit as prescribed in Standing Order issued in Government Order 1st read above in favour of Thiru.S.Muthuchamy, (Sl.No.4) and Thiru.N.Rathakrishnan (Sl.No.6), Advocates, mentioned in the table below:-

Sl. No.	Post of Law Officer	Name of the Court	Name of Advocate Thiru/Tmt/Selvi
1. ✓	Public Prosecutor	District and Sessions Court, Dindigul	P.Mahendran, S/o. V.Palanisamy, 351, Palaniandavar Nagar, Palani, Dindigul District.
2.	Government Pleader	District and Sessions Court, Dindigul	K.Ravichandran, S/o. Karuppana Gounder, B-5, Raj Nagar, Collectorate Post, Dindigul.
3. ✓	Special Public Prosecutor	Mahila Court, Dindigul	K.Jothi, D/o. M.Kandhan, 126, K.M.A. Nagar 2 nd Street, Opp. to Nandhavanapatti, Old Karur Road, Dindigul-624 001.
4. ✓	Additional Public Prosecutor	Sub Court, Vedasandur	S.Muthuchamy, S/o. Subramaniya Gounder, Market Road, Panchayat Complex, Vedasandur-624 710.
5. ✓	Additional Public Prosecutor	Fast Track Court, Palani	T.V.Sivakumar, S/o. Venkatasubbu, 479, Puthu Nagar, Palani, Dindigul District
6.	Additional Government Pleader	Sub Court, Palani	N.Rathakrishnan, S/o. Natchimuthu, Anganan Street, 4/32, Rajendra Road, Palani, Dindigul District.



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7.	Additional Government Pleader	Fast Track Court, Palani	B.Manoharan, S/o. K.Balakrishnan, 687-B, Nethaji Nagar, Palani, Dindigul District.
8.	Additional Public Prosecutor	Sub Court, Dindigul	A.K.Shanmuga Parthiban S/o. A.Kandasamy, No.162, M.V.M. Nagar Extension, F-Block, Near M.V.M. Nagar Park, M.V.M. Nagar, Dindigul.
9.	Pleader Doing Government Work	District Munsif Court, Oddanchatram	K.Muruganantham, S/o. R.Krishnasamy, Kariyagoundanpatti Pudur, Neelamalaikottai Post, Dindigul West Taluk, Dindigul District.
10.	Pleader Doing Government Work	District Munsif Court, Palani	C.Padmanaban, S/o. Chinnadurai, 231/B/2, Ramamoorthi Nagar, A.Kalayamputhur, Palani, Dindigul District.
11.	Pleader Doing Government Work	District Munsif Court, Nilakottai	C.Soundrapandian, S/o. T.Chellapandi, 14-2-1, Pandiampillai Street, M.Vadipatti (BO) Nilakottai Taluk, Dindigul District-624 211.
12.	Pleader Doing Government Work	District Munsif Court, Vedasandur	P.Kanagaraj, S/o. R.Perumal Naicker, 4, Market Road, Sivam Complex, Vedasandur-624 710.

5. The followings are the terms and conditions for the appointment of the above Law Officers:-

- i) The Law Officer shall hold office for a period of three years from the date of taking charge of his / her appointment.
- ii) The appointment shall be terminated by the Government at any time before the expiry of the term of three years by giving one month notice in writing or by giving one month retainer fee in lieu of one month notice.



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- iii) The Law Officer may resign his / her post by giving similar notice to the Government.
- iv) The above Law Officers are not entitled to use the Tri-colour State Emblem in any form, including in their letter head.
- v) The services of the Law Officer will terminate automatically on his / her attaining the age of 60 years.
- vi) Regarding legal opinion on official matters, the Public Prosecutor and Government Pleader are alone competent to offer his / her opinion on the clarification raised from the Districts Government authorities.
- vii) Any deviation of the conditions stipulated above will lead to termination of the Law Officer without prior notice.

6. The District Collector, Dindigul is directed to report the date on which the Law Officers assume charge of office, to the Government.

7. The District Collector, Dindigul is also directed to settle the fee claim submitted by the Law Officers subject to eligibility.

(BY ORDER OF THE GOVERNOR)

S.K.PRABAKAR
ADDITIONAL CHIEF SECRETARY TO GOVERNMENT

To:-

Law Officers concerned.
Through: The District Collector, Dindigul.
The District Collector, Dindigul.
The Principal District Judge, Dindigul.
The Superintendent of Police, Dindigul.
The Treasury Officer Concerned.
The Accountant General, Chennai-600 018.

Copy to:-

The Hon'ble Chief Minister's Office, Chennai-600 009.
The Registrar General, High Court of Madras, Chennai-600 104.
The Special Personal Assistant to Minister for Law, Chennai - 600 009.
The Private Secretary to the Additional Chief Secretary to Government, Home, Prohibition and Excise Department, Chennai - 600 009.
Stock File/Spare Copy.

// FORWARDED / BY ORDER //

M. Kalihw
26/4/2022
SECTION OFFICER

Chand
26/4/2022



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f) Attention of this Court was drawn to Section 15 of the 'Schedule Castes and Schedule Tribe (Prevention of Atrocities Act), 1989 (33 of 1989)' {hereinafter 'SC/ST (PoA) Act' for the sake of convenience and clarity} and Section 32 of 'the Protection of Children from Sexual Offences Act, 2012 (No.32 of 2012)' [hereinafter 'POCSO Act' for the sake of convenience and clarity] to say that these special statutes provide for appointment of Special Public Prosecutor / Exclusive Public Prosecutor. In this regard, attention of this Court was drawn to sub-Section (8) of Section 24 of Cr.P.C., which makes it clear that both the Central Government as well as the State Government may appoint Special Public Prosecutors for the purposes of any case or class of cases and the qualification is ten years of standing at the bar. There is a proviso to sub-Section (8) of Section 24 of Cr.P.C. (proviso inserted on 31.12.2009) which says that the Court may permit the victim to engage an advocate of his choice to assist the prosecution but this is in the realm of victimology and therefore, we are not going into that aspect. Suffice to say that sub-Section (8) of



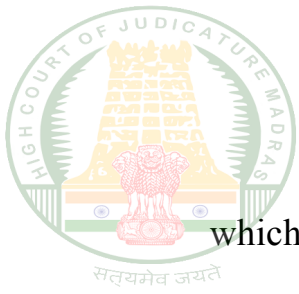
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Section 24 of Cr.P.C. empowers the Central Government as well as the State Government to appoint Special Public Prosecutors for a specific case or for certain class of cases. This powers are intact / standalone and it is not controlled by any of the other sub-Section/s preceding or following sub-Section (8) ie., sub-Sections (1) to (7) or sub-Section (9) of Section 24 of Cr.P.C.

5. In response to the aforementioned argument / submission of learned State Public Prosecutor, learned counsel on record for PIL petitioner submitted that his argument was predicated on sub-Section (6) of Section 24 of Cr.P.C. and learned counsel very fairly submitted that the Tamil Nadu amendment to Cr.P.C. kicked in on 01.12.1980 vide which *inter alia* sub-Section (6-A) has been introduced and subsection (6-A) clearly opens with a non-obstante clause vide sub-Section (6).

6. In the light of the narrative, discussion and dispositive reasoning set out supra, we find that sub-Section (6) of Section 24 of Cr.P.C. opens with a non-obstante clause but that non-obstante clause is limited to sub-Section (5) of Section 24 of Cr.P.C., and after the Tamil Nadu amendment,



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which kicked in on 01.12.1980, sub-Section (6) is clearly subject to sub-Section (6-A) (to be noted sub-Sections with requisite amendments post 01.12.1980 have been set out in paragraph 8 of our earlier proceedings dated 15.12.2023) and there is no disputation or contestation about the same. This means that the power of the State Government to resort to Section 6-A is intact. The sequitur means that it cannot be gainsaid that appointments of Public Prosecutor and Additional Public Prosecutor can be made only from the regular cadre. The further sequitur is the prayer of the PIL petitioner deserves to be dismissed.

7. Before we write the concluding paragraph ie., operative part of this order, we make it clear that the plain language of sub-Section (6-A) makes it clear that the provisions of sub-Sections (4) and (5) of Section 24 of Cr.P.C. have to be adhered to and the State Public Prosecutor has very fairly submitted that sub-Sections (4) and (5) of Section 24 of Cr.P.C. are / will be being diligently adhered to. To be noted, as an illustration one such order being G.O.(D)No.558, Home (Courts.VIA) Department dated 26.04.2022 has been scanned and reproduced supra.



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WEB COPY **8.** We conclude by writing that the powers of the State Government to appoint Public Prosecutors or Additional Public Prosecutors under sub-Section (6-A) of Section 24 of Cr.P.C. is de hors the regular cadre and it can be resorted to and this is besides the powers of the State Government (as well as the Central Government) to appoint Special Public Prosecutors in a particular cases or for a class of cases vide sub section (8) which is a stand alone subsection which is also intact. Mandamus plea fails to cut the ice with us.

9. Captioned WP, which has been filed as a PIL, is dismissed albeit with observations as above and aforementioned elucidation of the obtaining position of law with regard to the appointment of Public Prosecutors and Additional Public Prosecutors. We refrain from imposing costs. There shall be no order as to costs.

[M.S.,J.] & [R.S.V.,J.]

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Index : Yes
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and
R.SAKTHIVEL, J.

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To

1. The Principal Secretary to Government,
Home Department,
Secretariat, Chennai – 600 009.

2. The Director General of Police /
Head of Police Force,
Dr.Radhakrishnan Road, Chennai – 600 004.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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