

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE ATUL SREEDHARAN**

ON THE 9th OF FEBRUARY, 2022

WRIT PETITION No. 2798 of 2022

Between:-

SMT. KRISHNA PRAJAPATI

.....PETITIONER

(By Shri Vipin Yadav, learned Advocate)

AND

**THE STATE OF M.P. THROUGH SECRETARY
DEPARTMENT OF LAW AND LEGISLATURE VALLABH
BHAWAN BHOPAL M.P. (MADHYA PRADESH)**

.....RESPONDENTS

(By Shri Maneesh Kholia, learned PL Advocate)

(Heard through Video Conferencing)

This petition listed for admission and interim relief this day; the court passed the following:

ORDER

The petitioner is a Special Public Prosecutor appointed under section 15 (1) of the Scheduled Castes and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "SC/ST Act"). In the said capacity, she appears before the Ld. Special Court (Atrocities) at Jabalpur. The petitioner is aggrieved by the order dated 18.1.2022 by which the State Government has passed an order in the following words :

"क्रमांक - 1/124/21-ब (दो)/2022, राज्य शासन एतद् द्वारा अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989 (कं 33 सन् 1989) की धारा 14 के अंतर्गत स्थापित विशेष न्यायालय के समक्ष

अभियोजन संचालन हेतु संबंधित जिले में पदस्थ जिला अभियोजन अधिकारी/ अतिरिक्त जिला अभियोजन अधिकारी की अधिनियम की धारा-15, के तहत विशेष लोक अभियोजक नियुक्त करती हैं।

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार
(अरुण कुमार सिंह (सीनियर))

सचिव

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग,
पुं.क्रमांक-1/124/21-ब(दो)/2022 भोपाल दिनांक 18/01/2022''

2. As per the above order, the Public Prosecutors in all the districts are appointed as Special Public Prosecutors to appear before the Special Courts established under section 14 of the SC/ST Act. Ld. Counsel for the petitioner has drawn the attention of this Court to Sub- section (2) of section 15 of the SC/ST Act which reads thus :

"For every Exclusive Special Court, the State Government shall, by notification in the Official Gazette, specify an Exclusive Special Public Prosecutor or appoint an advocate who has been in practice as an Advocate for not less than seven years, as an Exclusive Special Public Prosecutor for the purpose of conducting cases in that Court. "

3. Ld. Counsel for the petitioner has submitted that sub-section 2 of section 15 provides for the appointment of an Exclusive Public Prosecutor meaning thereby, that there cannot be more than one Special Public Prosecutor appearing before the Special Court and so, the impugned order is in gross violation of the legislative intent reflected in sub-section 2 of section 15. Ld. Counsel for the petitioner has also submitted with reference to Sub-section 1 of section 15, that even a Special Public Prosecutor who was to be appointed before a Special Court cannot be appointed by way of a general order passed by the State, as is the impugned order, instead the order appointing Special Public Prosecutors must specify by name of such person, posts held by him and the district I which he/she is serving.

4. Opposing the said view, Ld. Counsel for the State has also referred to the impugned order and has submitted that the impugned order is only for the appointment of Special Public Prosecutor, as the phrase used is "Vishesh Lok Abhiyajak" instead of "Ananya Vishesh Lok Abhiyajak", which would be the Hindi equivalent of an "Exclusive Special Public Prosecutor." Therefore, Ld. Counsel for the State submits that the petition itself is unsustainable as it has been filed on a wrong appreciation of the impugned order.
5. The Ld. Counsel for the petitioner, in the course of his argument has also referred to the definition of an exclusive Special Court defined in Section 2 (1) (b) (d), which of course is not relevant in the facts and circumstances of this case as the appointment order is for Special Public Prosecutors before the Special Courts and not for the appointment of Exclusive Special Public Prosecutors before the Exclusive Special Courts.
6. Ld. Counsel for the petitioner has also referred to the definition of a Special Public Prosecutor in section 2 (1) (e), which defines a Special Public Prosecutor as a Public Prosecutor specified as such, or an Advocate referred to in section 15 of the SC/ST Act.
7. It is also essential to refer to section 14 of the SC/ST Act because it brings out the distinction between a Special Court and an Exclusive Special Court. What must not be lost sight of is that the intention of the legislature, while amending the SC/ST act was to provide speedy trial to offences under the SC/ST Act and under sub-section 1 of section 14, the State shall establish with

the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, an Exclusive Special Court for one or more Districts. The proviso to sub-section 1 of section 14 lays down that in districts where a smaller number of cases are registered under the SC/ST Act, the State Government shall, with the concurrence of the Chief Justice of the High Court by notification in the Official Gazette, specify for such Districts, the Court of Session, to be a Special Court to try offences under this Act.

- 8.** The distinction that appears to come out from the provisions of section 14(1) and the Proviso thereto, is that an Exclusive Special Court can be for one or more districts while a Special Court is one, where a particular Court of Session is designated as a Special Court, to try offences under this Act where there are a smaller number of cases under the Special Act. Thus, by necessary implications it flows that where a Special Court can even try other cases, an Exclusive Special Court is constituted to try offences, exclusively under the SC/ST Act.
- 9.** The petitioner has not been able to demonstrate as to how she is a “person aggrieved” or how the impugned order has infringed upon her right, either legal or constitutional. It is not the contention of the petitioner that she would be removed as a Special Public Prosecutor if the impugned order is given effect to. The impugned order does not require the removal of existing Special Public Prosecutors. The order in question only extends the scope and designates every Public Prosecutor or an Assistant Public Prosecutor as a Special Public Prosecutor to try offences

before the Special Court constituted under the first proviso to section 14(1) of the SC/ST Act. If the petitioner was concerned that the impugned order has violated the provisions of the SC/ST Act without infringing upon any of her own rights and that she herself was not a person aggrieved, then her concern is in the larger public interest and she should have preferred a PIL instead and so, the petition deserves to be dismissed on this ground alone.

- 10.** However, as the other legal aspects have been referred to by the Ld. Counsel for the petitioner, this Court feels it essential to deal with them.
- 11.** The contention of the Ld. Counsel for the petitioner that under section 15 (1), a general order cannot be passed appointing the existing Public Prosecutors and Assistant Public Prosecutors as Special Public Prosecutors to appear before the Special Court and that it should have been a specific order to be released for each district, is unacceptable. The act does not provide for a procedure as envisaged by the Ld. Counsel for the petitioner. If specific orders had to be passed by the State Government with regard to the appointment of Public Prosecutors by name, post and district, then that should have been spelt out in the act itself. Where the act itself is silent of any such procedure to be adopted, the same does not infringe upon the right of the State to pass the impugned order.
- 12.** To appreciate the above, it would be beneficial to refer to “The Scheduled Castes and the Scheduled Tribes (Prevention of

Atrocities) Amendment Act, 2015 (hereinafter referred to as the “Amending Act”), published in the Gazette of India on 01/01/2016. The statement of objects and reasons reveal that the SC/ST Act of 1989 was enacted to deter the commission of atrocities against the members of the Scheduled Castes and Scheduled Tribes. A reading of clause 2 of the statements of object and reasons of the Amending Act reveals that despite the deterrent provisions of the original act, atrocities against the members of the protected castes were only increasing and a prominent reason was “delays in trial and low conviction rate”. It is on the backdrop of this that the impugned order passed by the State must be analyzed.

- 13.** If there was only one Special Public Prosecutor (hereinafter referred to as the “SPP”) before each Special Court, in an era where the number of cases are increasing, then the focus of the SPP would be divided among several cases that are listed each day before the Special Courts. Thus, the level of preparation, the efficacy of conducting the trial, the examination of witnesses and final arguments on behalf of the prosecution, all become suspect on account of pressure on a single SPP. Besides, if the SPP is on leave, for whatever reason, then all the cases before the Special Court on that particular date get adjourned leaving the witnesses susceptible to influence of the accused persons, which would result in a delay in the trial process which is much against the legislative intent for the trial of these cases, which demand an expeditious conduct of these trials on a day-to-day basis. In this regard, it would be beneficial to refer to section 14(2) of the SC/ST Act which require these cases to be disposed of within a period of

two months, as far as possible. Section 14(3) of the SC/ST Act provides for the day-to-day conduct of trials until all witness in attendance have been examined and if the case is adjourned, the reasons for the same have to be recorded by the Ld. Trial Court. Thus, the provisions of section 14 of the SC/ST Act requires and expeditious conduct of the trial of such cases.

- 14.** In the light of the above, if the impugned order is given effect to and consequently, all the prosecutors of the district are appointed as Special Public Prosecutors, then the absence of one Special Public Prosecutor on a given day will not hamper the progress of the trial as there is another to step in and continue with the conduct of the trial. Also important is the fact that with more Special Public Prosecutors, the pending cases can be distributed equitably, and each Special Public Prosecutor would have lesser number of cases to deal with greater focus and dedication which would perhaps result in a better conviction rate in these category of cases.
- 15.** Thus, it is evident that the enforcement of the impugned order would actually give greater impetus to clause 2 of the legislative intent reflected in the Statement of Objects and Reasons of the Amending Act, with specific reference to “delays in trial and low conviction rate”.
- 16.** As the order has been clarified by the Ld. Counsel for the State that the impugned order is only for appointment Special Public Prosecutors before the Special Courts and not Exclusive Special Public Prosecutors before the Exclusive Special Courts, therefore,

the argument raised by the Ld. Counsel for the petitioner with regard to sub-section 2 of section 15 does not require a finding.

17. Under the circumstances, in view of what has been argued, discussed and considered by this Court herein above, the petition sans merit and is **dismissed**.

(Atul Sreedharan)
Judge