
(1971) 06 GUJ CK 0006

Gujarat High Court

Case No: None

Dilipbhai Chhotalal
Dave

APPELLANT

Vs

State of Gujarat and
Others

RESPONDENT

Date of Decision: June 25, 1971

Acts Referred:

- Constitution of India, 1950 - Article 21, 21
- Criminal Procedure Code, 1898 (CrPC) - Section 270, 492, 492(1), 492(1)

Citation: (1971) 12 GLR 999

Hon'ble Judges: B.J. Divan, Acting C.J.; P.D. Desai, J

Bench: Division Bench

Judgement

B.J. Divan, Ag. C.J.

1. The petitioners in these two Special Criminal Applications are both accused persons in a case going on before the learned Additional Sessions Judge for the City of Ahmedabad. The case, we are informed, has commenced on August 18, 1970, and it has been going on since then and involves, according to the prosecution, criminal misappropriation to the extent of Rs. 25 lakhs. It is the prosecution case that the accused entered into a conspiracy and did in pursuance of that conspiracy criminally misappropriate this amount from the funds of the Central Bank of India. The Bank has been joined as the second respondent in these two petitions.

2. The grounds which have been set out in the two petitions are the same and common arguments have been advanced in both the petitions. The petitioner's case in Special Criminal Application No. 8 of 1971 is that this criminal case was instituted against the accused as a result of the first information report given by the Internal Auditor, J.M. Mistry, of the Central Bank to the Police Department of Ahmedabad. The complainant was in the witness-box from 18th August 1970 to 21st January 1971; and after 21st

January till the filing of this Special Criminal Application, the prosecution has examined about 116 witnesses and according to the list of witnesses, 124 witnesses for the prosecution are yet to be examined. The petitioner's grievance is regarding an order passed by the learned trial Judge on an application presented by the accused in the course of the trial. The application challenged the appointment of the Special Prosecutors, who have been appointed by the Government u/s 492(1) of the Code of Criminal Procedure to conduct this particular case in the City Sessions Court at Ahmedabad. The application is Ex. 3039 on the record of the case and was filed on March 26, 1971. By the said application the petitioner herein requested the trial Judge to stop the trial of the Sessions Case in the interests of justice and to pass suitable order for the appointment of a new Public Prosecutor. His contention in the application, Ex. 3039, was that he had reliable information that the Special Public Prosecutor and the Special Assistant Public Prosecutor were to be paid per day by the Central Bank and the Special Public Prosecutor throughout the trial of the case in the Court Room was taking detailed instructions from one S.M. Shah, Internal Auditor of the Central Bank. It was alleged in the said application that the Public Prosecutor was utilising the services of the Bank Van and the car of the Chief Agent for the purpose of coming to Court and for going home and this was seen many times by the applicant-accused. It was further alleged in the said application that the overall attitude of the Public Prosecutor was of such a nature that the accused apprehended that the Public Prosecutor was not taking a detached view of the case and that he was making all efforts to secure conviction any how rather than putting the case fairly before the Court. The accused contended that he seriously apprehended that he was not likely to get justice if there is not a Public Prosecutor representing the State but a Public Prosecutor who is interested in the Central Bank of India, which was the complainant in the case. Against this application by Ex. 3040, the Special Public Prosecutor had put in his reply and after hearing both the sides the learned trial Judge passed an order on March 29, 1971, rejecting the application. The learned Judge in para 7 of the Order observed:

During the trial of this case, so far, I have not been able to find any act of unfair attitude on the part of the Public Prosecutor, which can cause or was likely to cause reasonable apprehension in the mind of the accused-applicant that he will be made to suffer in his defence on account of any unfair attitude on the part of the learned Public Prosecutor.

The order of the learned trial Judge indicates that at the time of the arguments on the application, Ex. 3039, the Public Prosecutor stated that the Government had appointed him and S.H. Desai, as Special Public Prosecutor and Assistant Public Prosecutor respectively, and the fees of the two Public Prosecutors were agreed to be paid by the Central Bank of India as may be agreed upon between them and the Bank. As regards the allegation that the Public Prosecutor was being given lift in the car belonging to the Chief Agent, the explanation of the Public Prosecutor was that the Chief Agent of the Central Bank, Gandhi Road Branch, did at times give him a lift, while he was going to his residence and the statement was made that the said Agent was staying beyond the

residence of the Public Prosecutor and at times did give him a lift to him upto his house while he was on his way to his residence. Thereafter the present Criminal Application, being Special Criminal Application, No. 8 of 1971, has been filed in this Court by accused No. 1 before the trial Court. Special Criminal Application No. 13 of 1971 has been filed by accused No. 2 containing more or less the same allegations. We may point out that affidavits-in-reply have been filed on behalf of the Bank as well as on behalf of the Government in Special Criminal Application No. 8 of 1971 and it is agreed that those affidavits should also be taken as affidavits-in-reply in Special Criminal Application No. 13 of 1971.

3. In order to appreciate the contentions, we may set out here in extenso the relevant portions of the Notification issued by the Government of Gujarat on April 19, 1969. The Notification is in these terms:

In exercise of the powers conferred by Sub-section (1) of Section 492 of the Code of Criminal Procedure 1898 (V of 1898), the Government of Gujarat hereby makes the following appointments:

(2) Shri V.H. Shukla Public Prosecutor, Ahmedabad and Shri G.M. Vidyarthi, Asstt. Government Pleader, High Court, to be Special Public Prosecutors for conducting the above said case in the City Sessions Court, Ahmedabad. Shri Shirish H. Desai, Asstt. Public Prosecutor is appointed to assist the Special Public Prosecutors.

In the first paragraph of the Notification which deals with the conduct of the case in the Court of the City Magistrate, the details of the case are referred to viz., the case of defalcation of money against Dilip Dave and C.P. Dave and others. A copy of this Notification was forwarded to the Principal Judge, City Sessions Court, Ahmedabad. It may also be pointed out that this particular application, Ex. 3039 was preceded by similar applications earlier in the course of the trial. Those applications were rejected on the earlier occasions and against the order passed in one of them the accused had come to the High Court by way of Revision Application and the Revision Application was also rejected by the High Court.

4. The main contention of Mr. Surti, appearing for the petitioners, is that the appointment of the Special Public Prosecutor and the Special Assistant Public Prosecutor is illegal inasmuch as the remuneration of these two appointees has been left to be fixed by an agreement between them and the Bank and in fact they are to be paid directly by the Bank in pursuance of such agreement as may be arrived at between them. It has come out in the affidavits before us that the Bank has agreed to pay and in fact pays Rs. 300/- per day to the Special Public Prosecutor and Rs. 150/- per day to the Special Assistant Public Prosecutor. It was contended that where the complainant agrees to pay and in fact pays the Special Public Prosecutor, the appointment of the Special Public Prosecutor is vitiated because of the implied prohibition in Section 492 Criminal Procedure Code against any such payment. The second contention of Mr. Surti in this connection was that

non-compliance with Rule 38 of the Gujarat Law Officers (Conditions of Service) Rules, 1965 (hereinafter referred to as the Rules), which provides for Special Counsel, vitiates the appointment of the Special Public Prosecutor and Assistant Public Prosecutor. The third contention of Mr. Surti, on behalf of the petitioners, was that Article 21 of the Constitution has been violated inasmuch as the trial is not according to the procedure established by law since the Public Prosecutor, who is conducting the prosecution before the Sessions Court u/s 270 Criminal Procedure Code is not in fact an independent Public Prosecutor but is the Prosecutor appointed at the instance of and being paid by the Central Bank of India. It was also contended by Mr. Surti that the accused in this case were being discriminated against inasmuch as equal protection of laws within the territory of India was not being given to the accused in this case as other accused persons who are having their trials before the Sessions Courts throughout the State are prosecuted by Public Prosecutors to be appointed by the State and to be paid by the State as against the accused in this particular case, where the trial before the Additional City Sessions Judge is being conducted by a Special Public Prosecutor appointed by the State but paid by the Central Bank of India.

5. These are the different challenges against the appointment of the Special Public Prosecutor and the Special Assistant Public Prosecutor; and it has been prayed that the Notification, dated April 19, 1969, appointing respondents Nos. 3 to 5 as Special Public Prosecutors be declared illegal and violative of Rule 38 of the Rules and further that all the proceedings before the Committing Magistrate, II Court, concerning the committal proceedings and all proceedings before the learned Additional City Sessions Judge, Ahmedabad, beset aside and quashed and the same maybe declared as void and of no effect.

6. In order to appreciate the first contention of Mr. Surti, it is necessary to refer to some of the provisions of the Criminal Procedure Code. u/s 4(1)(t), "Public Prosecutor" means any person appointed u/s 492, and includes any person acting under the directions of a Public Prosecutor and any person conducting on behalf of Government in any High Court in the exercise of its original criminal jurisdiction. Section 270 provides that in every trial before a Court of Sessions the prosecution shall be conducted by a Public Prosecutor. Section 492(1) provides that the State Government may appoint, generally, or in any case, or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors. Section 493 provides that the Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under inquiry, trial or appeal, and if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution, and the pleader so instructed shall act therein, under his directions. Section 494 provides that any Public Prosecutor may, with the consent of the Court in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and upon such withdrawal (a) if it is

made before a charge has been framed, the accused shall be discharged in respect of such offence or offences; (b) if it is made after a charge has been framed, or when under the Code of Criminal Procedure no charge is required, he shall be acquitted in respect of such offence or offences.

7. Mr. Surti contended that looking to the scheme of Sections 492(1), 493 and 494, it has been by necessary implication enacted in Section 492 that the payment of the Public Prosecutor, who is in charge of the prosecution, shall be by the State. He contended in this connection that the Public Prosecutor has been entrusted with the statutory function of withdrawal in case a withdrawal from the prosecution is thought necessary and this presupposes, according to Mr. Surti, that the Public Prosecutor is able to exercise his own mind independently and without any consideration of his own interest or that of the complainant or any other person. It was urged that if the Special Public Prosecutor is allowed to receive his fees directly from a private complainant, provisions of Section 494 Cr. P.C. would become nugatory because the prosecutor in such a case would be prone to identify himself with the cause of the complainant and assume the role of a persecutor rather than a prosecutor and would not withdraw from the prosecution even in a fit case. Besides, contended Mr. Surti, when payment is to be made by the private complainant to the Special Prosecutor, in all probability, the accused would be subjected to a protracted trial in view of the fact that the prosecutor would be interested in unduly prolonging the trial having regard to his pecuniary stake in the matter and such a situation would result in denial of fair trial to an accused person. Mr. Surti also based his argument on the expression "appoint" occurring in Section 492(1) and contended that having regard to the well accepted connotation of the said expression, it was obligatory on the State Government to lay down the terms and conditions of the appointment of the Special Public Prosecutor including the scale or quantum of fees payable to him and that the said expression by implication prohibited the fixation and payment of fees to be left by the State Government to the private complainant. It was next urged that though Section 493 contemplates that any pleader instructed by a private person could act under the directions of the Public Prosecutor who may be in charge of the prosecution, the effect of the arrangement which has been reached in the instant case would be to turn a pleader engaged by a private party into a public prosecutor and therefore also an implied prohibition should be read into the provisions of Section 492(1) against arriving at such arrangement in respect of payment of fees to the public prosecutor.

8. As regards Mr. Surti's contention that the payment of the fees of the Special Public Prosecutor by the private complainant at the rate agreed by and between" them would have the tendency of turning the prosecutor into a persecutor and would subject the accused to a protracted trial, it must be borne in mind that though the public prosecutor would be in charge of and is required to conduct the prosecution before the Court of Sessions, the control of the proceedings before the Court is ultimately in the hands of the presiding Judge. It would not be unreasonable to assume that if there is unnecessary prolongation of the trial and consequential harassment of the accused at the hands of the

public prosecutor or unfair handling of the prosecution case by the prosecutor, the Court would always intervene and protect the accused and ensure a fair trial. By reason of this factor alone, therefore, it would be difficult to read into the provisions of Section 492(1) an implied prohibition against arriving at an arrangement such as the one which is found in the present case.

9. As regards the contention that a Special Public Prosecutor receiving his remuneration directly from the private complainant at the rate agreed by and between them would be loathe to withdraw from the prosecution even in a fit case, it is difficult to sustain it on Mr. Surti's own submission to be immediately noted. He rightly conceded that if the Bank in the instant case had agreed to reimburse the State Government for all the fees that it would be required to pay to the Special Public Prosecutor and the State in its turn undertook to pay the fees of the Special Public Prosecutor, no grievance could be made against any such arrangement and the validity of such an arrangement between the private complainant and the State Government on one hand and the State Government and the Special Public Prosecutor on the other could not have been challenged on the ground that it is impliedly prohibited on a conjoint reading of Section 492 and Section 494. In our opinion, in principle there is no difference if instead of the State coming into the picture as an intermediary, so to say, for the passage of the fees or the remuneration from the private complainant to the Special Public Prosecutor, or in respect of the State acting as a conduit pipe for that purpose, it leaves payment of fees to be fixed by an agreement between the private complainant and the Special Public Prosecutor. The payment in either case would in substance be made by the private complainant and if the method adopted in this case is objectionable, the other indirect method wherein the State Government acts, as an intermediary would be equally objectionable. Mr. Surti, however, urged that in such a case, the State will retain some control over the Public Prosecutor specially appointed by it and could bring pressure upon the prosecutor to exercise power of withdrawal u/s 494 in a suitable case. The submission, in our opinion, is wholly misconceived and ill-founded. Section 494 vests in the public prosecutor the discretion to apply to the Court for its consent to withdraw from the prosecution of any person. The discretion of moving the Court for withdrawal from prosecution, which is conferred upon the prosecutor, is a statutory discretion and he alone can exercise that discretion. While exercising that discretion, he cannot abdicate his responsibility in favour of any one not even in favour of the State Government. In the absence of explicit provision in Section 494, the State Government cannot give any binding instructions to the public prosecutor in the matter of withdrawal from prosecution and the public prosecutor would not be obliged to carry out a recommendatory direction, if any, issued by the State Government in that behalf. The public prosecutor has to exercise his personal judgment in the light of the facts and circumstances of each individual case and then decide whether or not to move the Court for its consent to withdraw from the prosecution of any person. The submission that the State Government would have some control in the matter of withdrawal from prosecution against any person in a case where the prosecutor is to be paid by it is, therefore, misconceived and ill-founded. Besides, it would not be

unreasonable to assume that while appointing a Special public Prosecutor, the State Government would always bear in mind that the public prosecutor though an executive officer is in a larger sense also an officer of the Court and that he is bound to assist the Court with his fairly considered views and that the Court is entitled to have the benefit of the fair exercise of his function. The choice of the Special Public Prosecutor in ordinary course of events would always be guided by this overriding consideration and there is no reason to assume that a person so chosen would not discharge his functions properly. We are not prepared on an assumption that the State Government would not make a proper choice while appointing a Special Public Prosecutor even in a case where his remuneration is to be paid directly by a private complainant, and read any implied prohibition in Section 492(1) as suggested by Mr. Surti.

10. The contention based on Section 493 is again of no avail to the petitioner. The Special Public prosecutor even under the arrangement arrived at in the present case, does not appear as the counsel of the private complainant. He is appointed as the Special Public Prosecutor by the State u/s 492(1) and by virtue of that appointment alone is he entitled to conduct the prosecution in the trial before the Court of Sessions. Section 493 contemplates the engagement of a pleader to prosecute in any Court any person and the function of the pleader so engaged is essentially to assist the Public Prosecutor in the conduct of the prosecution. We fail to see how the arrangement arrived at as regards the of payment fees to the Special Public Prosecutor duly appointed in the instant case can take away the trappings and functions of his office and convert him into a pleader instructed by a private person so as to render the provisions of Sections 492 and 493 nugatory.

11. It was then urged that the expression "appoint" occurring in Section 492(1) implies that it was obligatory on the State Government to fix the scale and quantum of fees payable to the Special Public Prosecutor and that the said expression by implication prohibited an arrangement of the type which has been arrived at in the present case. Two decisions one of the Patna High Court and the other of the Supreme Court, were relied upon by Mr. Surti in support of his submission that the word "appoint" must of necessity bring in its trail the aforesaid limitation by necessary implication. In [The General Manager, Southern Railway Vs. Rangachari](#), the expression "appointment" occurring in Article 16(1) of the Constitution has been interpreted by the Supreme Court in para 14 at page 50 of the report to mean all the terms and conditions of service pertaining to that office. Similarly in *Sukhnandan Thakur v. State of Bihar* AIR 1967 Patna 617 the word "appointment" occurring in Article 16(1) was interpreted as applying both to the case of appointment as well as of termination and the expression was given an enlarged meaning as pointed out in the course of the judgment. In our opinion, however, these two decisions cannot assist the petitioner. All that these two decisions lay down is that while interpreting the expression "appointment" in the context of Article 16(1) of the Constitution, one should not confine it merely to appointment at the initial stage but having regard to the object and context, it should also include promotion, termination etc. The interpretation

put upon that expression with reference to the particular setting in which the word occurs in Article 16(1) having regard to the object of the said Article cannot be pressed into service while interpreting the word "appoint" occurring in Section 492(1) of the Code. The word "appoint" in Section 492 would in the context in which it appears only means the initial appointment and would not necessarily bring within its fold all the matters which the word "appoint" is held to embrace in Article 16(1) of the Constitution.

12. Nothing has been pointed out to us from the provisions of the Criminal Procedure Code which would vitiate any arrangement by which the State Government permits the remuneration of the Special Public Prosecutor to be fixed and paid directly under an agreement arrived at between the Special Public Prosecutor and the private complainant. Having regard to the arguments advanced before us, the only question with which we are now concerned is about the legality of such an agreement under the provisions of the Code of Criminal Procedure. Having considered the relevant provisions, we are of the opinion that there is no legal bar under the Code of Criminal Procedure against such an arrangement being arrived at between the public Prosecutor and the private complainant. We will consider separately whether such an arrangement is or is not valid under the provisions of the Constitution of India.

13. As regards the next ground of challenge it was contended that the Government of Gujarat has on 14th May 1965, promulgated the Gujarat Law Officers (Conditions of Service) Rules, 1965, under the proviso to Article 309 and Article 165 of the Constitution. Under Rule 2(g), "Law Officer" has been defined to include, inter alia, a Public Prosecutor; and under Rule 2(i), "Public Prosecutor" means any person appointed u/s 492 of the Code of Criminal Procedure, 1898, to be a Public Prosecutor for a sessions division and includes an Additional Public Prosecutor, Assistant Public Prosecutor or Honorary Assistant to the Public Prosecutor, if any, appointed for such sessions division. Rule 2(k) is material for the purposes of this particular argument of Mr. Surti and is in these terms:

2. (k) "Special Counsel" means any advocate or pleader specially appointed by the State Government for any case, civil or criminal and includes a law officer when so appointed.

Rule 38, on which this contention of Mr. Surti is based, is in these terms:

33. Special Counsel.■The appointment of a Special Counsel shall be subject to such terms and conditions (including the scale of fees) as the State Government may by order in writing determine.

In the instant case, the Special Public Prosecutor who was already functioning as the Public Prosecutor for the City of Ahmedabad and the Assistant Public Prosecutor who was also previously functioning as the Assistant Public Prosecutor for the same area have been appointed as Special Counsel by virtue of the powers conferred upon the State Government by Section 492(1) Criminal Procedure Code. They have been

appointed in this particular criminal case and, therefore, both of them fall within the definition of "Special Counsel" occurring in Rule 2(k) of the Rules. Mr. Surti contended that the word "may" occurring in Rule 38 must be read as "shall" and he further contended that it was only for the State Government to lay down the terms and conditions including the scale of fees when a Special Counsel is appointed and that too the State Government has to determine the question of the fees by an order in writing and it was not open to the State Government to allow the fees of the Special Counsel appointed in the instant case to be fixed by agreement between the Special Counsel and the private complainant, the Central Bank of India. We enquired of Mr. Surti as to what were the special circumstances in the instant case why the word "may" should be read as "shall"; but he has not been able to point out any principle of interpretation or any special circumstances which would compel us to read the word "may" as "shall" in this rule. In our opinion, all that Rule 38 does is to provide that if a Special Counsel is appointed, the terms and conditions of his employment will be such as may be determined by the State Government by an order in writing. It is not obligatory on the State Government under Rule 38 in every case at the time of appointing a Special Counsel to lay down the terms and conditions of his appointment. In our opinion Rule 38 enables the State Government to prescribe the framework within which a Special Counsel appointed by it will function and to lay down terms and conditions subject to which the Special Counsel has to discharge his functions. The power to appoint the Special Counsel is derived in the instant case from Section 492(1) Criminal Procedure Code but if a Special Counsel is so appointed, Rule 38 enables the Government, if it so chooses, to prescribe the terms and conditions of his appointment. In our opinion, nothing in Rule 38 requires the State Government itself to pay the fees of such Special Counsel. It is open to the State Government to provide for fees of the Special Counsel appointed by it to be paid by virtue of an agreement directly arrived at between the Special Counsel and the complainant as has been done in this case. We wish to make it clear that we are not concerned in the present case or at the present stage with the propriety or advisability of any such arrangement. All that we are concerned with is the legality of such an agreement being arrived at between the complainant and the Special Public Prosecutor so far as the provisions of the Code of Criminal Procedure and the Rules are concerned.

14. So far as the challenge to the order of appointment under Article 14 of the Constitution is concerned, para 9 of Special Criminal Application No. 8 of 1971 sets out the challenge in these terms:

When the petitioner knew about the said agreement between the said Public Prosecutors and the Central Bank of India, the petitioner reasonably and bona fide apprehends that respondent No. 1, the State of Gujarat, by allowing these Public Prosecutors to enter into the type of the aforesaid agreement denies to the petitioner equality before the law and equal protection of the laws within the territory of India as other accused persons who are having their trials before the Sessions Courts throughout the State are prosecuted by Public Prosecutors to be appointed by the State and to be paid by the State. In this view

of the matter the petitioner respectfully states that the petitioner is not given the equal treatment, the type of the treatment given to the other accused persons standing their sessions trials before the Sessions Court throughout the State.

It is well-settled law that if any particular piece of legislation or any particular executive act is to be challenged as contravening the provisions of Article 14 of the Constitution, the specific ground on which the challenge is made and particulars in support of that ground must be set out. For example, if there is a classification, it must be set out in the challenge as to why the classification is unreasonable or that there is no rational or reasonable nexus between the classification and the object sought to be achieved by the piece of legislation or executive action in question. Or if there is any challenge under Article 14 on the ground that it gives uncanalized or unguided powers to the authority concerned, then that challenge must be properly formulated so that in the affidavit-in-reply the State can meet with the challenge by putting forward proper facts. Merely stating that a classification has been effected is not enough for the purpose of challenging the legislative action or the executive act so far as the provisions of Article 14 are concerned. Article 14 does not prohibit classification as such. All that it prohibits is unreasonable classification or in which there is no reasonable nexus between the object sought to be achieved and the classification as such. We have set out the challenge on the ground of Article 14 as formulated in the petition and the only thing it sets out is that there is discrimination between the accused and all other accused who are tried before the Sessions Courts throughout the State; there are some additional allegations in Special Criminal Application No. 13 of 1971 but they are also not very relevant or pertinent and do not in any event give a locus standi to the petitioner to challenge the impugned order on the ground of violation of Article 14. The fact remains that challenge on the ground of unreasonable classification or that there is no reasonable nexus between the classification and the object sought to be achieved, or that no guide lines are laid down and therefore Section 492 is void is missing in this case. If any such challenge on appropriate grounds on the footing of Article 14 had been made, we would have considered that challenge to the orders of appointment in question. Since there is no such challenge, we are not called upon to enquire into the validity of the impugned order as violative of Article 14 of the Constitution.

15. The challenge on the ground of Article 21 of the Constitution can only succeed if the trial takes place otherwise than in accordance with the procedure established by law. In order to succeed on that challenge on the ground of Article 21, the petitioner must satisfy us that the trial is not taking place in accordance with the procedure established by law. The violation of the procedure complained of is only on the ground that the Special Public Prosecutor is going to be paid his fees by the complainant in question. We have pointed out that neither under the Code of Criminal Procedure nor under Rule 38 can it be said that the appointment of these Special Prosecutors is illegal or in violation of the provisions of law. Therefore, so far as the trial of the accused in this particular case is concerned, it cannot be said as not being in accordance with the procedure established by law to the

extent that the Special Public Prosecutors are said to have been illegally appointed. We further wish to make it clear that in the instant case since we have come to the conclusion that the appointment of the Special Public Prosecutors is not illegal, we are not called upon to decide whether in view of the provisions of Section 537 Criminal Procedure Code, this appointment would amount to an illegality, or a mere irregularity and whether the trial can be said to be violative of the procedure established by law on the ground of irregularity. We are not called upon to decide that question and we decline to go into ■that question.

16. Ultimately, as we have indicated in the course of this judgment, the main grievance of the petitioner in each of these Special Criminal Applications, is that the Special Public Prosecutors are to be paid by the Bank. It has been contended that even if the trial is otherwise fair, the possibility of the Public Prosecutor identifying himself with the Bank's case cannot be ruled out and so long as that possibility remains, injustice is likely to be done to the accused in the case. To that aspect of the matter, in our opinion, para 7 of the learned Judge's Order is a complete. answer because the learned Judge has pointed out in that para that in the course of the trial which commenced on August 18, 1970, till the date of order, which was passed on March 19, 1971, he had not been able to find any act of unfair attitude on the part of the Special Public Prosecutor, which could cause or was likely to cause reasonable apprehension in the mind of the accused that he would be made to suffer in his defence on account of any unfair attitude on the part of the learned Special Public Prosecutor. Thus the possibility of any injustice resulting to the accused because of the Public Prosecutor identifying himself with the complainant from whom he is going to receive his remuneration, does not exist on the facts of this case, and in our opinion, therefore, the apprehension which has been set out in the application before the learned trial Judge, which is also set out here and which was also urged before us as one of the principal grounds of attack has no basis in fact so far as the trial upto March 19, 1971 is concerned.

17. Under these circumstances, we have come to the conclusion that the challenge to the appointment of the Special Public Prosecutor and the Special Assistant Public Prosecutor must fail. In the result, each of these Special Criminal Applications fails and is dismissed with no order as to costs. Rule is discharged in each of the Special Criminal Applications.

17.1. Before we part with this case, we may observe that Section 492(1) of the Criminal Procedure Code confers upon the State Government very wide powers as regards the appointment of the Public Prosecutors. It would not be unreasonable to assume that when the State Government appoints generally for any local area any person to be a public prosecutor, the person so appointed is well-equipped and competent to conduct prosecution in all trials before the Courts of Sessions or the Magistrate's Courts in that area. Normally, the conduct of prosecution before the Court of Sessions under the relevant sections of the Criminal Procedure Code in all cases arising in the local area would be left to such Public Prosecutor. Section 492(1) at the same time advisedly confers power upon the State Government to appoint Public Prosecutor or Public

Prosecutors in any individual case or for any specified class of cases in any local area. The object behind the conferment of such power on the State Government obviously is to enable the State Government to appoint Special Prosecutors in cases of a special nature or class, which might require that the prosecution should be conducted, in view of the complexity or importance of the questions involved in the case or for some similar reason by a special counsel, especially qualified having regard to his experience or special attainment, so that the prosecution is able to assist the Court in the best possible manner in the trial of the case. No conditions appear on the face of Section 492 of the Criminal Procedure Code to guide the exercise of this power but this object behind the enactments of the section must of necessity regulate the exercise of power vested in the State Government under the said section. In our opinion, it would be desirable for the State Government to lay down appropriate norms or standards regarding the appointment of Special Public Prosecutors for any particular case or for any particular class of cases in the light of aforesaid legislative object so that no accusation may be made against the State Government of exercising its powers of appointment of Special Public Prosecutors arbitrarily or unreasonably or discriminatively at the behest of influential or affluent complainants who can afford to engage the services of highly paid counsel even in cases which may not warrant the appointment of Special Counsel. We do not wish to say that this power has been exercised in any particular case in that manner but in order to be free from any such allegation, it would be in the interests of the State Government itself to lay down such norms or standards. In our opinion, in consultation with the Advocate General, who is the leader of the Bar and the principal law officer of the State Government, such norms can properly be evolved so that even the possibility of such allegations being made against the State Government would be completely eliminated. A copy of this judgment to be forwarded to the Government of Gujarat.

18. Mr. Surti applies for a certificate under Article 132(1) and also under Article 134(1)(c) of the Constitution. In our opinion, this case does not involve a substantial question of law as to the interpretation of the Constitution; nor does it involve such a question of public importance as to make it fit for appeal to the Supreme Court. The leave applied for is, therefore, refused. The judgment in the case before the learned trial Judge not to be pronounced till July 15, 1971. Mr. Surti undertakes to apply for an urgent certified copy of this judgment today.