

## P. Jigesh and Madhavan Maniyara Vs State of Kerala and C.K. Sreedharan

**Court:** High Court Of Kerala

**Date of Decision:** Feb. 12, 2013

**Acts Referred:** Constitution of India, 1950 " Article 162

Criminal Procedure Code, 1973 (CrPC) " Section 173(2), 24, 24(4), 24(5), 24(8)

Penal Code, 1860 (IPC) " Section 120(b)

**Citation:** (2013) CriLJ 3250 : (2013) 1 ILR (Ker) 867 : (2013) 1 KHC 601 : (2013) 1 KLJ 825 : (2013) 1 KLT 681

**Hon'ble Judges:** P.R. Ramachandra Menon, J

**Bench:** Single Bench

**Advocate:** P. Narayanan, for the Appellant; Asif Ali Advocate Director General of Prosecution for R1 and Mr. K. Ramkumar, (SR) Government Pleader for R2, for the Respondent

**Final Decision:** Dismissed

### Judgement

P.R. Ramachandra Menon, J.

Appointment of the second respondent as the Special Public Prosecutor to conduct the prosecution of the

case relating to Crime No. 433 of 2012 of the Vadakara Police Station (otherwise known as T.P. Chandrasekharan case) and Crime No. 233 of

2012 of the Chombala Police Station, Kozhikode and other auxiliary proceedings including the bail application before this Court and lower courts,

is the subject matter of challenge. The main grounds of challenge are; absence of public interest, absence of any consultation in view of the mandate

u/s 25A of the Cr.P.C.; non satisfaction of the course and proceedings stipulated under sub-sections (4) and (5) of Section 24 Cr.P.C. and the

non-desirability or suitability of the 2nd respondent, to be appointed as Special Public Prosecutor. The first petitioner is the 50th accused in Crime

No. 433 of 2012 of Vadakara Police Station, which stands committed for trial to the Sessions Court and is pending before the Addl. Sessions

Judge (Marad cases), Kozhikode as SC. 867 of 2012. The second petitioner is a person, who was an aspirant to the post of Clerk in the

Kasaragod District Co-operative Bank in the selection conducted in the year 1994, who, allegedly came to be sidelined, while giving appointment

to some others, pursuant to the alleged conspiracy and manipulation of records by some Members of the Board of Directors of the Bank. The

second respondent, who was a member of the Board of Directors, is stated as the 2nd accused in Crime No. 81 of 1995 of the Kasaragod Police

Station registered in this regard under the relevant provisions of the IPC and the Prevention of Corruption Act; which is now pending before the

Enquiry Commissioner and Special judge, Kozhikode as CC. 28/2006. Alleging that the second respondent is a politically influential person and

apprehending chance for denial of opportunity for a fair trial, (if the second respondent is permitted to conduct the prosecution as Special Public

Prosecutor) in both the cases, the petitioners are before this Court challenging Ext. P3 order of appointment on various grounds.

2. A detailed statement has been filed on behalf of the first respondent, pointing out that the idea and understanding of the petitioners as to the

scope and applicability of Section 25A of the Cr.P.C. and also as to the course and procedure in respect of appointment of Spl. Public Prosecutor

u/s 24(8) of the Cr.P.C. are quite wrong and misconceived. It has been asserted that Section 25A of the Cr.P.C., which was incorporated in the

statute as per Act 25/2005 w.e.f. 23.06.2006, has not been implemented as such in the State of Kerala, as it is not at all mandatory to constitute

the Directorate of Prosecution u/s 25A, it being optional. It is stated that, no Directorate as contemplated u/s 25A has been constituted in the State

of Kerala and hence, no concurrence of the Director General of Prosecution is necessary for appointing an eligible hand as the Special Public

Prosecutor. The case in hand is stated as an instance of brutal murder by a hired gang, in conspiracy with several others and implemented with the

help of many others, who have been arrayed as accused. It is specifically contended that appointment of Special Public Prosecutor u/s 24(8) of the

Cr.P.C. stands on a different footing and it is not governed by the requirements u/s 24(4) and 24(5). The first respondent asserts that it is a case of

much public importance and of sensational nature. 76 accused are involved and as many as 280 witnesses are there on the side of the Prosecution.

Competency of the second respondent is sought to be highlighted with reference to his appointment as Spl. Public Prosecutor in various cases,

even by the previous Government, irrespective of the political ideology of the second respondent. The personal insinuation against the 2nd

respondent in Ext. P2 case, where he has been implicated as an accused in the capacity as a Director of the concerned Co-operative Bank in

connection with selection and appointment to various posts in the Bank in 1994 cannot be a bar with regard to such appointment as Spl. Public

Prosecutor.

3. Mr. K. Ramkumar, the learned Sr. Counsel appearing for the petitioners asserted that no "public interest" is involved in this case, to have

appointed a Special Public Prosecutor. Ext. P3 is totally silent in this regard, which according to the petitioners, has been passed merely on the

basis of the request made by the widow of the deceased. Such course has been heavily deprecated by Courts always, highlighting the necessity to

have "public interest". It is stated that "consultation" being mandatory to have anybody appointed as Prosecutor/Addl. Prosecutor, appointment of

"Special Public Prosecutor" is not a matter of exception. Reliance is sought to be placed on the decision reported in P.G. Narayanankutty Vs.

State of Kerala and Others, , Ram Kishore Meena and Madhu Singh Rajawat Vs. State of Rajasthan and Another, (Rajasthan High Court) K.V.

Shiva Reddy Vs. State of Karnataka and Others, (Karnataka High Court), Paramjit Singh Sadana Vs. State of A.P. and Others, and of this Court

in N.N. Shibu Vs. State of Kerala . It is also highlighted that the second respondent, by virtue of being an accused in a Vigilance case, which is

pending trial, is "not a fit person" to be appointed as Spl. Public Prosecutor in a murder case and by virtue of the chances to have close association

with the police officers at higher levels, there will not be any fair trial in both the cases.

4. Mr. Asif Ali, the learned Director General of Prosecution, sought to controvert the said submissions, pointing out that the instant case, is one of

the most heinous crimes committed in the recent past and it has really shocked the conscience of every common man. There were 52 stabs/cut

injuries on the body of the deceased. The accused 1 to 7 are directly involved in the commission of offence, while the accused Nos. 8 to 14 are

conspirators, with such other charges against the remaining accused. It is stated that there are more than 15 eminent criminal lawyers appearing for

the various sets of accused and that the accused could be booked only by virtue of concerted effort of the "Special Investigation Team", who

completed the investigation within a very short period. It is stated that the trial is scheduled to be commenced from 11.02.2013, to be concluded

on 17.04.2013, as borne by Ext. R1(a) (marked as an "Exhibit" by mistake in the place of "Annexure"). The credentials of the second respondent

are highlighted in paragraph "4" of the statement, having been appointed as Spl. Public Prosecutor in various cases, even by the previous

Government, as borne by Ext. R1(b) (marked as an "Exhibit" by mistake in the place of "Annexure").

5. All the concerned Police Officers, who have investigated Ext. P2 case (wherein the 2nd respondent is arrayed as an accused), except one

officer are stated as no more in service, having retired on attaining the age of superannuation, while the remaining officer by name "A.V. George" is

working as Superintendent of Police, Wayand. Hence it is pointed out that the plea as to the chance for misusing the office by the 2nd respondent

as the Special Public Prosecutor, is totally incorrect and devoid of any element of merit or bonafides. It is also stated that none of the Police

Officers in the Special Investigation Team, who investigated "T.P. Chandrasekharan case" is connected with Crime No. 81/1995 of the Kasargod

Police Station (Ext. P2 case, where the second respondent is arrayed as an accused), further adding that, by virtue of the constitutional mandate,

all are presumed to be innocent, until found guilty and that the integrity and competency of the second respondent can never be doubted by

anybody in any manner. The learned Director General of Prosecution submits, that expeditious trial of the case is extremely necessary, to safeguard

the "public interest" and that the trial has been scheduled accordingly, particularly in view of the mandate given by this Court as per order dated

6.11.2012 in Bail Application No. 7841/2012, which has attained finality. The learned Director General of Prosecution also places reliance on the

decision rendered by a Division Bench of this Court in Thankappan, E.A. Vs. State of Kerala and another, (as to the scope of Section 25A of

Cr.P.C.) and a decision of the Single Bench in Kuriachan Chacko and others v. Secretary to Government and Others (2012 (3) KHC 614) (as to

the scope of Section 24(8) of Cr.P.C. and the inapplicability of the process prescribed under Sub Sections 4 and 5 of Section 24 Cr.P.C.)

Referring to the law declared by the Madhya Pradesh High Court in Annop Vs. State of M.P. and Another, , it is pointed out that the accused has

absolutely no role or say with regard to the identification and appointment of a Special Public Prosecutor.

6. As discussed above, the main point of dispute is as to the circumstances, the manner/procedure and the person to be appointed as a Special

Public Prosecutor. One of the main grounds raised by the petitioners (Ground B) is that the appointment of the second respondent vide Ext. P3 is

violative of Section 25A of Cr.P.C., as the Government has not consulted the Director General of Prosecution, nor has received his advice to

effect such appointment; contending that, after the introduction of Section 25A in the Cr.P.C., every Public Prosecutor and Special Public

Prosecutor appointed by the State Government shall be subordinate to the Director of Prosecution.

7. Admittedly, Section 25A was introduced as per Act 25 of 2005 only with effect from 23.06.2006. The expression of the terms clearly denotes

that, it is not mandatory to constitute a Directorate of Prosecution u/s 25A and the said provision has not been implemented as such, in the State of

Kerala. The Director of Public Prosecution (which post was subsequently redesignated by the Government as "Director General of Prosecution"

with effect from 25.10.1991) was functioning in the State for more than "three decades" even prior to the incorporation of Section 25A, which

was on the basis of various "executive orders" passed by the State under Article 162 of the Constitution of India. Whether the then existing

Director and the team will get automatically converted as the "Directorate constituted u/s 25A" of the Cr.P.C. immediately following the

incorporation of Section 25A, was a subject matter of consideration before a Division Bench of this Court in connection with the appointment of

the Director General of Prosecution of the State, in W.P.(C) No. 18844/2011. The main contention was that, there was "no concurrence" of the

Chief Justice for the appointment and that the person identified was not having the requisite minimum seven years" of practice as an "Advocate of

the High Court", in terms of the relevant provisions of the Cr.P.C., read with Rule 5 of the Government Law Officers (appointment and condition

of service) and conduct of cases Rules 1978. The factual and legal position was subjected to threadbare analysis by the Bench and as per the

decision reported in Thankappan, E.A. Vs. State of Kerala and another, , it has been categorically held that the Director General of Prosecution

appointed under the executive orders issued under Article 162 of the Constitution of India does not automatically become the Director of

Prosecution u/s 25A of Cr.P.C. and that, such appointment does not require the concurrence of the Chief Justice, specified u/s 25A. The requisite

length of practice as an "Advocate of the High Court" was also given a liberal interpretation, placing reliance on the law declared by the Supreme

Court in Prof. Chandra Prakash Agarwal Vs. Chaturbuj Das Parikh and Others, . This being the position, the challenge raised by the petitioners

against the appointment of the second respondent, with reference to Section 25A of Cr.P.C., can't prevail any more.

8. The next point to be considered is whether the "consultation" as specified under Sub Sections 4 and 5 of Section 24 Cr.P.C. is necessary, for

appointment of a Special Public Prosecutor under Sub Section 8 of Section 24 Cr.P.C. Placing reliance on the decision rendered by the learned

Single Judge of Andhra Pradesh High Court as per the decision reported in Paramjit Singh Sadana Vs. State of A.P. and Others, , it is contended

by the petitioners that, even for appointment of a Special Prosecutor u/s 24(8), the procedure contemplated under Sub Sections 4 and 5 of

Section 24 have to be followed and that, such consultation is not an empty formality. During the course of hearing, it is brought to the notice of this

Court, that the decision in Paramjith Singh Sadhana"s case (cited supra) was rendered, mainly relying on the decision rendered by the very same

Court earlier, as reported in Devineni Seshagiri Rao Vs. The Govt. of A.P. and Others, . The said verdict was subsequently overruled by a

Devision Bench of the Andhra Pradesh High Court, as per the decision reported in The State of Andhra Pradesh, Department of Legislative

Affairs and Justice and Another Vs. Margadarsi Financiers and Others, and as such, the decision in Paramjith Singh Sadhana"s case (cited supra)

does not come to the rescue of the petitioners.

9. The question whether the procedure prescribed under Sub Sections 4 and 5 of Section 25 of Cr.P.C. would govern the appointment of Special

Public Prosecutor under Sub Section 8 of Section 24, was very much a subject matter of consideration before this Court on an earlier instance as

well. After considering the issue, particularly on recording satisfaction of the element of "public interest" involved, it was held by a learned Judge of

this Court in *Kuriachan Chacko & Others v. Secretary to Government and Others* (2012 (3) KHC 614) that, appointment of Special Public

Prosecutor u/s 24(8) of the Cr.P.C. stands on a different footing and it is no way controlled by the modalities prescribed u/s 24(4) and 24(5) of

the Cr.P.C.

10. The issue has been meticulously considered in paragraph "10" of the above verdict, wherein it has been observed that, special circumstances

are envisaged under Sub Section 8 of Section 24, to meet the special requirement in a case or class of cases, enabling the Government to make the

appointment of Special Public Prosecutor. The necessity to have "consultation" with the concerned Sessions Judge by the District Magistrate for

preparation of a panel and the appointment of Public Prosecutor/Additional Public Prosecutor to be effected from the said panel, is mainly to

ascertain, as to who could be the "best person/s" in the opinion of the learned Sessions Judge, to be appointed as Public Prosecutor/Additional

Public Prosecutor for the District. The requisite qualification for the appointment as Public Prosecutor/Additional Public Prosecutor is only the

practice as an Advocate for not less than "seven years" as provided under Sub Section 7 of Section 24. But when it comes to the appointment of a

Special Public Prosecutor u/s 24(8), it is the minimum practice as an Advocate for not less than "ten years".

11. The appointment of a Special Public Prosecutor u/s 24(8) is not with respect to any particular District, nor does the provision envisage or

restrict that, an Advocate having "ten years" practice before the concerned Sessions Court alone shall be appointed as the Special Public

Prosecutor. Any competent lawyer satisfying the requirement u/s 24(8) in one District, can be appointed as "Special Public Prosecutor" to deal

with a particular case/class of cases in another District. If the District Magistrate of the District (where the appointment is to be made) is to consult

the concerned Sessions Judge in this regard (following the procedure as to the appointment of Public Prosecutor/Additional Public Prosecutor

specified under Sub Sections 4 and 5 of Section 24), he can only have a discussion with the Sessions Judge of the particular District, of which he is

in charge and quite naturally, the concerned Sessions Judge may not be in a position to say anything with regard to the credentials of such lawyer

sought to be appointed as the Special Public Prosecutor, who is actually having practice elsewhere. Satisfaction of the appointing authority

(Government) alone is sufficient and is contemplated, subject to the requirement that the person concerned should have a minimum of "ten years"

of practice as an Advocate, as provided u/s 24(8) and nothing else. This Court fully agrees with the views expressed by the learned Judge of this

Court in the decision reported in Kuriachan Chacko & Others v. Secretary to Government and Others (2012 (3) KHC 614) and holds that,

absence of "consultation" under Sub Sections 4 and 5 of Section 24 of Cr.P.C. cannot bar the way of the Government in appointing a Special

Public Prosecutor u/s 24(8) of Cr.P.C.

12. With regard to the reliance placed by the petitioners on the decision of this Court reported in P.G. Narayanankutty Vs. State of Kerala and

Others, , it is to be noted that, the said decision never holds or suggests that, "consultation" has to be there, as provided under Sub Sections 4 and

5 of Section 24, in respect of appointment of a Special Public Prosecutor u/s 24(8) as well. The observation made by the learned Judge in

paragraph "3" is enough to hold that Section 24(8) stands on a different footing, than the rest, being a Special Provision, which spells out an

"exception" to the General Rule. The relevant portion of paragraph 3 is extracted below:

Normally, Sessions Cases before Sessions Courts are expected to be conducted by the Public Prosecutors appointed by the State Government

under S. 24 of the Code of Criminal Procedure (for short the "Code"). Sub-section (8) of S. 24 which spells out an exception to the general rule

states that the Central Government or the State Government may appoint, for the purpose of any case or class of cases, a person, who has been in

practice as an advocate for not less than 10 years, as Special Public Prosecutor. The legislative policy underlying sub-section (8) of S. 24 of the

Code is to preserve the interests of the State and to protect public interest in individual cases or class of cases; for that purpose power is vested in

the Government to appoint Special Public Prosecutors in appropriate cases, where Public interest demands such a course.

13. The fact that no such consultation is ever contemplated u/s 24(8), becomes more clear from the contents of paragraph "8" of the very same

decision, which reads as follows:

8. Since the Government are already satisfied that this is a fit case for appointing Special Public Prosecutor, a direction is issued to the first

respondent-State to appoint a suitable person as Special Public Prosecutor in the place of the second respondent to conduct Sessions Case No.

16 of 1980 on the file of the Sessions Court, Palghat within two weeks from the date of receipt of a copy of this judgment by the first respondent.

The Sessions Judge, Palghat will not take up the Sessions Case 16 of 1980 for trial during a period of three weeks from to-day. This original

petition is disposed of in this manner, but without costs.

It was a case, where a Special Public Prosecutor (2nd respondent therein) was appointed without any financial commitment to the State, which

was heavily deprecated by the Court, alerting the Government as to the High Office of the "Special Public Prosecutor" and the role he has to play.

It has been held that, the Government cannot appoint a Special Public Prosecutor at the cost of a private party, abdicating the Government's

financial responsibility, which otherwise will lead to evil consequences. The Court also expressed the "fine gesture" expressed by the 2nd

respondent-a Senior member of the Bar whose appointment as the Special Public Prosecutor was in dispute, gracefully withdrawing the consent

for appointment and thus relieving the Court of the duty of pronouncing upon the validity of his appointment under the impugned order (as

observed in the opening sentence/paragraph). Observing that the existence of the "public interest" and the necessity to appoint a Special Public

Prosecutor were not in dispute and that the Government had already decided to appoint a Special Public Prosecutor in the case, the learned Judge

(vide paragraph "8") directed the State to appoint a suitable person as Special Public Prosecutor in place of the 2nd respondent to conduct the

concerned Sessions Case within "two weeks". The crucial aspect to be noted is that, such a direction was given by the learned Judge, after

referring to the "Exception" carved out to the General Rule vide Sub Section 8 of Section 24 for appointing a Special Public Prosecutor. To put it

more clearly, the Court did not find it necessary to have consultation or to complete the formalities as provided under Sub Sections 4 and 5 of

Section 24 of Cr.P.C., before appointing a new Special Public Prosecutor. This by itself shows that, the "concept of consultation" and satisfaction

of the modalities prescribed under Sections 24(4) and 24(5) of Cr.P.C. do not govern the special situation contemplated u/s 24(8) dealing with the

appointment of a "Special Public Prosecutor". As such, the decision cited by the petitioners, reported in P.G. Narayanankutty Vs. State of Kerala

and Others, stands virtually against the petitioner, in so far as the question of "consultation" is concerned.

14. With regard to the reliance sought to be placed on the decision in N.N. Shibu Vs. State of Kerala , it appears that the petitioners seek to refer



to the Circular dated 25.03.1992 issued by the State Government prescribing the "guidelines" to be followed, while appointing Spl. Public

Prosecutors. The contents of the said Circular, as extracted in paragraph "5" of the said verdict, are reproduced below, for convenience of

reference:

5. Ext. R1(a) is the Circular issued by the Government on 25/03/1992, prescribing the guidelines to be followed while appointing a Special Public

Prosecutor. The five guidelines read as follows:

(a) The appointment of Special Public Prosecutors will be permitted only in very exceptional circumstances, where the cases involved are highly

sensational or have extensive public interest.

(b) The appointment will be made only after consultation with the District Collector/Superintendent of Police concerned who will specifically

express his view whether the appointment of Special Public Prosecutor is absolutely necessary to conduct the prosecution effectively.

(c) If the District Collector/Superintendent of Police is so satisfied, he will also forward to Government a letter from the Advocate proposed to be

appointed as Special Public Prosecutor, indicating his willingness to conduct the prosecution on payment of regularisation fee prescribed in the

Kerala Government Law Officers (Appointment and Conditions of Service) and Conduct of Cases Rules, 1978.

(d) No private individual will be permitted to meet expenses connected with engagement of a Special Public Prosecutor

(e) Requests for appointment of a Junior Counsel to assist the Special Public Prosecutor will not be entertained when the appointment is made u/s

24(8) of Criminal Procedure Code.

The guidelines do not provide that consent or opinion of the Director General of Prosecutions is mandatory for appointing a Special Public

Prosecutor. Therefore, for the reason that consent or opinion of the Director General of Prosecutions was not sought for or granted before

appointing Sri K.P. Rajeevan as Special Public Prosecutor, his appointment could not have been cancelled. If the grievance is that in the counter

case no Special Public Prosecutor is appointed and at the same time a Special Public Prosecutor is conducting the main case, the better course

should have been to appoint a Special Public Prosecutor in the counter case also. The unilateral cancellation of the appointment of Sri K.P.

Rajeevan, without any valid reason, is arbitrary and illegal. It can only be quashed.

In the above case, appointment of the concerned Spl. Public Prosecutor u/s 24(8) of the Cr.P.C. was subsequently cancelled at the instance of the

Director General of Prosecution, who had received a representation from the 11th accused, pointing out that there was a "counter case" wherein

no Special Public Prosecutor was appointed-allegedly due to influence and that the appointment of the Special Public Prosecutor in the main case

was without consulting the Director General of Prosecution, in violation of the Circular. This Court held that the "Guidelines" did not stipulate, that

consent or opinion of the DGP was mandatory for appointing Special Public Prosecutor and hence, appointment of the Special Public Prosecutor

already made, could not have been cancelled on this count; simultaneously observing that, if the actual grievance was that in the counter case no

Special Public Prosecutor was appointed, the proper course could have been to appoint a Special Public Prosecutor in the counter case as well.

Here also, it is to be noted that no observation has been made by this Court, that "consultation" and the procedure prescribed under sub-sections

(4) and (5) of Section 24 of the Cr. P.C., are necessary for appointment of Special Public Prosecutor u/s 24(8). This being the position, the above

decision does not support the petitioners in any manner, except the reference made to the contents of the said Circular dated 25.03.1992. Any

clause in the Circular cannot widen or restrict the scope of statutory prescriptions. In view of the "exception" drawn to Section 24(8) from the

"general provision", as explained by this Court in paragraph (3) of the decision reported in P.G. Narayanankutty Vs. State of Kerala and Others,

and in view of the scope of the said provision as explained by this Court in Kuriachan Chacko and others vs. Secretary to Government and others

( 2012 (3) KHC 614) holding that the requirements under sub-sections (4) and (5) of Section 24 Cr.P.C. do not govern the appointment of

Special Public Prosecutor u/s 24(8), the contention raised by the petitioners to the contrary, does not appear to be palatable.

15. Another main ground of attack against Ext. P3 is the alleged absence of "public interest", to have appointed a Special Public Prosecutor to

conduct the case. According to the petitioners, Ext. P3 order has been issued merely on the request of the widow of the deceased

Chandrasekharan. It is contended that, it is only an ordinary case of murder, which could be easily dealt with by the existing Public

Prosecutor/Addl. Public Prosecutor in the normal channel. True, it has been held by this Court as per the decision in P.G. Narayanankutty Vs.

State of Kerala and Others, and subsequent decisions] that appointment of Special Public Prosecutor cannot be ordered as a matter of course,

and that, existence of "public interest" is an important aspect to be looked into. The fact that, the incident was a case of brutal murder of the victim,

whose body contained as many as 52 stab/cut injuries and that there are 76 accused, with 280 witnesses cited on the side of the prosecution, is a

matter of record. The murder was committed as designed, hiring a group of gangsters with the connivance of others, acting/contributing in different

proportions, from different levels. Even according to the petitioners, the case was investigated by a "Special Team" headed by Mr. Vincent M.

Paul, the Addl. D.G.P. and several Senior Police Officers of the State, as specifically pleaded in "paragraph 9" of the writ petition. The factual

position has been reiterated by the 1st respondent in their statement as well, wherein it is pointed out that, it is not an ordinary case of murder and

that it has drawn the attention of people at large all over India and abroad, involving much "public interest" in bringing the guilty to the dock. It was

accordingly that, the "Special Investigation Team" was constituted, headed by the Addl. D.G.P., considering the "public interest" and "sensational"

nature of crime.

16. In paragraph 7 of the statement, filed by the 1st respondent, it is pointed out that, the appointment of the Special Public Prosecutor was made,

following the request of the widow of the deceased, supported by the Police Department and that it was as per the recommendation of the Police.

When the petitioners concede in the writ petition, (Paragraph 9), that, this case was investigated by a "Special Investigation Team" headed by the

Addl. D.G.P., this itself is a pointer to the fact that, it was not sought to be dealt with as an ordinary murder case. By virtue of the complexity of the

issues involved with reference to the relevant facts and questions of law, it is quite corollary that the Government had to consider the necessity to

have appointed a Special Public Prosecutor as well, in public interest. In other words, it was not an ordinary case of murder, investigated by the

Investigating Authority in the "normal hierarchy", to be dealt with by the Public Prosecutor/Addl. Public Prosecutor in the District. The State took a

"conscious decision" to constitute a "Special Investigation Team" as aforesaid and the investigation was completed by the team headed by the

Addl. D.G.P. and several other Officers under him. This speaks about the "public interest" involved and the necessity to have a different treatment,

to elicit the truth and to punish the accused, if they are guilty and to have them acquitted, if they are innocent.

17. The role of the Special Public Prosecutor has been explained by this Court in P.G. Narayanankutty Vs. State of Kerala and Others, alerting

that the appointment of a Special Public Prosecutor is not with a view to secure conviction at all costs. The observations made by the learned

Judge in paragraph 6 are very relevant. The relevant portion is extracted below:

... The prosecutor is, so to say, an officer of the Court expected to assist the court in arriving at the truth in a given case. The Prosecutor no doubt,

has to vigorously and conscientiously prosecute the case so as to serve the high public interest of finding out the truth and in ensuring adequate

punishment to the offender. At the same time, it is no part of his duty to secure, by fair means or foul, convicting in any case. He has to safe-guard

public interest in prosecuting the case; public interest also demands that the trial should be conducted in a fair manner, heedful of the rights granted

to the accused under the laws of the country including the Code. The Prosecutor, while being fully aware of his duty to prosecute the case

vigorously and conscientiously, must also be prepared to respect and protect the rights of the accused.

The 2nd respondent has been appointed by the 1st respondent as per Ext. P3 order, treating the instant case as a special one, involving much

public interest. The element of public interest is very much discernible from the materials on record and as such, a mere non-mentioning of the

word "public interest" in Ext. P3 order cannot tilt the balance in any manner, so as to sustain the contention of the petitioners.

18. With regard to the credentials and competency, there is no case for the petitioners that, the 2nd respondent does not satisfy the requirement u/s

24(8) to be appointed as a Special Public Prosecutor, which insists a minimum practice as an Advocate for a period of 10 years. The 2nd

respondent is stated as having "45 years" of standing at the Bar and it is stated in paragraph 4 of the statement filed by the 1st respondent that, the

2nd respondent had been engaged as a Special Public Prosecutor in as many as 20 cases, in the past 20 years. The particulars of some of such

engagement are summarised as given below:

19. The caliber and competency of 2nd respondent is stated as recognised by the various Governments (both the L.D.F. and the U.D.F.) alike,

having him been appointed as Special Public Prosecutor in various cases during the past two decades. Specific reference is made to Ext. R1(b)

appointment order dated 03.05.2010, which was ordered by the previous Government headed by the then Chief Minister of the State Sri. V.S.

Achuthanandan. The political ideology cherished by the 2nd respondent was never a stigma or taboo, in so far as his appointment as a Special

Public Prosecutor was made vide Ext. R1(b) by the earlier Government. Similarly, it was a time when Ext. P2 case registered against the 2nd

respondent in the year 1995 was still pending. This gives sufficient data-base for the proven integrity and competency of the 2nd respondent as

Special Public Prosecutor to deal with the case. That apart, the personal insinuation, if any, is not a relevant factor for considering anybody to be

appointed as a Special Public Prosecutor u/s 24(8) of the Cr.P.C., as held in 2012(3) KHC 614 (cited supra). This Court does not find much pith

or substance in the plea raised in this regard, as to the disputed suitability of the person concerned.

20. With regard to the apprehension expressed from the part of the petitioners, as to the chance for influencing the police officers (connected to

Ext. P2 case) by the 2nd respondent/Special Public Prosecutor, in view of his close acquaintance with the higher level officers connected with the

present murder case and as to the chance for denial of a "fair trial" in both the cases, this Court finds that, the same is only misconceived. This is

for the obvious reason that, the investigation in respect of the Ext. P2 crime is already over; final report has been filed before the Court u/s 173(2)

of Cr.P.C. and the case has been numbered as SC 28/2006. That apart, it is specifically pointed out that, out of the 5 police officers named in Ext.

P2, the persons at serial numbers 2 to 5 have already left the service on superannuation, while the person at serial number "1" is working as the

Superintendent of Police at Wayanad. It is further asserted from the part of the 1st respondent in the statement filed, that none of the officers who

investigated the crime, forming the subject matter of Ext. P2, was there, as part of the "Special Investigation Team" who investigated the present

murder case. As it stands so, no interference is warranted on this head as well.

21. With regard to the request made by the widow of the deceased to appoint a Special Public Prosecutor and the act of the Government in

having considered the same leading to Ext. P3 appointment, this by itself is not enough to hold that there is no proper application of mind on the

part of the Government in having exercised the power to appoint a Special Public Prosecutor u/s 24(8) of Cr.P.C. Nothing prevents the close

relatives of the deceased to seek for appointment of a Special Public Prosecutor. But the request will be acceded to by the Government, only if

there is a public interest or when the case is of sensational nature, as contained in Clause (a) of the relevant Government Circular dated 25.3.1992

extracted in paragraph 5 of the decision rendered by the learned Judge of this Court in N.N. Shibu Vs. State of Kerala . The fact that the case

happens to be highly sensational is discernible from the pleadings and proceedings in the case. So also is the position, with regard to the extensive

public interest involved, as discussed hereinbefore, necessitating constitution of a "Special Investigation Team" headed by the Additional Director

General of Police, State of Kerala and several other officers under him. The rights and liberties of the "victim" to assist the prosecution, even in a

case where a Special Public Prosecutor has been appointed u/s 24(8) Cr.P.C., are evident from the recently introduced "proviso" to Section

24(8) which reads as follows:

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;

Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section.

This Court does not find anything wrong on the part of the Government for having decided to appoint a Special Public Prosecutor, after

considering the request made by the widow of the deceased and also considering the element of public interest/sensational nature of the case

involved.

22. After the conclusion of the arguments, the learned counsel for the petitioner sought to cite one more decision, as reported in Centre for PIL

and Another Vs. Union of India (UOI) and Another, . That was a case with regard to the appointment of the Central Vigilance Commission under

the Central Vigilance Commission Act, 2003, where "unimpeachable institution and personal integrity" was held as of paramount consideration.

The factual position dealt with in the said case with reference to the relevant provisions of the Central Vigilance Commission Act, 2003 and the

recommendation made by the High Power Committee without considering the sanction already given by the Government to prosecute the person

concerned under the relevant provisions of the Prevention of Corruption Act read with Section 120(b) of IPC. After elaborate discussion, it was

held as an instance that impaired the recommendation of the Committee, to be held as "non est" and accordingly, it was set aside. What has been

highlighted in the said decision all throughout, is in respect of the transparency of the institution/CVC and the proceedings and it no way deals with

the requirements of a person to be appointed as a Special Public Prosecutor u/s 24(8) of Cr.P.C. The petitioners are not justified in drawing

analogy to the appointment of a Special Public Prosecutor u/s 24(8) of the Cr.P.C., to the selection and appointment of the "Central Vigilance

Commission" under the Central Vigilance Commission Act, 2003 and there is an ocean of difference between the requirements and the duty to be

performed under the two different enactments. As it stands so, the reliance sought to be placed on the above verdict is rather wrong and

misconceived. This Court is of the firm view that, it is not for the accused to dictate terms as to who should be engaged/appointed as the

Prosecutor/Special Public Prosecutor to conduct the prosecution. This Court also finds support from the view taken by the Madhya Pradesh High

Court in this regard, as reported in Annop v. State of M.P. And Another (2006 (CrI.L.J. 2061)). The jurisdiction of this Court to examine the

correctness and sustainability of the order passed u/s 24(8) of Cr.P.C. by way of juridical review, cannot be exercised, as if it were an Appellate

Authority/Appellate Court. No interference is possible, unless such decision taken by the Government is per se arbitrary and against the public

interest. This is more so, in view of the law declared by the Apex Court as reported in State of U.P. and Another Vs. Johri Mal, . It is incidentally

to be noted that, Ext. P3 order was passed by the first respondent as early as on 8.8.2012 and the petitioners have chosen to approach this Court

only on the eve of the commencement of trial, by filing the writ petition on 4.2.2013. There is considerable force in the submission made by the

learned Director General of Prosecution, that the trial has been scheduled as per Ext. R1(A), to have it commenced from 11.02.2013 and to be

concluded by 17.4.2013, in view of the observations made by a learned Judge of this Court as per the order dated 6.11.2012 in Bail Application

No. 7148/2012 preferred by one of the accused, directing to have the trial finalised as expeditiously as possible, at any rate on or before

31.07.2013. Rejection of the bail to some accused was a subject matter of challenge before the Apex Court and as per the order dated 1.2.2013

in SLP (Crl.) 584/2013 (arising from the order dated 17.12.2012 in B.A. No. 8954/2012 of this Court) interference was declined, dismissing the

SLP, making it clear that the petitioner would be free to make a fresh application for grant of bail, after the depositions of eye witnesses are

recorded by the trial Court. No interference is warranted in the said circumstance, as well.

In the above facts and circumstances, this Court finds that there is absolutely no merit or bonafides in the writ petition. Interference is declined and

the writ petition is dismissed accordingly.