(1999) 3 ALD 1 : (1999) 3 ALT 155 : (1999) 1 APLJ 444 : (1999) CriLJ 2852

Andhra Pradesh High Court

Case No: Writ Petition No. 369 of 1997

Surapaneni Ram Prasad		APPELLANT
	Vs	
Govt. of A.P. and Others		RESPONDENT

Date of Decision: April 9, 1999

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 10(2), 20, 23, 24
- Defence of India Act, 1962 - Section 29, 40

Citation: (1999) 3 ALD 1 : (1999) 3 ALT 155 : (1999) 1 APLJ 444 : (1999) CriLJ 2852

Hon'ble Judges: C.V.N. Sastri, J

Bench: Single Bench

Advocate: Mr. E. Manohar for P. Kamalakar, for the Appellant; Government Pleader for Home and Mr. M. Chandra Sekhar Rao, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The petitioner, who is a practising advocate of Vijayawada, questions in this writ petition the appointment of the 5th respondent, who is also an advocate of Vijayawada Bar, as Additional Public Prosecutor for the Court of II Additional District and Sessions Judge-cum-Metropolitan Sessions Judge, Vijayawada, by the Government in G.O. Rt, No.37, Home (Courts-C) Department, dated 6-1-1997.

2. This case has had a chequered history. By G.O. Ms. No. 103, dated 29-2-1996 the petitioner was appointed as Additional Public Prosecutor for the said Court. It was challenged by one Ramesh Chandra Babu in WP No.6353 of 1996. The writ petition was allowed by a learned single Judge of this Court by order dated 18-9-1996 on the ground that Section 24 of the Criminal Procedure Code has not been complied with inasmuch as the pane was sent by the District Magistrate without consulting the Metropolitan Sessions

Judge, Vijayawada, but only consulting the District Judge, Krishna. The said order was confirmed in WA No. 1271 of 1996 by judgment dated 6-12-1996 holding that a combined reading of Sections 7 and 24 of the Criminal Procedure Code leaves no doubt to hold that for any Metropolitan area, the Metropolitan Sessions Judge is the Judge that is to be consulted under subsection (4) of Section 24 of the Code. While disposing of the writ appeal, the Division Bench also noted that Section 20 of the Code empowers the State Government to appoint Executive Magistrate in every district and in every Metropolitan area and to appoint one of them as District Magistrate. Sub-section (2) of Section 20 says that the State Government may appoint any Executive Magistrate as Additional District Magistrate and such Magistrate shall have such of the powers of the District Magistrate under this Code as are directed by the State Government. After referring to the said provisions, the Division Bench observed as follows:

"There is no material on record to show whether the District Collector or the Commissioner of Police is the District Magistrate for Vijayawada Metropolitan area. It is also submitted at the Bar that the Police Commissioner is normally appointed as District Magistrate of the Metropolitan area. Hence both the panels sent by the District Magistrate i.e., the District Collector in this case under subsection (4) of Section 24 can be faulted. Since there is no material before this Court to hold that District Collector is not the District Magistrate for Vijayawada Metropolitan area, we do not propose to give any finding on this issue."

The Division Bench, therefore disposed of the writ appeal with the following directions:

"We are of the opinion that a fresh panel should be called for from the concerned District Magistrate of the Metropolitan area of Vijayawada, but he should send it after consulting with the District and Sessions Judge-cum-Metropolitan Sessions Judge, Vijayawada.

There shall, therefore, be a direction to the second respondent (State Government) to call for a fresh panel from the District Magistrate of the Metropolitan area of Vijayawada, to be sent after due consultation with the Additional District and Sessions Judge-cum-Metropolitan Sessions Judge, Vijayawada, and to make the appointment of Additional Piftlic Prosecutor as per law. This exercise shall be done within one month from the date of receipt of a copy of this order. Until fresh appointment is made, the present arrangement shall continue. With the above direction, the appeal is dismissed. In the circumstances, no costs."

3. It appears that even before the said order of the Division Bench was communicated, as per the order, of the learned single Judge dated 18-9-1996, the State Government called for a fresh panel of names from the Collector and District Magistrate, Krishna who submitted a fresh panel containing three names on 13-12-1996. The said panel is stated to have been submitted after consultation with the III Additional District and Sessions Judge and Special Judge for ACB Cases, Vijayawada, who was incharge of the Court of II Additional District and Sessions Judge-cum-Metropolitan Sessions Judge as the latter

was on leave at that time and that the same was duly recommended by the District Judge, Krishna, Machilipatnam. At that stage, the petitioner filed WA No. 1271 of 1996 contending that the Collector and District Magistrate has no jurisdiction to send the panel of advocates for appointment of Additional Public Prosecutor for Metropolitan Courts in Vijayawada. Acting on the said panel sent by the Collector and District Magistrate, Krishna, the State Government issued orders in G.O. Rt. No.37, dated 6-1-1997, which is impugned in the present writ petition, appointing the 5th respondent herein as Additional Public Prosecutor for the Court of II Additional District and Sessions Judge, Vijayawada, Krishna District, for a period of three years from the date of taking charge of the post. According to the respondents, the appointment is actually made for the Court of II Additional District and Sessions Judge-cum-Metropolitan Sessions Judge, Vijayawada but, by mistake, in the order it is stated that the appointment is made for the Court of II Additional District and Sessions Judge, Vijayawada and that is purely a typographical error as there are no two separate Courts but only one Court of Additional District and Sessions Judge-cum-Metropolitan Sessions Judge.

4. The writ petition came up for admission before Mr. Justice V. Rajagopal Reddy who was a member of the Division Bench which earlier disposed of WA No.1271/96 and who, in fact, authored the judgment in WANo.1721/96. The learned Judge, while admitting the writ petition on 20-1-1997 passed an interim order on WP MP No.404 of 1997 which reads as follows:

"The learned Government Pleader for Home brought record and argued on instructions. The impugned order reads as if the 5th respondent has been appointed as Additional Public Prosecutor only for the Court of II Additional District and Sessions Judge, Vijayawada, Krishna District and that the said appointment does not include the Court of Metropolitan Sessions Judge, Vijayawada. However, the learned Government Pleader for Home says that the appointment also includes the Court of Metropolitan Sessions Judge, Vijayawada. If that is the case, then there seems to be violation of the order of this Court in WA No.1271/96, dated 6-12-1996. There shall, therefore, be a direction to the 5th respondent to take the files from the petitioner pertaining to the II Additional District and Sessions Judge, Vijayawada only. The petitioner shall continue as the Additional Public Prosecutor for the Court of Metropolitan Sessions Judge and shall retain the files with regard to the said Court until further orders."

As per the said interim order, the petitioner as well as the 5th respondent have been continuing to function as Additional Public Prosecutor in the respective areas.

5. Sri E. Manohar, the learned senior Counsel appearing for the petitioner, made the following submissions :

(1) The impugned order is clearly in violation of the order of the Division Bench in WA No.1271/96. It is also in breach of Section 24(4) of Cr.PC. The word ''Session Judge'' in relation to the Metropolitan area means the concerned Metropolitan Sessions Judge only

but not the District and Sessions Judge. Hence consultation has to be with the Metropolitan Sessions Judge only. Consultation with the III Additional District and Sessions Judge, holding temporary charge of the Court of the II Additional District and Sessions Judge-cum-Metropolitan Sessions Judge, who was on leave for only one week, is bad as the III Additional District and Sessions Judge, has nothing to do with the area and he has also no personal knowledge of the merits of the candidates. There was no such urgency which could not brook the delay of 7 days. The action is, therefore, totally arbitrary. In any case, there was no effective consultation as required under law. In support of the above submissions, Sri Manohar placed strong reliance on the judgment of the Supreme Court in Harpal Singh Chauhan and others Vs. State of U.P., .

(2) In G.O. Ms. No.284, dated 20-5-1989, the Commissioner of Police, Vijayawada, was appointed to be Additional District Magistrate in relation to the Metropolitan area of Vijayawada with all the powers of District Magistrate under the Code and all other laws for the time being in force. For the purpose of Section 24 Cr.PC the Commissioner of Police is the District Magistrate in relation to the Metropolitan area. Hence the panel sent by the Collector and District Magistrate, Krishna, on the basis of which the 5th respondent is appointed, is incompetent and illegal.

6. On the other hand, Sri M. Chandrasekhar Rao, the learned Counsel appearing for the 5th respondent and Sri C. Sodasiva Reddy, the learned Government Pleader for Home, have contended that as the Division Bench fixed a time limit of one month for completion of (he exercise and as the Metropolitan Sessions Judge was on leave at the relevant time, the 111 Additional District and Sessions Judge, who was in full additional charge of the Court of the II Additional District and Sessions Judge-cum-Melropolitan Sessions Judge was consulted and in consultation with him, the panel of names was prepared by the District Judge and the same was forwarded to the Collector and District Magistrate and as such there is no illegality whatsoever. They have further submitted that though the Commissioner of Police, Vijayawada, was appointed as the Additional District Magistrate in relation to the Metropolitan area of Vijayawada in G.O. Ms. No.284, dated 20-5-1989, he cannot be considered to be a District Magistrate for the purpose of Section 24 Cr.PC. Section 24 Cr.PC speaks of only District Magistrate but not Additional District Magistrate. The Commissioner of Police is only an Additional District Magistrate and he is subordinate to the District Collector who is the District Magistrate. The word "District Magistrate" used in Section 24(4) Cr.PC does not include Additional District Magistrate even though the Additional District Magistrate may have conferred (he powers of District Magistrate. In support of this contention, reliance is sought to be placed on the decision of the Supreme Court in Hari Chand Aggarwal Vs. Batala Engineering Co. Ltd., .

7. In Harpal Singh Chauhan and others Vs. State of U.P., , it was held that according to the provisions made in the Criminal Procedure Code prescribing the procedure for appointment of Public Prosecutor and Additional Public Prosecutor, it is for the Sessions Judge to assess the merit and professional conduct of the persons recommended for such appointments and the District Magislfate has to express the opinion as to the

suitability of the persons so recommended from the administrative point of view. It is also held that Section 24 of the Code requires an effective and real consultation between the Sessions Judge and the District Magistrate about the merit and suitability of a person to be appointed as Public Prosecutor or as Additional Public Prosecutor. That is why it requires a panel of names of persons to be prepared by ihe District Magistrate in consultation with the Sessions Judge. In WP No.6353 of. 1996 as well as in WA No. 1271 of 1996, it was held that in the case of metropolitan area, it is the Metropolitan Sessions Judge who is required to be consulted for making the appointment of a Public Prosecutor or Additional Public Prosecutor, hi his judgment in WP No.6353 of 1996, the learned single Judge observed that in the interest of administration of justice at district level, it is always necessary to keep the District Judge in the picture and, therefore, there can be no illegality or infirmity if the panel sent by the Metropolitan Sessions Judge is transmitted by the District and Sessions Judge to District Magistrate. Pursuant to the said order, the Collector and District Magistrate, Krishna, addressed a letter to the District Judge, Krishna, requesting him to arrange for sending a fresh panel in consultation with the Metropolitan Sessions Judge, Vijayavvada. Accordingly the District Judge, Krishna, called for a panel from the Metropolitan Sessions Judge, Vijayawada. As the Metropolitan Sessions Judge happened to be on leave at that time, the 111 Additional District and Sessions Judge, who was holding the full additional charge of the Court of the Metropolitan Sessions Judge, Vijayawada, submitted a panel of three names to the District Judge who forwarded the same to the Collector and District Magistrate, Krishna on 6-12-1996 "together with bio-data, antecedent reports, social status aner duly considering their ability in consultation with the Metropolitan Sessions Judge, Vijayawada." Inasmuch as the III Additional District and Sessions Judge was holding full additional charge of the Court of the 11 Additional District and Sessions Judge-cum-Metropolitan Sessions Judge, Vijayawada and as the panel was prepared in consultation with him. I do not find any illegality or infirmity in the same. It cannot be said that the III Additional District and Sessions Judge was a stranger to the area or that the had no personal knowledge of the professional conduct or merit of the candidates. In view of the fact that this Court had fixed a time limit for completing the exercise, it was probably thought that it was not desirable to wait till the regular Metropolitan Sessions Judge, District Judge and the District Sessions Judge returns to duty after the expiry of his leave. I do not, therefore, find any warrant for the submission of the learned Counsel for the petitioner that the action in calling for a panel from the III Additional District and Sessions Judge was either arbitrary or motivated. The file produced before me by the learned Government Pleader for Home reveals that there was due and effective consultation among the Metropolitan Sessions Judge, District Judge and the District Magistrate in the matter of preparation and the submission of panel of names. Consultation need not necessarily be by way of personal conference. It can also be by correspondence. In Supreme Court Advocates-on-Record Association and another Vs. Union of India, , the Supreme Court quoted with approval the following observations of K. Subba Rao, J., in R. Pushpam and Another Vs. The State of Madras and Another, :

"The word "consult" implied a conference of two or more persons or an impact of two or more minds in respect of a topic in order to enable them to evolve a correct or, at least, a satisfactory solution. Such a consultation may take place at a conference table or through correspondence. The form is not material but the substance is important."

I do not, therefore, find any substance in the first point raised by the learned Counsel for the petitioner and it is accordingly rejected.

8. Coming to the second point, the Division in WA No.1271 of 1996 did not give any finding but specifically left it open. Sub-section (4) of Section 24 Cr.PC provides that the District Magistrate shall, in consultation with the Session Judge, prepare a panel of names of persons; who are, in his opinion, fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the District. It does not contemplate the Additional District Magistrate preparing a panel. Though the Commissioner of Police, Vijayawada was appointed as Executive Magistrate and Additional District Magistrate in relation to the metropolitan area of Vijayawada by the State Government in exercise of the powers conferred by Section 20 Cr.PC, vide G.O. Ms. No.284 Home (Courts-B) Department, dated 20-5-1989 and he is empowered to exercise all the powers of a District Magistrate, there is nothing on record to show that the Collector and District Magistrate, Krishna, ceased to be the District Magistrate in relation to the Metropolitan area of Vijayawada or that his powers in that behalf are taken away or that he delegated the same to the Commissioner of Police. It is pertinent to notice Section 23 Cr.PC in this context. Sub-section (1) of Section 23 Cr.PC provides that "All Executive Magistrates, other than the Additional District Magistrate, shall be subordinate, to the District Magistrate, and every Executive Magistrate (other than the Sub-Divisional Magistrate) exercising powers in a subdivision shall also be subordinate to the Sub-Divisional Magistrate, subject, however, to the general control of the District Magistrate." Sub-section (2) of Section 23 Cr.PC provides that "The District Magistrate may, from time to time, make rules or give special orders consistent with this Code as to the distribution of business among the Executive Magistrate subordinate to him and as to the allocation of business to an Additional District Magistrate." It is not shown that any special order under subsection 23(2) was made by the District Magistrate with regard to the allocation of business to the Additional District Magistrate in this behalf. In the absence of any such special order, it cannot be said that District Magistrate cannot send the panel in relation to the Metropolitan area.

9. In Hari Chand Aggarwal Vs. Batala Engineering Co. Ltd., , the Supreme Court had an occasion to consider a somewhat similar situation arising under the provisions of the Defence of India Act, 1962. u/s 40 of the said Act, Central Government issued a notification delegating its powers u/s 29 to "District Magistrate". The question arose whether the said power can be exercised by the Additional District Magistrate who has been invested with all powers of District Magistrate u/s 10(2) Cr.PC. It was held that when the notification specifically conferred the said power on "District Magistrate", an Additional District Magistrate is not competent to requisition the property u/s 29 simply because he

has been invested with all powers of District Magistrate u/s 10(2) of Cr.PC. It was further held that there is no reason to deviate from the normal rule that the expressions of words which have been used in the notification must be read as such and not in any other manner. It was also held that the scheme of Section 10 of the Code leaves no room from doubt that the District Magistrate and the Additional District Magistrate are two different and distinct authorities and even though the latter may be empowered under sub-section (2) to exercise all or any of the powers of a District Magistrate but by no stretch of reasoning can an Additional District Magistrate be called the District Magistrate which are the words employed in subsection (I) of Section 10. It was further observed that the Central Government, while making the delegation of its power u/s 29 of the Act, must ordinarily be presumed to be fully conscious of the fact that the powers of requisitioning are of a very drastic nature and it is for that reason that an officer or authority of the high status of a District Magistrate in the district was empowered to exercise that power. The same reasoning can be applied to the instant case also where we are dealing with the appointment of Public Prosecutors and Additional Public Prosecutors who have an important role to play in the administration of criminal justice. For that reason, the Legislature though it fit to confer the power of preparing the panel on an officer of the status of a District Magistrate in the district in consultation with the Sessions Judge. There is also another circumstances in this case which goes to show that the Collector and District Magistrate alone is the proper person to send the panel. The appointment in the instant case includes not only the Metropolitan area but also some more area pertaining to the Court of the II Additional District and Sessions Judge. Insofar as the area which is outside the Metropolitan area is concerned, undoubtedly it is only the District Magistrate who lias to prepare the panel. For that reason, consultation lias to be with both Metropolitan Sessions Judge as well as the District Judge. That appears to have been satisfied in the present case because the District Magistrate addressed the District Judge who, in turn, consulted the In-charge Metropolitan Sessions Judge. I may also state in this connection that the file discloses that before sending the panel to the Government, the Collector and District Magistrate, Krishna, referred the names in the panel to the Commissioner of Police, Vijayawada, for checking the antecedents of the candidates included in the panel. The file, however, does not disclose if any report was submitted thereon by the Commissioner of Police to the District Magistrate. Presumably there was no adverse report. Be that as it may, from the above discussion, it is clear that the requirements of Section 24(4) are duly complied with in this case. I do not, therefore, find any merit in the second contention of the petitioner also.

10. There is yet another consideration for non-suiting the petitioner. Admittedly the petitioner''s name does not find a place in the panel. According to sub-section (5) of Section 24, no person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under sub-section (4). As his name does not figure in the panel, the petitioner has no right to be considered for appointment. In that view of the matter, it is doubtful whether the petitioner has locus standi to file this

writ petition at all. That apart, it has been repeatedly exhorted by the Apex Court as well as this Court that the members of the legal profession are required to maintain high standard of legal ethics and dignity and profession and they are not supposed to solicit work or seek mandamus from Courts in matters of professional engagements. It is a matter of regret that the members of the legal profession still persist in filing such writ petitions repeatedly.

11. For all the foregoing reasons, the writ petition is dismissed with costs. The interim order stands vacated.