

(2012) 03 AP CK 0014

Andhra Pradesh High Court

Case No: Writ Petition No : 21728 of 2011

Gorrepati Prasada Reddy and
Others

APPELLANT

Vs

The State of Andhra Pradesh and
Others

RESPONDENT

Date of Decision: March 16, 2012

Acts Referred:

- Constitution of India, 1950 - Article 162, 226
- Criminal Procedure Code, 1973 (CrPC) - Section 24, 24(1), 24(3), 24(4), 24(8)
- Penal Code, 1860 (IPC) - Section 120B, 147, 148, 149, 201
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3(2)

Citation: (2012) 2 ALD(Cri) 64 : (2013) 2 ALT(Cri) 278 : (2013) CriLJ 3508

Hon'ble Judges: Samudrala Govindarajulu, J

Bench: Single Bench

Advocate: T. Bal Reddy for Sri. K. Suresh Reddy, for the Appellant; B. Nalin Kumar, Counsel for the Respondent No. 3, Sri. V. Venugopala Rao, Counsel for the Respondent No. 4 and Sri. S. Bharat Kumar, Counsel for the Respondent No. 5, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Samudrala Govindarajulu

1. The petitioners 1 to 10 are some of the accused in S.C. No. 39 of 1993 in the court of Special Sessions Judge-cum-IV Additional Sessions Judge, Guntur, relating to offences punishable under Sections 120B, 147, 148, 302, 307 and 201 read with section 149 IPC and Section 3(2)(v) of Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act. It is popularly known as Tsundur Carnage Case. It is alleged that along with the petitioners, 218 others also faced trial in that sessions case. The Special Sessions Judge, after trial, convicted some of the accused for

various offences and sentenced them accordingly, and also acquitted some of the accused in that case. The accused persons who were convicted and sentenced, filed Criminal Appeal Nos. 1021, 1022, 1023, 1024, 1025, 1045, 1046 and 1060 of 2007 and 470 of 2011. The State also filed Criminal Appeal Nos. 389 and 988 of 2008 against those "accused who were acquitted by the Special Sessions Judge. Some of the victims/complainants filed Criminal Revision Case No. 829 of 2008 questioning the finding of acquittal recorded by the Special Sessions Judge against some of the accused. The Special Sessions Judge delivered Judgment in the sessions case on 31.7.2007.

2. When the above appeals and revision case have been pending in this court, the Government issued the impugned G.O. Rt. No. 980 Law (LA and J-Home Court-A1), dated 6.6.2011 appointing the 3rd respondent as Special Public Prosecutor and the 4th respondent as Assistant Special Public Prosecutor to conduct prosecution in Tsundur Carnage Case before this court in all the appeals, revision petitions and all related matters. Questioning the vires and propriety of the Government of Andhra Pradesh in issuing G.O. Rt. No. 980, the petitioners 1 to 10 filed this writ petition under Article 226 of the Constitution of India seeking Mandamus declaring G.O. Rt. No. 980, dt. 6.6.2011 as arbitrary, illegal and unconstitutional.

3. The 1st respondent filed counter affidavit contending that the 5th respondent, who is President of Tsundur Dalit Victims Struggle Committee, Guntur submitted representation to the Government seeking appointment of the respondents 3 and 4 as Special Public Prosecutor and Special Assistant Public Prosecutor to conduct prosecution in Tsundur Carnage Case before this court and that after careful examination of the said representation, the Government in exercise of the powers conferred u/s 24(8) of the Code of Criminal Procedure, 1973 (Act I of 1974) (in short "the Code") read with G.O. Ms. No. 187 Law (L) Department, dated 6.12.2000 appointed the respondents 3 and 4 to conduct prosecution in the case before the High Court by issuing impugned G.O. Rt. No. 980. It is further contended that the Government issued the impugned G.O. after thorough examination of entire record in the matter. The 3rd respondent filed counter affidavit on behalf of the respondents 3 and 4 opposing the writ petition. The 5th respondent did not file counter in this writ petition.

4. It is contended by senior counsel for the petitioners that the Government should not have appointed the respondents 3 and 4 as Special Public Prosecutor and Assistant Special Public Prosecutor respectively on mere asking by the 5th respondent. It is contended that the defacto complainants, who are private parties have no say in the matter of appointing of Public Prosecutors and in conducting of prosecution before the courts and that it is prerogative of the Government to appoint a person as Public Prosecutor u/s 24 of the Code. It is pointed out that when there is a Public prosecutor and four Additional Public Prosecutors appointed by the Government for conducting prosecutions in the High Court in accordance with

Section 24(1) of the Code after compliance of the procedure, the Government should not have exercised the power conferred u/s 24(8) of the Code to appoint Special Public Prosecutors for this particular case and that it is not the Government's contention that the Public Prosecutor and Additional Public Prosecutors working in this High Court are not competent to conduct prosecution in this Tsundur Carnage Case. At this point itself, I would like to clarify that appointment of Special Public Prosecutors has no reflection on the competency of the existing Public Prosecutor or Additional Public Prosecutors in the High court. In addition to the existing Public Prosecutor and Additional Prosecutors in the High Court, who were appointed in accordance with Section 24(1) of the Code, the Government intended to invoke Section 24(8) of the Code in this case to appoint Special Public Prosecutors. The appointment of Special Public Prosecutors u/s 24(8) of the Code is not in derogation of the power or duty of the Government to appoint Public Prosecutor and Additional Public Prosecutors to the High Court u/s 24(1) of the Code or to the Sessions court and Additional Sessions Courts or Assistant Sessions court under Sections 24(3) & (4) of the Code; and the power u/s 24(8) of the Code is in addition to the power under-section 24(1) of the code as well as Sections 24(3) &(4) of the Code. Therefore, it cannot be said that appointment of Special Public Prosecutors may suggest that the present Public Prosecutor and Additional Public Prosecutors in the High Court are not capable of handling this Tsundur Carnage Case.

5. As many as 179 accused out of 219 accused faced trial before the Special Sessions Judge and were either convicted or acquitted. Appeals and revision case relating to the said accused have been pending in this court as detailed above. During trial before the Special Sessions Judge, 70 witnesses were examined on behalf of the prosecution, nine witnesses were examined on behalf of the accused and 750 exhibits were marked on behalf of both the parties. According to the 1st respondent, the records in that case are voluminous containing more than 10,000 pages. The Government taking note of volume of the papers and also volume of the work involved in this case, have chosen to invoke Section 24(8) of the Code in appointing Special Public prosecutors. In case, the same work has to be handled by the Public Prosecutor and his team of Additional Public Prosecutors, in the High Court, then it may be at the cost of regular work in the High Court other than this Tsundur Carnage Case. The Government in the counter stated that after scrutiny of case diary filed in this case and also on representation of the 5th respondent, this decision is taken to appoint Special Public Prosecutors in this case.

6. The Senior Counsel for petitioners placing reliance on *Dodda Brahmanandam V. State of A.P.* 1986(1) ALT 141 and *Devineni Seshagiri Rao V. Government of A.P.* 2003(2) ALD(Crl.) 637 (AP) of this Court contended that it is not for the private parties to name persons to be appointed as Special Public Prosecutors and the Government cannot act on representation of the Defacto complainants or the victims. In *Dodda Brahmaiah* (1 supra), this court mainly struck down the appointment of Special Public Prosecutor on the ground that the Advocate who was, appointed as such

previously represented the defacto complainants in the court and filed two applications for adjournment describing himself as the counsel appointed by the defacto complainants. Therefore, the court felt that a reasonable apprehension has certainly arisen in the minds of accused that the said Advocate as Special Public Prosecutor, would not act with that impartiality, which is expected of him.

7. In *Devineni Seshagiri Rao* (2 *supra*), this court observed that office of the Public Prosecutor is unique in its nature and status and it cannot be permitted to be concluded by or slipped into hands of private individuals and that the State cannot surrender its discretion to the choice of an individual. In both these reported cases, appointments of Special Public Prosecutors for conducting sessions cases before trial courts were in issue. Whereas in the case on hand, the respondents 3 and 4 were appointed by the 1st respondent as Special Public Prosecutor and Assistant Special Public Prosecutor respectively in the appellate court i.e., High Court.

8. As a matter of fact, the respondents 3 and 4 were appointed as Special Public Prosecutors for conducting prosecution in SC No. 39- of 1993 in the trial court i.e., the court of Special Sessions Judge-cum-IV Additional Sessions Judge, Guntur at Camp Tsundur by G.O. Rt. No. 1212 Law (LA & J-Courts A-2) Department, dated 23.08.2000. The said appointment of the respondents 3 and 4 as Special Public Prosecutors in G.O. Rt. No. 1212 was questioned by some of the accused in sessions case before this court in writ petition No. 9723 of 2004. This court disposed of the said writ petition in [Modugula Mallikarjuna Reddy and Another Vs. Government of A.P., Law Dept. and Others](#), upholding appointment of the respondents 3 and 4 as Special Public Prosecutors for conducting prosecution in Sessions Case No. 39 of 1993 before the trial court.

9. Appointment of the respondents 3 and 4 as Special Public Prosecutor and Assistant Special Public prosecutor respectively in the impugned G.O. Rt. No. 980 is only virtually continuation of their appointment as Special Public Prosecutors in the High Court also. It is contended by the respondents that since the respondents 3 and 4 conducted trial in Special Sessions Court, they are acquainted with all facts as well as papers relating to the case and they will be in a position to deliver goods in the High Court also in a better way because of their, previous acquaintance with the case. This is not the first time the Government took a decision to appoint the respondents 3 and 4 u/s 24(8) of the Code on the representation of 5th respondent namely, President of Tsundur Dalit Victims Struggle Committee, Tsundur, Guntur.

10. It is pointed out by Senior Counsel for the petitioners that the impugned G.O. Rt. No. 980 reads that representation dated 20.1.2011 was also received from Sri D. Vara Prasada Rao, Minister for Rural Development and M.G.N.R.E.G.S. and that the impugned G.O. was issued on influence of the said Minister. There is absolutely no indication in the record and more particularly in the impugned G.O. that the said Minister exercised any influence on the Government in issuing the impugned G.O.. On the other hand, the Government was fair enough in setting out representation

of the Minister as reference No. 2 in the said G.O., explicitly. Simply because one of the Ministers made a representation on any subject to the Government, it may not be equated with exercising influence in the subject by that Minister. A Minister being primarily a people's representative is expected to reflect views of the people, who approach him and to make necessary representation, if felt necessary, to the Government on the subject. That cannot be considered as an act of influence on the part of Minister as unnecessary interference by the Minister on the subject.

11. Apart from the above decision of the Government to appoint Special Public Prosecutor in this Tsundur Carnage Case, it has to be seen whether designation of the 4th respondent as Assistant Special Public Prosecutor is in accordance with law. In the impugned G.O. the Government appointed 4th respondent as "Assistant Special Public Prosecutor" in exercise of its power u/s 24(8) of the Code. Section 24(8) of the Code empowers the Government to appoint a person who has been in practice as an Advocate for not less than ten years as a Special Public Prosecutor for the purpose of any case or class of cases. There is no provision in any of the sub-sections of Sec. 24 of the Code for appointment of any advocate as Assistant Special Public Prosecutor. The nomenclature by the Government in the impugned G.O., as Assistant Special Public Prosecutor is unknown to the Code. Section 24(1) of the Code speaks of appointment of Public Prosecutor and Additional Public Prosecutors for conducting prosecutions in the High Court. Section 24(3) of the Code deals with appointment of Public Prosecutor and Additional Public Prosecutors in the Districts for conducting prosecutions in Sessions Court, Additional Sessions Courts and Assistant Sessions Courts. Whereas, Section 25 of the Code deals with appointment of Assistant Public Prosecutors by the State Government for conducting prosecutions in the courts of Magistrates. Section 3(u) of the Code defines "Public Prosecutor" as any person appointed u/s 24 and includes any person acting under the directions of Public Prosecutor. The said definition of Public Prosecutor includes Special Public Prosecutor appointed u/s 24(8) of the Code. Though the Code deals with several types of Prosecutors like Public Prosecutor, Additional Public Prosecutor and Assistant Public Prosecutor, the Code does not deal with any other types of Special Public Prosecutors except Special Public Prosecutor as such. The question of a person who is appointed as "Assistant Special Public Prosecutor" conducting prosecution in the High Court is not contemplated by provisions of the Code. The Government cannot coin the designations in a fanciful or whimsical manner and are expected to limit exercise of power to the express provisions contained in the Code.

12. The counsel for the respondents 3 and 4 contended that there is vacuum with regard to appointment of Special Assistant Public Prosecutor in the Code and in such an event, the Government can make such an appointment in exercise of its executive power under Article 162 of the Constitution of India. The contention lacks basis, as such contention can be extended to a case of "Deputy Public Prosecutor" or "Joint Public Prosecutor" and so on. Even under Article 162, the State Government

cannot take shelter for justifying fanciful or whimsical actions.

13. Further, this contention of the counsel for respondents 3 and 4 is contrary to the language contained under Article 162 of the Constitution of India. The executive power of the State under Article 162 of the Code can extend to the matters with respect to which the legislature of the State has power to make laws. Criminal Procedure is a subject which is in concurrent list i.e., list No. III of Schedule 7 of the Constitution of India in respect of which the State legislature cannot straight away pass legislation and bring the same into force. In case, the State legislature intends to pass a legislation touching the subject which is in concurrent list, pre-requisites and post-requisites as contemplated for such legislation under the Constitution are required to be computed with. In fact, the 1st respondent did not trace power to Article 162 of the Constitution of India either in impugned G.O. Rt. No. 980 or in counter affidavit filed in this writ petition. Therefore, G.O. Rt. No. 980 cannot be justified under Article 162 of the Constitution of India, when the State Government appointed the 4th respondent as Special Assistant Public Prosecutor in Tsundur Carnage Case. In the circumstances, though this court has no hesitation to uphold impugned G.O. Rt. No. 980 to the extent of appointment of the 3rd respondent as Special Public prosecutor to conduct prosecution in the High Court in Tsundur Carnage Case, this court is of the opinion that impugned G.O. Rt. No. 980 is contrary to law and ultravires powers of the State Government in appointing the 4th respondent as Assistant Special Public prosecutor in Tsundur Carnage Case. Since both the appointments of the respondents 3 and 4 are separable, this court upholds appointment of the 3rd respondent as Special Public Prosecutor in the impugned G.O., In the result, the writ petition is partly dismissed upholding G.O. Rt. No. 980 Law (LA & J-Home Courts. A1) Department dated 6.6.2011 of the 1st respondent to the extent of appointment of the 3rd respondent as Special Public Prosecutor; and the writ petition is partly allowed quashing that part of G.O. Rt. No. 980 Law (LA & J-Home Courts. A1) Department, dated 6.6.2011, in so far as it relates to appointment of the 4th respondent as Assistant Special Public prosecutor. No costs.