

(2009) 08 MAD CK 0366

Madras High Court (Madurai Bench)

Case No: Criminal O.P. (MD) No. 1717 of 2009

M. Vettaivillan

APPELLANT

Vs

The District Collector, The
Deputy Superintendent of Police
and The Inspector of Police

RESPONDENT

Date of Decision: Aug. 12, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 395
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 15, 21, 3(1), 3(2)
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 - Rule 4(1), 4(5)

Hon'ble Judges: G.M. Akbar Ali, J

Bench: Single Bench

Advocate: A. Rahul, for the Appellant; L. Murugan, G.A. (Crl.side), for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

G.M. Akbar Ali, J.

The petition is filed u/s 482 Cr.P.C. directing the 1st respondent to appoint Mr. G. Bhagavathsingh, Advocate as Special Public Prosecutor to conduct trial pending in S.C. No. 114 of 2005 on the file of the First Additional District and Sessions Court (PCR Cases), Madurai.

2. The brief facts of the case is as follows:

The petitioner belongs to Scheduled Caste Community. On 08.05.2004 one Vellaichamy and 16 others belonging to a dominant community forcibly trespassed

into the petitioner's house and brutally assaulted him and his family members and also took away the valuables. A case was registered in Crime No. 139 of 2004 by the 3rd respondent for the alleged offence punishable under Sections 395 I.P.C. r/w 3(1)(x) and 3(2) of SC/ST (P&A) Act, 1989. After investigation the respondent police has filed a final report against four persons and the same was taken on file in S.C. No. 114 of 2005 by the First Additional District and Sessions Court (PCR Cases), Madurai. Under Rule 4(5) of SC/ST (P&A) Rules, 1995, the petitioner is entitled to engage a Senior Advocate of his choice as Special Public Prosecutor to conduct trial. The petitioner sent a representation dated 18.12.2008 to the 1st respondent to appoint Mr. G. Bhagavathsingh, Advocate, Madurai, as Special Public Prosecutor. However, no action has been taken, the petitioner is before this Court for the relief as stated supra.

3. Heard both sides.

4. It is seen that the petitioner is the de-facto complainant in Crime No. 139 of 2004 for the alleged offence punishable under Sections 395 I.P.C. r/w 3(1)(x) and 3(2) of SC/ST (P&A) Act, 1989. A charge-sheet has also been laid against four persons and the same was also taken on file, which is now pending in S.C. No. 114 of 2005. In the mean while, the petitioner has sent a representation to the 1st respondent/District Collector, Sivagangai for appointing one Mr.G.Bhagavathsing, Advocate, Madurai as Special Public Prosecutor to conduct trial in S.C. No. 114 of 2005. The petitioner further would state that under Rule 4(5) of SC/ST (P&A) Rules, 1995, he is entitled for such engagement of a Special Public Prosecutor. The said Section reads as follows:

4(5) Notwithstanding anything contained in Sub-rule (1) the District Magistrate or the Sub-Divisional Magistrate may, if deem necessary or if so desired by the victims of atrocity engage an eminent Senior Advocate for conducting cases in the Special Courts on such payment of fee as he may consider appropriate.

5. The learned Counsel for the petitioner would submit that the petitioner being the victim of atrocity is entitled to engage an eminent Senior Advocate of his choice for conducting the case in Special Court. The learned Counsel for the petitioner also pointed out that in similar case in CrI.O.P. (MD) No. 6025 of 2004 this Court has considered the plea of the victim and has directed the District Magistrate to consider the representation of the petitioner within a stipulated time. He further relied on yet another case reported in [Smt. Satki Devi and Another etc. Vs. Tikam Singh and Others](#), wherein the Rajasthan High Court has held as follows:

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Sections 15, 21 - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules (1995), Rule 4(5) - Special Public Prosecutor to conduct cases - Appointment of - Rule 4(5) provides for appointment of advocate of choice of victim of atrocity who is also in opinion of District Magistrate an eminent senior advocate - There is no conflict between Rule 4(5) of Rules and Section 15 of Act - Appointment of senior

advocate as Special Public Prosecutor for conducting trial at instance of victim - Same cannot be called in question without challenging vires of rule.

6. Under Rule 4(5), the District Magistrate or the Sub-Divisional Magistrate may engage an eminent Senior Advocate for conducting cases in the Special Courts on such payment of fee as he may consider appropriate "if so desired by the victim of atrocity". The Rajasthan High Court has also upheld such appointment and in similar circumstances, this Court has also directed the District Magistrate to consider such representation.

7. In view of the discussion, the petition is allowed and accordingly the first respondent is directed to consider the representation of the petitioner dated 18.12.2008 within a period of one month from the date of receipt of a copy of this order in accordance with Rule 4(5) of SC/ST (P&A) Rules, 1995.