

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE VIVEK RUSIA**

**WRIT PETITION No. 5774 of 2021**

**BETWEEN:-**

**1. RAJKUMAR DWIVEDI S/O RAM LAKHAN, AGED ABOUT 37 YEARS, OCCUPATION: GOVT. SERVICE M.I.G. COLONY, INDORE (MADHYA PRADESH)**

**2. KRISHNA KUMAR PATEL S/O DINDAYAL PATEL, AGED ABOUT 42 YEARS, OCCUPATION: GOVT. SERVICE SHYAM NAGAR.INDORE (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI MANU MAHESHWARI-ADVOCATE)***

**AND**

**1. STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY LAW AND LEGISLATIVE AFFAIRS DEPARTMENT VALLABH BHAWAN, BHOPAL.**

**2. ADDITIONAL SECRETARY LAW AND LEGISLATIVE AFFAIRS DEPARTMENT VALLABH BHAWAN BHOPAL (M.P.) (MADHYA PRADESH)**

**3. COLLECTOR / DISTRICT MAGISTRATE INDORE MOTITABELA. RD.MARUTICHAMBER CHHATRIBAGH.INDORE (MADHYA PRADESH)**

**4. MR. DHARMENDRA GURJAR, AGED ABOUT 38 YEARS, OCCUPATION: ADVOCATE DISTRICT COURT INDORE PREMISES M.G.ROAD. (MADHYA PRADESH)**

**5. SMT.FUL KUMARI W/O LATE VISHNUDAS**

VAISHNAV, AGED ABOUT 42 YEARS,  
OCCUPATION: SERVICE NAYABASERA. GANDHI  
NAGAR.INDORE (MADHYA PRADESH)

.....RESPONDENTS

(*SUDARSHAN JOSHI -GOVERNMENT ADVOCATE*).  
(*BY SHRI GAGAN BAJAD-ADVOCATE [R-4 & 5]*).

**WRIT PETITION No. 3564 of 2022**

**BETWEEN:-**

M.A. SYED S/O LATE M.H. SHAKIR, AGED ABOUT  
61 YEARS, OCCUPATION: INSPECTOR R/O 93, MR 9  
MAHALAXMI NAGAR (MADHYA PRADESH)

.....PETITIONER

(*BY MS. SUDHA SHRIVASTAVA-ADVOCATE*)

**AND**

STATE OF MADHYA PRADESH THROUGH  
1. PRINCIPAL SECRETARY LAW AND  
LEGISLATIVE AFFAIRS DEPARTMENT  
VALLABH BHAWAN, BHOPAL.

ADDITIONAL SECRETARY LAW AND  
2. LEGISLATIVE AFFAIRS DEPARTMENT  
VALLABH BHAWAN BHOPAL (MADHYA  
PRADESH)

COLLECTOR / DISTRICT MAGISTRATE MOTI  
3. TABELA. COLLECTORATE, (MADHYA  
PRADESH)

DHARMENDRA GURJAR, AGED ABOUT 38  
4. YEARS, OCCUPATION: ADVOCATE DIST. COURT  
INDORE PREMISES M.G. ROAD. INDORE  
(MADHYA PRADESH)

SMT. FUL KUMARI W/O VISHNU DAS VAISHNAV,  
5. AGED ABOUT 42 YEARS, OCCUPATION:  
SERVICE NAYA BASERA, GANDHI NAGAR.  
(MADHYA PRADESH)

.....RESPONDENTS

*( BY SHRI SUDARSHAN JOSHI-ADVOCATE )*  
*( BY GAGAN BAJAD-ADVOCATE (R-4 AND 5) )*

**Heard and reserved on** : **11.07.2023**  
**Order pronounced on** : **27.07.2023**

**ORDER**

Petitioners are challenging the order dated 13.02.2020 whereby the Department of Law and Legislative Affairs Government of Madhya Pradesh has appointed Shri Dharmendra Gurjar as Special Public Prosecutor in Session Trial No.389/2019 pending before Special Judge S.C./S.T. Act Indore.

The facts of the case in short are as under:-

2- At the relevant point in time these petitioners were posted in the police station GRP Indore. That Ms. Kiran Bhatam lodged the complaint in Police Station G.R.P. Indore regarding the theft of her vehicle TVS Scooty bearing registration No.MP-09-SD-9578. An FIR No.201/2015 was registered under Section 379 of IPC. Police arrested Dinesh with the stolen vehicle. Dinesh informed the police that he purchased the vehicle from Pankaj Vaishnav, therefore, petitioners brought Pankaj to the police Station. On the night of 19.12.2015, Pankaj was found dead in the bathroom of Police Station M.I.G.Indore. Since it was death due to hanging therefore Merg bearing No.42/2015 was registered under Section 174 of Cr.P.C. The Magisterial Inquiry was conducted by Additional Chief Magistrate, Indore and thereafter CrimeNo.02/2016 was registered against these petitioners under Section 304 /34 of IPC by the CID Police Headquarters, Bhopal. The Department obtained an opinion from Forensic Medicines and AIIMS, Bhopal and according to which the cause of death

of Pankaj Vaishnav was on account of antemortem hanging. The police filed the charge sheet against the petitioners under Section 342, 306, 193/34 of I.P.C. against all the petitioners. Anticipatory bail was denied to these petitioners then they surrendered before the Court and thereafter released on regular bail. According to the petitioners in their bail applications as well as writ petitions, respondent No.4 appeared as an advocate on behalf of the complainant to oppose the bail.

3- Respondent No.5, mother of the deceased Pankaj requested respondent No.3 for appointing respondent No.4 as a Special Public Prosecutor for conducting a Session Trial No.389/2019 pending before the Special Judge, SC/ST Indore. The said request was accepted and vide order dated 13.02.2020 the law department has appointed respondent No.4 as Special Public Prosecutor, hence, petitioners have filed a present petition before this Court.

4- The petitioners are assailing the impugned order *inter alia* on the ground that respondent No.3 has mechanically appointed respondent No.4 merely on the request made by respondent No.5. respondent No.4 cannot be appointed as Public Prosecutor because he happens to be the counsel of respondent No.5/complainant engaged to oppose the bail applications, therefore, the possibility of him being impartial in conducting the trial cannot be ruled out. The petitioners have no option if any other counsel other than respondent No.4 has been appointed as special public prosecutor.

5- Ms. Sudha Shrivastava (in W.P. No 3564/2022) and Shri Manu Maheshwari, (in W.P. No 5774/2021) learned counsel for the petitioners submitted that impugned order is non speaking order as no reason is assigned as to why the respondent No.4 is suitable to be appointed as

special public prosecutor. The Government has the number of public prosecutors in the entire M.P. then why the special public prosecutor is to be appointed in this trial. There are no exceptional circumstances in this trial which is to be conducted by Special Public Prosecutor. Respondent No.4 has been appointed on mere asking by the complainant. In support of their contention learned counsel for the petitioners has placed reliance in the case of *Mukul Dalal Vs. Union of India (1988) 3 SCC 144*, *Poonamchand Jain Vs. State of M.P. & Others 2001 (2) M.P.L.J. 61*, *Rajendra Nigam V State of M.P. & Others 1998 Cri.L.J. 998*, *Sunil Kumar Vs. State of Madhya Pradesh & Others, 1992 SCC Online MP 23*, *Devineni Seshagiri Rao Vs. The State Government of A.P. And others 2003 SCC Online AP 1264*, *Umesh Balasaheb Kalabhor Vs. State of Maharashtra & Others 2008 SCC Online Bom 1783*, *Shyam Ramkishan Sharma Vs. State of M.P. & others 1999 SCC Online MP 263*, *Paras Kumar Jain Vs. State of M.P. & others, Sidhartha Vashisht @ Manu Sharma Vs. State of (NCT of Delhi) (2010) 6 SCC 1*, *Sunil Kumar Vs. State of M.P. 1992 M.P.L.J. 772*, *Umesh Balasaheb Kalabhor Vs. State of Maharashtra and others, (2008) 4 CCR 53*,

6- Respondents have filed the reply by submitting that it is the prerogative of the State Government to appoint the special public prosecutor. Respondent No.4 is having eligibility to act as a special public prosecutor. His appointment does not in any way would cause prejudice to the petitioners. The allegation of non application of mind is baseless and the Court should not ordinarily exercise the power of judicial review to interfere with the decision taken by the Government. It is for the trial Judge to decide the case on merit as no public prosecutor cannot influence the judge. There is no allegation that respondent No.4 in any way would

influence the judge as he happened to be counsel for the complainant. It is a policy decision taken by the State Government after getting the sanction from a higher level, therefore, it should normally not be interfered.

7- Shri Gagan Bajaj, learned counsel for respondent No.4 and 5 submitted that even if respondent No.4 appeared on behalf of respondent No.5 in bail applications it cannot be presumed that he will not follow the procedure prescribed by law for conducting the trial. It is further submitted that the petitioners created all types of obstruction so that the FIR may not be registered against them. In support of his contention, Shri Bajaj has placed reliance over the judgment passed in the cases of *Anup Vs. State of M.P.2006 (2) M.P.L.J., Nemi Chand Vs. State of Rajasthan & Ors 2006 SCC Online Raj 289, Dev Raj Katariya Vs. State of M.P. (Writ Petition No.2835/2017 decided on 19.12.2017), Dr. P.S. Thakur Vs. State of M.P. & Ors (Writ Petition No.439/2015 decided on 12.07.2016), Bhramdutt S/o Late Shri Shyamlal and another (Writ Petition No.5811/2014 decided on 08.05.2015), Phool Singh Vs. State of Rajasthan reported 1993 SCC Online Raj 92, W.A. No.158/2015 (decided 15.04.2015)* wherein apprehension of causing prejudice has been disbelieved and the appointment of Special Public Prosecutor under Section 24 has been upheld.

#### ***Appreciations & Conclusion***

8- Sub-section 8 of Section 24 of Cr.P.C. is reproduced below:

*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."*

This Section gives authority to the Central Government or State

Government to appoint any advocate having 10 years or more of practice as a Special Prosecutor for the purpose of any case or class of cases. As per the proviso that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section.

9- Admittedly respondent No.5 made request to the to the State Government for appointment of Special Public Prosecutor in his case. The Government accepted the request and appointed respondent No.4 as Special Public Prosecutor. As per proviso, Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section, therefore, the choice of the victim is to be considered by the Court for engagement of an advocate of his choice to assist the prosecution under this sub-section, therefore, if the respondent No.5 wanted the service of the respondent No.4, he can be permitted to assist the prosecution under this section.

10- Admittedly, respondent no.4 appeared on behalf of respondent No.5 to oppose the bail application and writ petitions filed by these petitioners. It is correct, it is for the trial judge to consider the evidence and pass judgment. It makes no difference, for the judge as to who is appearing for accused or prosecution. Public Prosecutor appointed under Section 24 of Cr.P.C. (1) to (5) or the Special Public Prosecutor appointed under Section 24 (8) of Cr.P.C. are bound to conduct the trial under the provision of Cr.P.C. and they cannot go beyond this provision of the Cr.P.C. and the Evidence Act to conduct the trial but the principle is that justice not only be done but seen to be done. If petitioners are apprehensive that they may not get a chance of fair trial, if respondent No.4 is permitted to act as Special Public Prosecutor because he has already appeared for the complainant, therefore, his appointment cannot be upheld. However, under

Section 24(8) of Cr.P.C., the only requirement is that a person should be a practising advocate not less than 10 years. Respondent No.4 fulfils the qualification to act as Special Public Prosecutor but he is a choice of the complainant, therefore, he can at the most be permitted to assist the prosecution under the proviso of sub-section 8 of section 24 of Cr.P.C.

11- Undisputedly it is the prerogative of the State Government and Central Government has the case may be to appoint the Special Public Prosecutor in any case of class of cases. Respondent No.5 applied to the Collector, Indore that there is the possibility of connivance or collusion between the police officer and public prosecutor to affect the case, therefore, respondent No.4 be appointed as Special Public Prosecutor. Respondent No.4 submitted an affidavit that he will not charge any fee from the Government. District Public Prosecutor also gave no objection in favour of respondent No.4. Vide order dated 05.09.2020, the Superintendent of Police, Indore also recommended the name of respondent No.4 for appointment as a Special Public Prosecutor . But "Justice not only be done but seen to be done" is a well-known legal maxim that emphasizes the importance of transparency and public perception in the administration of justice. It reflects the idea that it's not enough for a judicial system to render fair and just decisions behind closed doors; it must also be evident and apparent to the public that justice is being served. It boosts public confidence in the legal system. Overall, the principle of "justice not only be done but seen to be done" underscores the vital role of transparency, accountability, and public perception in maintaining a fair and effective legal system.

12. Hence in view of the proviso to section 24(8) of the Cr.P.C., the complainant has a right to engage an advocate of her choice to assist the



prosecution, but the appointment of a Special Public Prosecutor of her choice by the Government is not contemplated in this section. Hence the order dated 13.02.2020 is hereby set aside. Session trial may go on with the assistance of a Public Prosecutor till the Government appoints a new Special Public prosecutor for this Trial is so desired.

Both the Writ Petitions are allowed. No order as to cost.

**(VIVEK RUSIA)**  
**J U D G E**

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