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Case Comment: K. Anbazhagan v The State of Karnataka

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INTRODUCTION

The Criminal Code of Procedure 1973 elaboratively gives procedural rules to deal with cases of a criminal nature. It is a well-understood fact that a crime committed under the Indian Penal Code is a crime against the society and state. A crime done by an offender is perceived to be done against the interests of the state and society. Thus, the code assigns the duty to represent the interests of the society as a whole to the Public Prosecutor. The code puts forth the provisions relating to the Public Prosecutor in a detailed manner. A Public Prosecutor is a person who acts as an agent and represents the interests of society as a whole in a criminal case from the side of the Government.

There are various types of Public Prosecutors as defined under the code. Some of them are Additional Public Prosecutor, Assistant Public Prosecutor and Special Public Prosecutor. A Special Public Prosecutor can also be appointed by the Central or the State Government to represent the Government as the case may be, and deal with the appeal of the society as a whole. Section 24 of the Code deals with the provisions relating to eligibility and appointment of Public Prosecutors. Clause 8 of the aforesaid section specifically provides that the Special Prosecutor

shall be a practising advocate for not less than ten years. Further, Section 301 shall also be read to understand the powers of the Public Prosecutors. It deals with how a Public Prosecutor can appear without any written authority before the Court.

Section 406¹ provides that wherever it seems necessary to achieve the ends of justice, the Supreme Court can transfer the case from one High Court to another or from a criminal court subordinate to one High Court or another Criminal Court of equal jurisdiction. Thus, this is done in cases where the Supreme Court is convinced with the fact that a proper unbiased investigation is not possible if the case subsists to be in that particular state where it arose and as a consequence, it orders to transfer the case from one High court to another or Criminal court of equal jurisdiction to attain justice. However, there can be a conflict that can arise in cases where the matter has been transferred to another High Court and the State Government involved appoints the Special Public Prosecutor from its State, from where the matter has been transferred, by taking the matter into its hands. Thus, the provisions of the code and the Supreme Court judgement in this matter prove to be a landmark judgement.

This case named *K Anbazhagan v State of Karnataka*² is an important case in the history of the Indian judiciary as it specifies the proper law of section 24³ when read with section 301⁴ of the Code of Criminal Procedure which talks about the Public Prosecutor and powers. It sets out certain guidelines and standards for a Public Prosecutor.

FACTS OF THE CASE

It is important to understand certain backgrounds before the material facts are investigated. Ms. J. Jayalalithaa served as Tamil Nadu's legitimately elected Chief Minister from 1991 until 1996. Her political party, the AIADMK, was defeated in the general elections conducted in 1996, and another political party, the DMK, was voted in with a majority. Criminal proceedings were

¹ Code of Criminal Procedure 1973, s 406

² *K. Anbazhagan v State of Karnataka & Ors* Crim App No 637/2015

³ Code of Criminal Procedure 1973, s 24

⁴ Code of Criminal Procedure 1973, s 301

launched against Ms. Jayalalithaa and her allies because of charges of accumulating assets disproportionate to their known sources of income.

The new administration established Special Courts to hear the cases brought against Ms. J. Jayalalithaa, Ms. S. Shashikala, Mr. V.N. Sudhakaran, and Ms. J. Elavarasi. On the commencement of the trial, 76 PWs were recalled for cross-examination on the grounds that lawyers representing the accused or some of them had previously been involved in another lawsuit brought against them. The Public Prosecutor did not appear to have objected to or consented to the recall of the witnesses. As many as 64 PWs rescinded their prior statement-in-chief out of a total of 76 PWs.

The Public Prosecutor did not use Section 154⁵ to label them hostile and/or cross-examine them. No attempt was made to ensure the witnesses were prosecuted for perjury. Following these circumstances, Mr. Anbazgahan filed a transfer petition in the court requesting to transfer the case from Chennai to Karnataka and they were subsequently allowed and transferred. A public prosecutor named Acharya was appointed but due to certain reasons, he resigned and subsequently, Bhavani Singh was appointed in his place.

However, the appellant filed a writ petition in the court that the Special Public Prosecutor appointed thereby shall be replaced by any other eminent lawyer because of bad records of her. The court dismissed the petition on infructuous grounds. The case was heard by the Special Court of Karnataka and it convicted the accused persons for the offences done under the Corruption Act. Later, a criminal appeal was filed by the convicted people and Karnataka was not made a party to the case. Thus, it did not appoint any public prosecutor in that appeal even though it was supposed to act on behalf of the state. However, the state of Tamil Nadu appointed Bhavani Singh as the Public Prosecutor from the side of the state. This was challenged by Mr. Anbazhagan on the grounds that Bhavani Singh had no authority to argue the case. The high gave in favor of Bhavani Singh, aggrieved by which he filed an appeal in the Supreme Court.

⁵ Indian Evidence Act 1872, s 154

ISSUES INVOLVED

1. Did the state of Tamil Nadu have the power to appoint a Public Prosecutor after transferring the case under section 406⁶ of the Code of Criminal Procedure?
2. Did the Special Public Prosecutor appointed under section 24(1) have the power to appear and argue the case for appeals as well as per section 301(1) of the code?
3. Would the annulment of Public Prosecutor Bhavani Singh entail a de novo hearing of the appeal?

JUDGEMENT AND REASONING

In view of the first issue of whether the state of Tamil Nadu had the power to appoint a Public Prosecutor for the appeal raised against the conviction of the accused people under section 406 of the Code of Criminal Procedure, the court gave its judgement that the state of Tamil Nadu had no right over the case and thus, the appointment was not valid. The reasoning given by the court was that once a case has been transferred from one state to another, in such a case, the transferor state (from which the case has been transferred) loses all its rights over that case and by the virtue of section 406, the transferee state takes charge over that case completely. Thus, in this case, after believing that there was a threat to meet the ends of justice in Tamil Nadu, the case was shifted by the Supreme Court to the jurisdiction of Karnataka. With the transfer of the case, the state of Tamil Nadu lost all its control over the case and was supposed to hand over the case to the state of Karnataka. Thus, the appointment made by the government of Chennai through a notification was declared invalid because of the reason that it had no authority over the case as it was the transferor state – court.

Regarding the question of whether the Public Prosecutor appointed under section 24(1)⁷ had the authority to argue and present the case in appeal as per section 301(1) of the code, the court expressed its answer in negative. It said that the phrase ‘without any written authority’ as used in section 301 of the Code, cannot be overstated. It can only indicate that a public prosecutor,

⁶ Code of Criminal Procedure 1973, s 406

⁷ Code of Criminal Procedure 1973, s 24(1)

once appointed by the state, can prosecute the appeal without the need for any official permission. The terms in section 301 (1) of the Code cannot be stretched to the degree that he can appear before the High Court only because he has been appointed in connection with the trial case since this would result in the anomalous scenario mentioned by Justice Lokur. Because of the language used in section 301 of the code, a public prosecutor assigned to conduct a matter before the trial court cannot be construed to be appointed for the purpose of an appeal emanating from that case. Further, it stated that the designation of Bhavani Singh as public prosecutor for the trial did not qualify him to pursue the appeal on behalf of the prosecuting agency before the High Court. The appointment of a public prosecutor in the high court under section 24(1) differs from the appointment of a public prosecutor in the district courts, and the notification appointing Mr. Bhavani did not allow him to represent the state of Karnataka on appeal.

With reference to the third issue whether the annulment of the public prosecutor, Mr. Bhavani Singh, a de novo trial would take place, the court took the view that it would not be necessary and denied it. The court reasoned its decision by stating that the appeal was heard on a day-to-day basis, as directed by the Supreme Court. The appeal has already been considered by a single judge of the High Court, and the decision is being prepared. The appellant had filed a more than 400-page written filing note with the trial court. The appellant dismissed the charges against Bhavani Singh during the hearing of the writ case, hence there is no need to revisit such allegations.

ANALYSIS

The verdict in *K. Anbazhagan v the State of Karnataka* has numerous significant ramifications. First, it clarifies the legislation about who is entitled to represent the prosecution in criminal appeals. Second, it underscores the concept that prosecutors must be unbiased and independent. Third, it sends a message to prosecutors that any misbehavior will be held accountable.

Regarding the first issue, it is completely construed with the decision of the court that the state of Tamil Nadu had no authority to interfere and appoint a public prosecutor as it would

ultimately lead to the influencing and interference of the transferor state, which was the sole purpose of transferring the case as to avoid their interference. The case was transferred after observing the circumstances which made the meeting of ends of justice difficult. Thus, if Tamil Nadu, being the transferor state, interrupts the procedure of the case, it would defeat the fundamental purpose of transferring the case. In the case of *Jayendra Saraswati Swamigal v State of Tamil Nadu*⁸, it was held by the Court that when a case is transferred under Section 406 of CrPC, the transferor State no longer possesses any power or control over the prosecution that is to be conducted in the court of a different state, where the case has been transferred to. Further, it also held that it is the duty of the State Government where the case has been transferred, to appoint a Public Prosecutor.

With regard to the second issue, it can be said that the public prosecutor was appointed under certain circumstances and for the purpose of arguing and presenting the case in the Special Court constituted by Karnataka under the direction of the Supreme Court. Thus, she had no authority to continue to present the case at the appeal stage without any written authority. Additionally, she could not be appointed as the public prosecutor with the official authority given to him by the state of Tamil Nadu as it had no say in the case matter. Further, the court said that the appointment of such a Public Prosecutor amounted to the appointment of Private counsel. In the case of *Haradhen Sen v State*⁹, it was held that the code provided no provision for filing written submissions at the appellate stage and that filing written submissions by a private counsel was not allowed. In another case, *Shiv Kumar v Hukum Chand and Anr.*¹⁰, it was held by the court that section 301(1) provides for the powers of the Public Prosecutors and sub-section 2 places a restriction on the private counsel. Further, it held that the only liberty that can be exercised by the private counsel is to submit the written arguments after the closure of evidence in a trial, only when the court permits the same.

Because of the third issue, it can be said that hearing all the allegations and considering the arguments all over again would only mean that the time of the court is being wasted. Thus,

⁸ *Jayendra Saraswati Swamigal v State of Tamil Nadu* (2005) 2 SCC 13

⁹ *Haradhen Sen v State of West Bengal* (2004) 2 Cal HN 527

¹⁰ *Shiv Kumar v Hukum Chandra and Anr* (1999) 7 SCC 467

keeping in mind the amount of pendency of cases in the court, revisiting the arguments would be a sheer waste of time and energy as the arguments would be similar and the decision would still result in the same manner.

CONCLUSION

The ruling Supreme Court, in this case, is an important win for the rule of law and the rights of criminal defendants. The ruling of the Court assures that prosecutors will be held to the highest ethical standards and that defendants will have a fair trial. Additionally, this case gave out important points that there must be independent and impartial prosecution to ensure that a fair trial is conducted and the prosecution lawyers shall be chosen carefully in order to make sure that they have not presented the case of the accused in their previous records. Thus, this decision marks one of the landmark cases.