

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.637 OF 2015

(Arising out of S.L.P. (Crl.) No.1632 of 2015)

K. Anbazhagan

...Appellant

Versus

State of Karnataka and Ors.

...Respondents

WITH

CRIMINAL APPEAL NO.638 OF 2015

(Arising out of S.L.P. (Crl.) No.2013 of 2015)

K. Anbazhagan

...Appellant

Versus

Selvi J. Jayalalitha and Anr.

...Respondents

J U D G M E N T

Madan B. Lokur, J.

1. Leave granted.

2. The question for consideration is whether Mr. G. Bhavani Singh appointed as a Special Public Prosecutor in the trial of the case against Ms. Jayalalitha and other accused persons in the Special Court in Bengaluru was

entitled to represent the prosecution in the appeals filed in the Karnataka High Court by the accused persons against their conviction.

3. My answer to this question is in the negative on an appreciation of earlier directions given by this court, on a reading of the notification appointing Mr. Bhavani Singh as a Special Public Prosecutor and on an interpretation of Sections 24, 25, 25-A and 301(1) of the Code of Criminal Procedure, 1973. The result is that the hearing of the appeals in the High Court stands vitiated, since the prosecution was not represented by an authorized person. The appeals will have to be heard afresh by the High Court with the prosecution represented by a Public Prosecutor appointed under Section 24(1) of the Criminal Procedure Code, 1973 or a Special Public Prosecutor appointed by the State of Karnataka under Section 24(8) of the said Code.

4. Before adverting to the facts of the case, it needs mention that this case is a classic illustration of what is wrong with our criminal justice delivery system. If the allegations made by Mr. K. Anbazhagan¹ are true that the

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accused persons used their power and influence to manipulate and subvert the criminal justice system for more than 15 years thereby delaying the conclusion of the trial against them, then it is a reflection on the role that power and influence can play in criminal justice delivery. However, if the allegations made by him are not true, even then it is extremely unfortunate that a criminal trial should take more than 15 years to conclude. Whichever way one looks at the unacceptable delay, it is the criminal justice delivery system that comes out the loser. Something drastic needs to be done to remedy the system, if not completely overhaul it, and as this case graphically illustrates, the time starts NOW.

Background facts

5. The background facts relating to the appeals have been pithily stated in **K. Anbazhagan v. Superintendent of Police**² and the relevant facts are paraphrased for the purposes of this decision.

6. From 1991 to 1996, Ms. J. Jayalalithaa was the duly elected Chief Minister of Tamil Nadu. A political party called the AIADMK headed by her was defeated in the

Mr. Anbazhagan is the General Secretary of the DMK, a political party
² (2004) 3 SCC 767

general elections held in 1996 and another political party, the DMK, was voted in with a majority. On the basis of allegations of amassing assets disproportionate to their known sources of income, criminal proceedings were initiated against Ms. Jayalalithaa and her associates. Special Courts were constituted by the new government for the trial of the cases filed against Ms. J. Jayalalithaa, Ms. S. Sasikala, Mr.V.N. Sudhakaran and Ms. J. Elavarasi. The constitution of the Special Courts was upheld by this court.³

7. In 1997, CC No. 7 of 1997 was filed before the Principal Special Judge, Chennai for the trial of Ms. J. Jayalalithaa, Ms. S. Sasikala, Mr. V.N. Sudhakaran and Ms. J. Elavarasi, who were charge-sheeted for offences under Section 120-B of the Indian Penal Code, Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 for alleged accumulation of wealth of Rs 66.65 crores, disproportionate to their known sources of income.

8. The trial of CC No. 7 of 1997 progressed before the Special Judge and by August 2000, as many as 250 prosecution witnesses were examined. In the general

³ J. Jayalalitha v. Union of India, (1999) 5 SCC 138

elections held in May 2001, the AIADMK headed by Ms. Jayalalithaa secured a majority of votes in the elections and therefore a majority of seats in the Legislative Assembly. She was chosen as the leader of the House by the AIADMK and appointed as the Chief Minister of Tamil Nadu. Her appointment as Chief Minister was challenged soon thereafter and this court declared that her appointment was not legal or valid.⁴ Consequently, on 21st September, 2001 she ceased to hold the office of Chief Minister of Tamil Nadu.

9. Sometime in January-February, 2002 the Election Commission of India announced a bye-election to the Andipatti Constituency. In the bye-election held on 21st February, 2002 Ms. Jayalalithaa was declared elected and she was sworn in as the Chief Minister of Tamil Nadu on 2nd March, 2002. With the change in government, it appears that three Public Prosecutors connected with CC No. 7 of 1997 resigned; a Senior Advocate appearing for the State also resigned as also the Investigating Officer. It appears that due to these resignations, and perhaps for other reasons, the trial did not proceed. Eventually, on 7th

⁴ B.R. Kapur v. State of Tamil Nadu, AIR 2001 SC 3435

November, 2002 the trial in CC No. 7 of 1997 resumed.

10. On the resumption of the trial, as many as 76 PWs were recalled for cross-examination on the ground that counsel appearing for the accused or some of them had earlier been busy in some other case filed against them. It seems that the Public Prosecutor did not object to the witnesses being recalled or gave his consent for their recall. Out of a total 76 PWs, as many as 64 PWs resiled from their previous statement-in-chief. It also appears that the Public Prosecutor made no attempt to declare them hostile and/or to cross-examine them by resorting to Section 154 of the Indian Evidence Act. It also appears that no attempt was made to see that the court takes action against the witnesses for perjury. Furthermore, it seems that the presence of Ms. Jayalalithaa was dispensed with during her examination under Section 313 of the Code of Criminal Procedure Code, 1973 (for short 'the Code') and instead a questionnaire was sent to her and her reply to the questionnaire was sent to the court *in absentia*. Apparently, the Public Prosecutor did not object to Ms. Jayalalithaa's application for dispensing with her

presence at the time of examination under Section 313 of the Code.

11. In these circumstances, the appellant, Mr. Anbazhagan moved transfer petitions in this court under Section 406 of the Code seeking transfer of CC No.7 of 1997 and CC No. 2 of 2001 pending in the Court of the XIth Additional Sessions Judge (Special Court No.1), Chennai to a court of equivalent competent jurisdiction in any other State.⁵

12. The transfer petitions were allowed by this court by its judgment and order dated 18th November, 2003 and the decision of this court is reported as **K. Anbazhagan v. Superintendent of Police**.⁶

13. While it is not necessary to go into great detail into the reasons why this court transferred the cases, it is nevertheless necessary to mention that this court

⁵**406. Power of Supreme Court to transfer cases and appeals.**— (1) Whenever it is made to appear to the Supreme Court that an order under this section is expedient for the ends of justice, it may direct that any particular case or appeal be transferred from one High Court to another High Court or from a Criminal Court subordinate to one High Court to another Criminal Court of equal or superior jurisdiction subordinate to another High Court.

(2) The Supreme Court may act under this section only on the application of the Attorney-General of India or of a party interested, and every such application shall be made by motion, which shall, except when the applicant is the Attorney-General of India or the Advocate-General of the State, be supported by affidavit or affirmation.

(3) Where any application for the exercise of the powers conferred by this section is dismissed, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider appropriate in the circumstances of the case.

⁶ (2004) 3 SCC 767

observed that Mr. Anbazhagan had made out a case that confidence in the fairness of the trial was being seriously undermined by the manner in which the prosecution was being conducted. It was observed that the Public Prosecutor was hand in glove with the accused thereby creating a reasonable apprehension of likelihood of failure of justice and there was a strong indication that the process of justice was being subverted. Accordingly, this court transferred the prosecution being CC No.7 of 1997 and CC No. 2 of 2001 pending in the court of the XIth Additional Sessions Judge (Special Court No.1) Chennai from Tamil Nadu to Karnataka with the following directions given in paragraph 34 of the Report:

(a) The State of Karnataka in consultation with the Chief Justice of the High Court of Karnataka shall constitute a Special Court under the Prevention of Corruption Act, 1988 to whom CC No. 7 of 1997 and CC .No. 2 of 2001 pending on the file of the XIth Additional Sessions Judge (Special Court No.1), Chennai in the State of Tamil Nadu shall stand transferred. The Special Court to have its sitting in Bangalore.

(b) As the matter is pending since 1997 the State of Karnataka shall appoint a Special Judge within a month from the date of receipt of this order and the trial before the Special Judge shall commence as soon as possible and will then proceed from day to day till completion.

(c) The State of Karnataka in consultation with the Chief Justice of the High Court of Karnataka shall appoint a senior lawyer having experience in criminal trials as Public Prosecutor to conduct these cases. The Public Prosecutor so appointed shall be entitled to assistance of another lawyer of his choice. The fees and all other expenses of the Public Prosecutor and the Assistant shall be paid by the State of Karnataka who will thereafter be entitled to get the same reimbursed from the State of Tamil Nadu. The Public Prosecutor to be appointed within six weeks from today.

(d) The investigating agency is directed to render all assistance to the Public Prosecutor and his Assistant.

(e) The Special Judge so appointed to proceed with the cases from such stage as he deems fit and proper and in accordance with law.

(f) The Public Prosecutor will be at liberty to apply that the witnesses who have been recalled and cross-examined by the accused and who have resiled from their previous statement, may be again recalled. The Public Prosecutor would be at liberty to apply to the court to have these witnesses declared hostile and to seek permission to cross-examine them. Any such application if made to the Special Court shall be allowed. The Public Prosecutor will also be at liberty to apply that action in perjury to be taken against some or all such witnesses. Any such application(s) will be undoubtedly considered on its merit(s).

(g) The State of Tamil Nadu shall ensure that all documents and records are forthwith transferred to the Special Court on its constitution. The State of Tamil Nadu shall also ensure that the witnesses are produced before the Special Court whenever they are required to attend that court.

(h) In case any witness asks for protection, the State of Karnataka shall provide protection to that witness.

(i) The Special Judge shall after completion of evidence put to all the accused all relevant evidence and

documents appearing against them whilst recording their statement under Section 313. All the accused shall personally appear in court, on the day they are called upon to do so, for answering questions under Section 313 of the Criminal Procedure Code.

14. The directions that are of primary concern are directions (a), (b) and (c). They are to the effect that the State of Karnataka should constitute a Special Court to try the transferred cases in Bangalore (now Bengaluru); that a Special Judge be appointed to the Special Court to try the transferred cases on a day to day basis; that the State of Karnataka should, in consultation with the Chief Justice of the Karnataka High Court, appoint a senior lawyer having experience in criminal trials as a Public Prosecutor to conduct the transferred cases against the accused persons.

15. Pursuant to the directions given by this court, the State of Karnataka, in consultation with the Chief Justice of the High Court of Karnataka appointed Mr. B.V. Acharya as a Public Prosecutor to conduct the case against the accused persons. The order dated 19th February, 2005 assigning the case to Mr. B.V. Acharya as a Public Prosecutor reads as follows:

NOTIFICATION

In obedience of the judgment dated 18.11.2003 passed by the Supreme Court of India in Transfer Petition (Criminal) Nos.77-78/2003 in the matter of K. Anbazhagan vs. The Superintendent of Police and others and in exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Central Act No.2 of 1974) as amended by the Code of Criminal Procedure (Amendment) Act 1978 and Rule 30 of the Karnataka Law Officers (Appointment and Conditions of Service) Rules 1977 Sri B.V. Acharya, Senior Advocate and former Advocate General of Karnataka, No.42, 5th Main, Jayamahal Extension, Bangalore - 560041, is appointed as Public Prosecutor to conduct C.C. No.7/1997 and C.C. No.2/2001 pending on the file of the XIth Additional Sessions Judge, (Special Court No.1), Chennai, regarding trial of Ms. Jayalalitha and others in the State of Karnataka and now transferred to the XXXVI Additional City Civil and Sessions Judge in pursuance.

By Order and in the name of the Governor of Karnataka.



Sd/-
(Chikkahanumanthaiah)
Under Secretary to Government,
(Administration-1) Law Department

16. For reasons that are not necessary to detail, Mr. Acharya resigned as the Public Prosecutor and in his place the State of Karnataka appointed Mr. G. Bhavani Singh as a Special Public Prosecutor by a notification dated 2nd February, 2013. The order appointing Mr. Bhavani Singh as a Special Public Prosecutor was issued in exercise of powers conferred by Section 24(8) of the Code⁷ and Rule

⁷ The relevant portions of Section 24 of the Code read as follows:

24. Public Prosecutors.—(1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also

30 of the Karnataka Law Officers (Appointment and Conditions of Service) Rules, 1977.⁸ The notification appointing Mr. Bhavani Singh reads as follows:-

NOTIFICATION

In obedience to the judgment dated 18-11-2003 passed by the Hon'ble Supreme Court of India in Transfer Petition No.77-78/2003 (Criminal) in the matter of K. Anbazhagan v. The Superintendent of Police and others and in exercise of the powers conferred by Sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Central Act No.2 of 1974) as amended by the Code of Criminal Procedure (Amendment Act 1978) and Rule 30 of the Karnataka Law Officers (Appointment and Conditions of Service) Rules, 1977 Sri G. Bhavani Singh, Senior Advocate, House No.746, Srinidhi, Kadugodi, White Field Railway Station, Bangalore-560067, is appointed as Special Public Prosecutor in place of Sh. B.V. Acharya on same terms to conduct Special C.C. No.208/2004 (in the case of Kum. Jayalalitha and others) pending on the file of XXXVIth

appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be.

(2) The Central Government may appoint one or more Public Prosecutors, for the purpose of conducting any case or class of cases in any district, or local area.

(3) For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district:

Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.

(4) to (7) xxx xxx xxx

(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:

Provided that the Court may permit the victim to engage an advocate of this choice to assist the prosecution under this sub-section.

(9) xxx xxx xxx

⁸ **30. Special Counsels:-** Subject to these rules the Government may appoint any advocate as a Special Counsel either for the conduct of a civil or criminal case or any appeal or proceedings connected therewith, pending in a court either within the State or in any other State or in the Supreme Court or in any High Court in the country.

(2) Before making such appointment the Government may consult the Advocate General if the appointment is to conduct a civil case or appeal and the Director of Prosecution if it is to conduct a criminal case or appeal.

(3) Remuneration payable to a special counsel shall be such as may be decided by Government in each case having regard to the nature of the case.

Additional City Civil & Sessions Court (Special Court),
Bangalore in pursuance.

Further, Sri Sandesh J. Chouta, Advocate, is continued to assist Sh. G. Bhavani Singh, Special Public Prosecutor, in this case.

By order and in the name of the Governor of Karnataka.
(K. Narayana)
Deputy Secretary to Government (Admn-I)
Law, Justice and Human Rights Department.

17. During the trial of Special CC No. 208 of 2004⁹ before the Special Court, Bangalore, an application was moved by Mr. Anbazhagan on 13th August, 2013 under Section 301(2) of the Code requesting for permission to assist the Special Public Prosecutor by making oral submissions on the merits of the case.¹⁰ The application was partly allowed by the Special Court by an order dated 21st August, 2013 and Mr. Anbazhagan was permitted to file a Memo of Arguments and to render such assistance to the Special Public Prosecutor as he may require. At a later date on 19th May, 2014 Mr. Anbazhagan filed elaborate written submissions running into about 430 pages.

18. Mr. Anbazhagan had separately objected to the

⁹ On transfer of the case from Tamil Nadu to Karnataka, it was renumbered from CC No.7 of 1997 to Special CC No.208 of 2004. We are not concerned with CC No.2 of 2001.

¹⁰ **301. Appearance by Public Prosecutors.**—(1) The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.

(2) If in any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case.

appointment of Mr. Bhavani Singh as the Special Public Prosecutor in representations to the Government of Karnataka and to the Chief Justice of the High Court of Karnataka, along with a request to remove him (Mr. Bhavani Singh) as the Special Public Prosecutor in the trial against the accused persons in view of some allegations against him.

19. Since Mr. Anbazhagan did not receive any positive response, he filed W.P. No. 38075 of 2013 in the High Court of Karnataka on 23rd August, 2013 challenging the appointment of Mr. Bhavani Singh as the Special Public Prosecutor and also praying that some other eminent lawyer may be appointed in his place.¹¹

20. During the pendency of W.P. No. 38075 of 2013, by a notification issued on 26th August, 2013 the appointment of Mr. Bhavani Singh as the Special Public Prosecutor was withdrawn by Karnataka. The ostensible reason was that there was no proper consultation with the Chief Justice of the Karnataka High Court when Mr. Bhavani Singh was appointed as the Special Public Prosecutor.

21. Aggrieved by the withdrawal of Mr. Bhavani Singh's

¹¹ The website of the Karnataka High Court indicates that the writ petition is still pending. However, it seems to have become infructuous due to subsequent events.

appointment as the Special Public Prosecutor, the accused persons filed a writ petition in this court being W.P. (Crl.) No.145 of 2013. Upon notice being issued to the State of Karnataka, the learned Attorney General appeared for Karnataka and informed this court on 6th September, 2013 that the impugned notification dated 26th August, 2013 would be withdrawn with a view to consult the Chief Justice of the Karnataka High Court. Consequently, the writ petition was dismissed as having become infructuous.

22. Soon thereafter, several developments occurred in quick succession. On 10th September, 2013 the State of Karnataka withdrew the notification dated 26th August, 2013 and by a letter of the same date requested Mr. Bhavani Singh not to appear before the Special Court. This led the accused persons to file W.P. (Crl.) No. 154 of 2013 in this court challenging the notification and the letter, both dated 10th September, 2013. This court issued notice in the writ petition, returnable in ten days and also passed an interim order staying the operation of the letter dated 10th September, 2013.

23. The State of Karnataka then consulted the Chief

Justice of the Karnataka High Court regarding the appointment of Mr. Bhavani Singh as the Special Public Prosecutor. On 14th September, 2013 the Chief Justice of the Karnataka High Court concurred with the view of the State of Karnataka that Mr. Bhavani Singh should no longer continue as the Special Public Prosecutor before the Special Court. On 16th September, 2013 a consequential order was passed by Karnataka withdrawing the appointment of Mr. Bhavani Singh as the Special Public Prosecutor.

24. These developments led the accused persons to file W.P. (Crl.) No.166 of 2013 in this court challenging the orders dated 14th and 16th September, 2013.

25. Both the writ petitions, that is, W.P. (Crl.) Nos.154 and 166 of 2013 were heard together by this court and by a judgment and order dated 30th September, 2013 both the writ petitions were disposed of and it was held that the order removing Mr. Bhavani Singh as the Special Public Prosecutor is *mala fide* and not sustainable in the eyes of the law and was accordingly quashed. The decision of this court is reported as **J. Jayalithaa v. State of**

Karnataka.¹²

26. The trial thereafter continued before the Special Court, though with some hiccups (major and minor), with which we are not directly concerned.

27. In any event, on 27th September, 2014 the Special Court delivered judgment convicting all the accused persons including Ms. Jayalalithaa. Among the materials considered by the Special Court were the elaborate written submissions given by Mr. Anbazhagan to the Special Court on 19th May, 2014.

28. At this stage, it is necessary to make a digression for understanding the issues raised in these appeals.

29. The prosecution against Ms. Jayalalithaa and others was at the instance of the State of Tamil Nadu but after the prosecution was transferred to Karnataka, and in terms of the decision of this Court rendered in **Anbazhagan**¹³ particularly paragraph 34(c) thereof, Tamil Nadu had no further say in matters relating to the Public Prosecutor or the Special Public Prosecutor (apart from the payment of his fees etc.). It was for Karnataka to appoint the Public Prosecutor, who was to be a senior lawyer having

¹² (2014) 2 SCC 401

¹³ (2004) 3 SCC 767

experience in criminal trials; the appointment was to be made in consultation with the Chief Justice of the High Court of Karnataka; the Public Prosecutor could be an appointee from within Karnataka or outside the State; the Public Prosecutor was entitled to the assistance of another lawyer of his choice who could also be from Karnataka or outside the State; all expenses and fees payable to the Public Prosecutor and his assisting lawyer were to be paid by Karnataka and that was to be reimbursed by Tamil Nadu. It is under these circumstances that Karnataka virtually stepped into the shoes of the State of Tamil Nadu and thereby became directly involved and concerned, at least in so far as the prosecution of the accused persons is concerned in Special CC No. 208 of 2004.

30. It is not that by issuing the directions contained in paragraph 34(c) above, this court adopted a procedure that was without precedent. In **Jayendra Saraswati Swamigal v. State of Tamil Nadu**¹⁴ it was held:

“Once the case is transferred as per Section 406 CrPC to another State, the transferor State no longer has control over the prosecution to be conducted in a court situated in a different State to which the case has been transferred. It is the prerogative of the State Government

¹⁴ (2008)10 SCC 180

to appoint a Public Prosecutor to conduct the case which is pending in the sessions division of that State.”¹⁵

It was further held:

“Of course, this Court while passing order of transfer, can give an appropriate direction as to which State should appoint the Public Prosecutor to conduct that particular case. Such orders are passed having regard to the circumstances of the case and the grounds on which the transfer has been effected. This Court can certainly give directions irrespective of the provisions contained in Section 24 CrPC. But so far as this case is concerned, nothing had been stated in the order of the transfer. The provisions contained in Section 24 CrPC shall prevail and it is for the appropriate State Government within whose area the trial is conducted to appoint Public Prosecutor under sub-sections (3) to (7) of Section 24 CrPC.”¹⁶

31. It is in these circumstances that Karnataka first appointed Mr. B.V. Acharya as the Public Prosecutor and then Mr. Bhavani Singh as the Special Public Prosecutor to conduct the trial against the accused persons.

32. Finally, this court also held:

“The purpose of transfer of the criminal case from one State to another is to ensure fair trial to the accused.”¹⁷

33. I dare say that the facts of these appeals clearly suggest that not only should the trial be fair to the accused persons but also that the trial should be fair to

¹⁵ Paragraph 12 of the judgment

¹⁶ Paragraph 13 of the judgment

¹⁷ Paragraph 15 of the judgment

the prosecution also.

34. It was then clarified by this court:

“However, we make it clear that the State of Pondicherry [the transferee State in this case] can appoint any counsel as Public Prosecutor having requisite qualifications as prescribed under sub-section (8) of Section 24 CrPC whether he is a lawyer in the State of Pondicherry or any other State.”¹⁸

35. Feeling aggrieved by the conviction handed down by the Special Court, Ms. Jayalalithaa and the other accused persons filed Criminal Appeal Nos. 835-838 of 2014 before the Karnataka High Court on 29th September, 2014. Since Karnataka was not made a party in the criminal appeals, that State did not appoint any Public Prosecutor or any Special Public Prosecutor to contest the appeals, even though, as mentioned above, it had stepped into the shoes of Tamil Nadu, as it were.

36. On the other hand, Tamil Nadu acted with remarkable alacrity and on 29th September, 2014 the Principal Secretary to the Government of Tamil Nadu passed an order authorizing the Directorate of Vigilance and Anti-Corruption, Chennai to engage the services of Mr. Bhavani Singh, Special Public Prosecutor to appear before

¹⁸ Paragraph 18 of the judgment

the High Court of Karnataka for and on behalf of the said Directorate in any appeal/bail petition, any other petition that may arise out of the conviction of the accused persons. The order passed by the Principal Secretary reads as follows:-

ORDER

The Director, Vigilance and Anti-Corruption, Chennai, in the letter read above, has requested the Government that Thiru G. Bhavani Singh, Special Public Prosecutor, who has conducted the trial in Special C.C. No. 208/2004 before the Special Judge, 36th Additional City Civil & Sessions Court, Bengaluru, may be authorized to appear before the High Court of Karnataka, Bengaluru, on behalf of the Directorate of Vigilance and Anti-Corruption, Chennai in any Appeal/Bail petition/any other petition that may arise out of the order of the above Trial Court.

2. The Government after careful examination, have decided to authorize the Director, Vigilance and Anti-Corruption, Chennai to engage the services of Thiru G. Bhavani Singh, Special Public Prosecutor to appear before the Hon'ble Court of Karnataka, Bengaluru on behalf of the Directorate of Vigilance and Anti-Corruption, Chennai in any Appeal/Bail Petition/any other petition that may arise out the order dated 27-09-2014 on the above Trial Court in all hearings.

(By order of the Governor)
Jatindra Nath Swain
Principal Secretary to Government"

37. When the criminal appeals and the petitions for suspending the sentence filed by the accused persons came up for consideration before a learned Single Judge of

the Karnataka High Court on 30th September, 2014 Mr. Bhavani Singh informed the court that he was appointed by the State Government (Tamil Nadu) to represent the prosecution but that he had not received any official communication in this regard.

38. The appeals again came up before a learned Single Judge on 1st October, 2014 for the purposes of grant or refusal of suspension of sentence of all the accused persons. On that date, Mr. Bhavani Singh filed his Memo of Appearance and a statement of objections opposing the release of the accused persons on bail. Thereafter, on 7th October, 2014 the learned Single Judge, after hearing submissions of the parties, declined to suspend the sentence awarded to the accused persons or to grant them bail.¹⁹

39. Feeling aggrieved, the accused persons filed a petition in this court challenging the refusal of bail by the learned Single Judge. In that petition being SLP (Crl.) No.7900 of 2014 bail was granted to Ms. Jayalalithaa and other accused persons by this court on 17th October, 2014. The grant of bail was confirmed by this court on 18th

¹⁹ Selvi J. Jayalalithaa v. State, MANU/KA/2704/2014, ILR 2014 Karnataka 5696

December, 2014 and it was directed that the criminal appeals pending in the Karnataka High Court be heard on a day to day basis so that they could be disposed of within three months. The order passed by this court reads as follows:-

ORDER

Pursuant to the directions issued by this Court dated 17.10.2014, the petitioners have been released on bail.

Petitioners have filed an affidavit dated 10.12.2014 to the effect that the entire records of the trial court has been filed before the High Court. From the affidavit, it is clear that necessary records have been filed and the appeals are ripe for hearing.

Keeping in view the peculiar facts of the case, we request the learned Chief Justice of High Court of Karnataka to constitute a Special Bench on the date of reopening of the High Court for hearing of the appeals exclusively on day-to-day basis and dispose of the same as early as possible at any rate within three months.

Bail granted by us earlier is extended by another four months from today.

Call these special leave petitions on 17.04.2015.”

40. Thereafter, the criminal appeals came up for hearing on 2nd/5th January, 2015 in the Karnataka High Court before a learned Single Judge.

41. Earlier, Mr. Anbazhagan was of the view that Mr.

Bhavani Singh was not entitled to represent the prosecution in the Karnataka High Court since his appointment as a Special Public Prosecutor stood terminated with the conclusion of the trial and the delivery of judgment by the Special Court. Moreover, he had not been appointed by Karnataka in consultation with the Chief Justice of the High Court to represent the prosecution in the appeals pending in the High Court. Under these circumstances, Mr. Anbazhagan made a representation dated 24th December, 2014 to the Chief Secretary to the Government of Karnataka to immediately appoint a senior lawyer practicing in the Karnataka High Court as the Special Public Prosecutor to contest the appeals filed by the accused persons. However, since he received no response to his representation, he filed a writ petition in the Karnataka High Court being Writ Petition No. 742 of 2015 seeking a direction to the State of Karnataka to appoint any other senior lawyer as the Special Public Prosecutor in the pending criminal appeals being Criminal Appeal Nos. 835-838 of 2014. The present appeals arise out of the proceedings in Writ Petition No. 745 of 2015.

Decision in the writ petition

42. After hearing learned counsels for the parties, the learned Single Judge, by his judgment and order dated 19th January, 2015 disposed of W.P. No. 742 of 2015.²⁰ It was held that the directions issued by this court in **Anbzhagan**²¹ were confined to the procedure to be followed in the trial. It was noted that “the very object of transferring the case to be prosecuted in the State of Karnataka by the State Government of Karnataka, by adopting the special procedure prescribed, was on the Supreme Court having lost confidence of a fair trial being conducted within the State of Tamil Nadu and in any organ of the Government of Tamil Nadu being involved.” It was also noted that “It is therefore a matter of formality for the Supreme Court to clarify as to the procedure in appointing a counsel and his assistant, if any, and in the conduct of further proceedings.” The writ petition was then disposed of with the following observations:

“To hazard a guess, the indication is that the proceedings in entirety, till the same attains finality, shall be taken to its logical conclusion by the State of Karnataka. In any event, since this court would not be competent to interpret or expound on what is not spelt out in the

²⁰ MANU/KA/0125/2015

²¹ (2004) 3 SCC 767

directions issued by the Supreme Court, in so far as the procedure to be followed in the manner or terms of appointment of Prosecution Counsel, post the judgment of the trial court, in the appeals now pending, it would be appropriate if the proceedings are allowed to continue notwithstanding the challenge as to the validity or otherwise of the appointment of respondent No. 5 [Mr. Bhavani Singh], as there is no discernible prejudice caused by his continuance as the Special Public Prosecutor for the time being. This is especially so, when the proceedings are directed by the Honourable Supreme Court to be conducted on a day to day basis, before a Special Bench and with expedition. Hence, to pronounce on the validity of the disputed appointment and to hamper the proceedings would be counter productive and undesirable. It is open either for the State Government of Karnataka or the petitioner himself, to seek further clarifications from the Supreme Court as to the procedure that is to be followed in making appointment of a Special Public Prosecutor and an assistant or assistants, if any, to represent the State of Karnataka.”

43. In this context, it is important to notice the stand taken by Karnataka before the learned Single Judge. It was submitted by the learned Advocate General for Karnataka that:

“The learned Advocate General would concur that the directions issued by the Supreme Court do not specify as to the procedure that is to be followed in the appointment of a Public Prosecutor before this court in the pending appeals. However, if the objective of the Supreme Court is to be understood in its broadest sense, it would have to be taken that the State Government of Karnataka, is entrusted with the task of conducting the case at all stages, till it attains finality.

The learned Advocate General would however, submit that after the judgment was pronounced by the trial court, there has been no further consultation between

the State Government of Karnataka and the Chief Justice of the High Court of Karnataka, as directed by the Supreme Court in making any appointment of a Special Public Prosecutor and there is no appointment order issued in favour of respondent No. 5, afresh; he would further submit that if it is a formality to be complied with, the State Government, in consultation with the Chief Justice, shall take further steps. Since the State Government is not formally authorized to take any steps in so far as the appointment of the prosecutor or counsel to conduct the appeals, no steps have been taken.” (emphasis supplied)

44. Feeling aggrieved by the judgment and order dated 19th January, 2015 a writ appeal was filed by Mr. Anbazhagan in the High Court being Writ Appeal No.260 of 2015. The State of Karnataka did not file any appeal against the judgment and order of the learned Single Judge but accepted it. The writ appeal filed by Mr. Anbazhagan was partly allowed by the Division Bench by its judgment and order dated 11th February, 2015.²² This decision is under challenge in this court.

Decision in the writ appeal

45. In the writ appeal, it was contended by Mr. Anbazhagan that it is for the transferee State (Karnataka) alone to prosecute the case in the Special Court and the appeals in the High Court. The transferor State (Tamil

²² MANU/KA/0386/2015

Nadu) has no effective role to play in the prosecution of the appeals. Since Mr. Bhavani Singh was not appointed by Karnataka to contest the appeals in the High Court, he was not entitled to appear on behalf of the prosecution and since Tamil Nadu had no role to play in the prosecution of the appeals, his appointment by Tamil Nadu was bad in law. It was further submitted that the appointment of Mr. Bhavani Singh as a Special Public Prosecutor was confined only to the trial before the Special Court and that appointment came to an end on the conviction of the accused persons. Unless his appointment as a Special Public Prosecutor was notified by Karnataka for contesting the appeals in the High Court, Mr. Bhavani Singh could not enter appearance for the prosecution. For this additional reason also Mr. Bhavani Singh's appearance in the High Court in the pending appeals filed by the accused persons was unauthorized.

46. Karnataka appeared through its Advocate General and the submissions made are best expressed in the words of the Karnataka High Court in the judgment under appeal:

“Sri Prof. Ravi Verma Kumar, learned Advocate General, appearing for the State of Karnataka submitted that in pursuance of the directions issued by the Hon'ble Supreme Court in consultation with the Hon'ble Chief Justice, the State of Karnataka appointed a Senior Counsel as the Public Prosecutor, who conducted the trial. When the said Senior Counsel pleaded his inability to continue to appear, they appointed the 5th respondent [Mr. Bhavani Singh] as the Public Prosecutor, who conducted the proceedings. Now the trial has ended in an order of conviction. Accused have preferred the appeals before this Court. As earlier, the appointment was made in pursuance of the direction issued by the Hon'ble Supreme Court, their understanding is that the obligation to appoint was only during trial. With the trial coming to an end with the order of conviction, that obligation ceases. As there is no fresh direction issued by the Hon'ble Supreme Court to appoint a Special Public Prosecutor, they have not made any such appointment. Though the State has appointed a Public Prosecutor under Section 24(1) of the Code, in the absence of any direction from the Apex Court, the said Public Prosecutor is not appearing in the pending appeals before the High Court. As the matter is sub-judice, they have not taken any further action in this matter.”²³ (emphasis supplied)

47. Learned counsel appearing on behalf of Mr. Bhavani Singh relied upon Section 301(1) of the Code which he interpreted to mean that no fresh order or authorization was necessary to enable or entitle Mr. Bhavani Singh to appear in the criminal appeals pending in the High Court. It was also submitted that if Mr. Anbazhagan had any grievance with the order passed on 29th September, 2014 by the Principal Secretary to the Government of Tamil

²³ Paragraph 17

Nadu authorizing the Directorate of Vigilance and Anti-Corruption, Chennai to engage the services of Mr. Bhavani Singh, Special Public Prosecutor, then he should have challenged it. Since he has not challenged that order, it continues to remain operative.

48. The High Court discussed the case law on the subject of the role of the transferee State in a case such as the present and concluded:

“From the aforesaid judgments, the law is fairly clear. In pursuance of the power conferred under Section 406 of the Code, if the Supreme Court were to transfer any particular case from one High Court to another High Court or from a Criminal Court subordinate to one High Court to another Criminal Court of equal or superior jurisdiction subordinate to another High Court, then the State from which the case is transferred loses control over the prosecution to be conducted in the transferee Court. It is the transferee State which acquires jurisdiction to prosecute the said case. If the order of transfer passed by the Apex Court does not specify who should appoint the Public Prosecutor to conduct a particular case, then it is the transferee State which has to appoint a Public Prosecutor under Section 24 of the Code. If the order of transfer specifies who should appoint the Public Prosecutor, then appointment should be made in accordance with such direction.”²⁴

49. The High Court then concluded that the order passed on 29th September, 2014 by the Principal Secretary to the Government of Tamil Nadu was *non est* and was not

²⁴ Paragraph 27

required to be challenged. It was held:

“Therefore, when a specific direction is issued by the Apex Court at the time of transferring the case, it is the transferee Court-State of Karnataka which shall appoint the Public Prosecutor. The State of Tamil Nadu lost control over the case transferred to the State of Karnataka. Therefore, the State of Tamil Nadu has no jurisdiction to appoint a Public Prosecutor in the Special Court nor in the appeals which are pending in this Court. Hence, the order passed by the State of Tamil Nadu authorizing the deleted third respondent herein to engage the services of the fifth respondent is without authority and non est in the eye of law. That order does not confer any right on the fifth respondent to represent either the State of Karnataka or the State of Tamil Nadu in the pending appeals before this Court. In view of our findings recorded above that the transferor Court has no power to appoint a Public Prosecutor under Section 24 of the Code in respect of a case pending in the transferee Court, the argument that the appellant has not challenged the said order of appointment has no merit.”²⁵

50. With regard to the interpretation of Section 301(1) of the Code and whether, by virtue of his appointment as the Special Public Prosecutor in Special CC No. 208 of 2004 Mr. Bhavani Singh could appear on behalf of the prosecution in the pending appeals in the High Court, emphasis was laid on the words “any court” appearing in Section 301(1) of the Code and it was held:

“It is well settled that we must look at the Act as a whole and discover what each Section, each clause,

²⁵ Paragraph 31

each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. The language employed is that Public Prosecutor in charge of a case may appear and plead before "any Court", in which that case is under enquiry, trial or appeal. If the intention of the legislature was to confine his appearance only to the Court in which the case is under enquiry, trial or appeal, they would have used the word "the Court" in place of "any Court". Therefore, the intention is clear and unambiguous. Once the Special Public Prosecutor is appointed to a case, and is put in charge of a case, then he may appear and plead without any written authority before "any Court" in which that case, which is entrusted to him, is under enquiry, trial or appeal.

If a Public Prosecutor is appointed under Section 24(1) or (3) and Section 25 of the Code and placed in charge of a case, then by virtue of such appointment and entrustment as a Public Prosecutor, he may appear in Court in which that case is under inquiry, trial or appeal. However, when he is appointed under Section 24(8) of the Code as Special Public Prosecutor he is appointed for the purposes of any case or class of cases. Section 301 of the Code makes it clear that, when he is in charge of a case, he may appear in "any Court" in which that case is under inquiry, trial or appeal. Therefore, a harmonious reading of these provisions makes it clear that a Public Prosecutor appointed under Section 24 or under Section 25 of the Code, though his appearance is normally confined to the Court to which he is appointed, Section 301 of the Code authorizes him to appear in "any Court" in which that case is under inquiry, trial or appeal."²⁶

51. Thereafter, on a discussion of the case law on the subject, it was held that the word 'case' in the context in

²⁶ Paragraphs 47 and 48

which it is used would include an appeal. Thereby, Mr. Bhavani Singh had the authority to not only appear in the case before the Special Court but also in the appeal arising out of it. It was held:

“The word 'case' is not defined in the Code. It is a word of wide and comprehensive import. The word 'case' cannot be equated to the words 'trial', 'appeal' or 'revision'. It clearly covers for larger area than would be covered by-such words as 'appeal', 'revision' or 'trial' or 'offences'. When the word 'case' is used with reference to a criminal case, it encompasses the various stages of a criminal case i.e., Investigation/inquiry, trial and appeal. A criminal case commences with the filing of an F.I.R. and registration of the case and comes to an end when the judgment is delivered discharging or acquitting or convicting the accused, when that judgment attains finality. In other words, after trial the accused is acquitted or convicted, the trial comes to an end and not the criminal case. Trial of a case is only one step in the life of a criminal case. Criminal case encompasses investigation/inquiry, trial and appeal. They are all different stages in a criminal case. The word 'case' has no fixed or universal meaning. It must be construed with regard to the particular context in which it is used and with regard to the scheme and purpose of the measure concerned. This word is quite often used in the Code with an intention to give a wider meaning. That is the reason why in Section 301 the legislature has consciously used the word, that the Public Prosecutor "in charge of a case" may appear and plead before any Court in which "that case is under inquiry, trial or appeal". In other words, if a Public Prosecutor is appointed to conduct a case, he is entitled to appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal. Therefore, the words "any Court" used in this Section enables the Public Prosecutor to appear in all Courts of Criminal Jurisdiction and it is not confined

to the Court to which he is appointed. The only condition to be satisfied is that he should be put in charge of the case after his appointment as a Public Prosecutor. It is altogether different, if by a rule, regulation, practice, when once he is appointed as a Public Prosecutor to a Court, he may not appear in another Court. Therefore, the Legislature has consciously used the words "may appear and plead". It is left to his discretion."²⁷

52. At this stage, it is important to note that neither Ms. Jayalalithaa nor any of the other accused persons nor any of the other parties before the High Court have challenged the decision of the High Court to the extent that Tamil Nadu had no authority to appoint Mr. Bhavani Singh as the Special Public Prosecutor in the criminal appeals pending in the High Court. The only challenge is the one made by Mr. Anbazhagan to the effect that Section 301(1) of the Code does not authorize or enable or entitle Mr. Bhavani Singh to continue as a Special Public Prosecutor in the criminal appeals pending in the High Court and that the appointment of Mr. Bhavani Singh as a Special Public Prosecutor was limited only to the trial before the Special Court and it automatically terminated on the conviction of the accused persons.

53. It is under these circumstances that this appeal is

²⁷ Paragraph 55

before this court.

Discussion

54. There is no dispute that when this court transfers a criminal case under Section 406 of the Code, from one State to another, the transferee State has full control in the matter of prosecuting the case and the transferor State has no say in that regard. Indeed, there can be no dispute about this in view of the decision of this court in **Jayendra Saraswati Swamigal**. But, what does this imply?

55. In my opinion, on the transfer of a case by this court under Section 406 of the Code, the transferee State not only steps into the shoes of the transferor State but it effectively becomes the prosecuting State. It can and does appoint a Public Prosecutor to prosecute the case and a Public Prosecutor who is answerable to the government of the transferee State only - the Public Prosecutor appointed by one State is certainly not answerable to the government of another State.

56. On an earlier occasion in another transferred case, the Allahabad High Court held that an appeal against a

conviction would not be maintainable in the High Court in the transferor State but would be maintainable only in the High Court of the transferee State.²⁸

57. The Delhi High Court has gone a step further and has held that an appeal for the enhancement of sentence of a convicted person could be filed by the government of the transferee State in the High Court of the transferee State and there is nothing to preclude the government of the transferee State from doing so.²⁹ In other words, the transferee State does not merely step into the shoes of the transferor State but takes control of the prosecution. I need not say anything more on this subject since there is no dispute that the transferee State takes control over the prosecution from the transferor State. All that I have explained is the breadth of the take-over - the take-over being complete.

58. So far as the present case is concerned, this court did not give any direction with regard to the appointment of a Public Prosecutor or a Special Public Prosecutor post the decision in CC No.7 of 1997. In that sense, it could

²⁸ Vikas Yadav v. State of Uttar Pradesh, MANU/UP/0621/2008. A petition for special leave to appeal directed against this decision was dismissed by this court being SLP (Criminal) No. 5368/2008 (Vikas Yadav v. State of U.P.) decided on 22nd October, 2008.

²⁹ State v. Vikas Yadav, MANU/DE/1673/2008

possibly be argued that there was a vacuum. However, the law is quite clear, namely, that Karnataka as the transferee State was entitled to file an appeal in the Karnataka High Court, should the need have arisen, including an appeal for enhancement of sentence and that on an appeal being filed in the High Court by the accused persons, Karnataka as the transferee State continues to retain its entitlement to appoint a Public Prosecutor or a Special Public Prosecutor to contest the appeal, otherwise the purpose of transferring the case out of Tamil Nadu to Karnataka would stand frustrated at the appellate stage. Really speaking, this court did not leave behind any vacuum. That Karnataka was remiss in fulfilling its obligation to appoint a Public Prosecutor to contest the appeals filed in the High Court by the accused persons or chose not to fulfill it for whatever reason, is no ground for Tamil Nadu to appoint a Special Public Prosecutor to appear in the appeals. This conclusion was arrived at by the High Court in the judgment under challenge and no one has disagreed with the view that Tamil Nadu could not appoint Mr. Bhavani Singh as a Special Public Prosecutor to

contest the appeals in the High Court. There the matter rests.

59. What is the effect of Mr. Bhavani Singh's appointment as the Special Public Prosecutor to conduct Special CC No.208/2004 and what is the interplay of this appointment with Section 301(1) of the Code? The answer to this lies in (a) The directions given by this court while transferring the case from Tamil Nadu to Karnataka; (b) The contents of the notification appointing Mr. Bhavani Singh as the Special Public Prosecutor to conduct Special CC No.208/2004 in the case of the accused persons pending before the Special Court; and (c) The scheme of Section 24 and Section 301(1) of the Code.

60. What is the scope and intent of the directions given by this court while transferring the prosecution from Tamil Nadu to Karnataka? As mentioned earlier, while it is not necessary to advert, in great detail, to the reasons for the transfer of the prosecution from Tamil Nadu to Karnataka, the fact of the matter is that this court noted and cited "only a few instances to show how the prosecution appears to have acted hand in glove with the accused";

that Mr. Anbazhagan had made out a case “that the public confidence in the fairness of trial is being seriously undermined”; and that “great prejudice appears to have been caused to the prosecution which could culminate in grave miscarriage of justice.” It is under these circumstances that this court transferred the prosecution from Tamil Nadu to Karnataka and the directions given by this court have, therefore, to be understood in that light, namely, to prevent the prosecution of the accused persons getting derailed for collateral reasons. While deciding the writ petition, the learned Single Judge held that this court had “lost confidence of a fair trial being conducted within the State of Tamil Nadu”.

61. A plain reading of the directions given by this court on earlier occasion makes it quite clear that this court was concerned only with the trial of CC No.7 of 1997 (and CC No.2 of 2001 with which this court is not concerned). To ensure that the trial is fair and is conducted in accordance with law, this court directed the State of Karnataka to appoint a Special Judge to try the case and also that “the trial before the Special Judge shall commence as soon as

possible and will then proceed from day to day till completion". To ensure that the Public Prosecutor does not become hand in glove with the accused persons, this court further directed the appointment of a Public Prosecutor in consultation with the Chief Justice of the High Court of Karnataka. It was made clear that the Public Prosecutor shall be a senior lawyer having experience in criminal trials so that he could conduct the trial in the Special Court.

62. The first three directions given by this court in paragraph 34 on an earlier occasion make it quite clear that the focus and concern of this court was limited only to the conduct of a fair trial and nothing beyond it.

63. This court did not have, and could not have had in mind the fairness or otherwise of the proceedings subsequent to the conclusion of the trial. There was no basis or material to assume that after the conclusion of the trial, on an appeal filed by the prosecution or the accused persons (as the case may be), even the appellate proceedings in the High Court would get subverted or compromised in any manner whatsoever. It would be

sacrilege if this court were to assume without any basis that the Karnataka High Court could get compromised. Consequently, the directions given by this court must be understood as limited to the conduct of the trial and the appointment of the Special Public Prosecutor was also limited thereby. In other words, the appointment of Mr. Bhavani Singh as the Special Public Prosecutor came to an end on the conclusion of the trial before the Special Court.

64. This is not to say that Karnataka could not have appointed the same Special Public Prosecutor (Mr. Bhavani Singh in this case) as the Special Public Prosecutor to conduct the appeals that might be filed after the conclusion of the trial. Karnataka could certainly have done so either through a composite notification for the trial and possible appeal(s) or by separate notifications. That Karnataka chose to appoint Mr. Bhavani Singh as the Special Public Prosecutor for the trial only is understandable. That Karnataka chose to sit by and not take any steps to appoint anyone to contest the appeals filed by the accused persons is nothing but a shirking of its duty and responsibility – but that is not the issue. All that I

intend to hold and do hold is that the directions given by this court were limited only to the trial of the case before the Special Court in Bengaluru and even Karnataka understood the directions to be limited to the trial and acted only to that limited extent.

65. Does the notification appointing Mr. Bhavani Singh as a Special Public Prosecutor reflect the views of this court? The contents of the notification dated 2nd February, 2013 appointing Mr. Bhavani Singh as a Special Public Prosecutor are also of considerable importance, although it has been submitted by learned counsel for the accused persons that the notification may be ignored in view of the provisions of Section 301(1) of the Code. I do not think that the contents of the appointment notification can be simply ignored or overlooked, as suggested by learned counsel for the accused persons.

66. The notification was issued pursuant to the directions given by this court transferring the prosecution from Tamil Nadu to Karnataka under the circumstances already mentioned. The intention of this court was clearly to ensure that upon transfer of the prosecution from Tamil

Nadu to Karnataka, the prosecution does not, *inter alia*, become hand in glove with the accused, that public confidence in the fairness of the trial is not seriously undermined and that the prosecution does not culminate in a grave miscarriage of justice. This court was, therefore, concerned only with the proceedings before the Special Court and not subsequent proceedings in the High Court.

67. This court was certainly conscious of the procedure required to be followed in the event of an appeal being filed in the High Court by the accused persons or by the prosecution and obviously did not think it necessary to advert to the procedure required to be followed. The Code of Criminal Procedure adequately provides for it. It would not, therefore, be correct to say that the directions given by this court created a vacuum in the event of an appeal to the High Court by the accused persons or by the prosecution. This is more particularly so since there was nothing on record to even remotely suggest that the proceedings in the High Court were likely to get undermined in any manner. It is in this light that the

notification appointing Mr. Bhavani Singh as a Special Public Prosecutor has to be read and understood and if the notification is so read and understood, it is quite clear that Mr. Bhavani Singh was given authority to represent the prosecution only before the Special Court and not in the High Court. The notification appointing Mr. Bhavani Singh as a Special Public Prosecutor only for the trial (and not for subsequent proceedings) correctly reflected the intent of this court.

68. The language employed in the notification dated 2nd February, 2013 appointing Mr. Bhavani Singh as a Special Public Prosecutor is quite specific and is to enable him “to conduct Special C.C. No.208/2004 (in the case of Kum. Jayalalitha and others) pending on the file of XXXVIth Additional City Civil & Sessions Court (Special Court), Bangalore”. There is no mention about anything beyond Special CC No. 208/2004 such as an appeal filed in the High Court either by the accused persons or by the prosecution. It is not possible to read into the language of the notification any authority being given to Mr. Bhavani Singh to proceed beyond the trial in representing the

prosecution. It would be violence to the language of the notification if it were given an interpretation wider than what the plain language suggests, intends and states.

69. Can it be said, under these circumstances, that the notification appointing Mr. Bhavani Singh as a Special Public Prosecutor could be read in conjunction with Section 301(1) of the Code as authorizing him to appear in the High Court in the appeals filed by the accused persons? For answering this, it is necessary to appreciate the scheme of Section 24 and Section 301(1) of the Code. It is necessary to look at a few provisions first.

70. Section 2(u) of the Code defines "Public Prosecutor".³⁰ In terms of the definition any person appointed under Section 24 of the Code is a Public Prosecutor. A Special Public Prosecutor appointed under Section 24(8) of the Code is naturally also a Public Prosecutor.

71. Section 24 of the Code is a part of Chapter II thereof which concerns the constitution of criminal courts and offices. Three Sections in this chapter relate to Public Prosecutors, namely, Section 24, Section 25 and Section

³⁰ "Public Prosecutor" means any person appointed under section 24, and includes any person acting under the directions of a public prosecutor.

25-A.

72. Section 24(1) of the Code provides for the appointment of a Public Prosecutor for a High Court. The authority to appoint a Public Prosecutor for a High Court is vested both in the Central Government and a State Government. The two requirements for the appointment of a Public Prosecutor for the High Court are that it shall be made after consultation with the High Court and the person so appointed shall, in terms of Section 24(7) of the Code, have been in practice as an advocate for not less than seven years. The 'jurisdiction' or 'area of operation' of a Public Prosecutor appointed for the High Court is limited to the High Court and it is not possible for a Public Prosecutor appointed for the High Court to claim that he or she is entitled to appear in the District Court or any other court by virtue of his or her appointment.

73. A similar power of appointment of a Public Prosecutor for every district is given to the State Government by Section 24(3) of the Code. There is a similar limitation of 'jurisdiction' or 'area of operation' of a Public Prosecutor appointed under Section 24(3) of the

Code to the district for which he or she is appointed. A Public Prosecutor appointed for a particular district cannot claim any authorization to appear as a Public Prosecutor in any other district or in the High Court of the State in which that district is located.

74. In other words, Section 24(1) and Section 24(3) of the Code limit the 'jurisdiction' or the 'area of operation' or the authority or the orbit of the Public Prosecutor to the High Court [Section 24(1) of the Code] or the district [Section 24(3) of the Code].

75. The first question that requires to be asked is whether Mr. Bhavani Singh was appointed as a Public Prosecutor or a Special Public Prosecutor for the High Court under Section 24(1) of the Code. The answer to this is in the negative. That being so, Mr. Bhavani Singh has no authority to *per se* conduct the appeals in the High Court on behalf of the prosecution. Really speaking, that should conclude the debate.

76. The next question is whether Mr. Bhavani Singh can claim that authority for by relying on Section 301(1) read with Section 24(8) of the Code. The answer to this is also

in the negative.

77. In addition to the general power or authority given to the Central Government and the State Government to appoint a Public Prosecutor for the High Court [Section 24(1) of the Code] and to the State Government to appoint a Public Prosecutor for a district [Section 24(3) of the Code] a much wider power is given to the Central Government and the State Government by Section 24(8) of the Code to appoint a Special Public Prosecutor, being a person who has been a practicing advocate for not less than ten years. The appointment of a Special Public Prosecutor is not with reference to the High Court or a district, but is an appointment for a case in any court or a class of cases in any court or courts.

78. Section 25 of the Code provides for the appointment of Assistant Public Prosecutors.³¹ Section 25(1) of the Code

³¹ **25. Assistant Public Prosecutors** - (1) The State Government shall appoint in every district one or more Assistant Public Prosecutors for conducting prosecutions in the Courts of Magistrates.

(1-A) The Central Government may appoint one or more Assistant Public Prosecutors for the purpose of conducting any case or class of cases in the Courts of Magistrates.

(2) Save as otherwise provided in sub-section (3), no police officer shall be eligible to be appointed as an Assistant Public Prosecutor.

(3) Where no Assistant Public Prosecutor is available for the purposes of any particular case, the District Magistrate may appoint any other person to be the Assistant Public Prosecutor in charge of that case:

Provided that a police officer shall not be so appointed—

(a) if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted; or

(b) if he is below the rank of Inspector.

enables the State Government to appoint one or more Assistant Public Prosecutors in every district of the State to conduct prosecutions in the courts of the Magistrates. Section 25(1A) of the Code enables the Central Government to appoint one or more Assistant Public Prosecutors to conduct any case or class of cases in the courts of the Magistrates. For the present purposes, Section 25(3) of the Code is also of importance. This provides that a police officer can also be appointed as an Assistant Public Prosecutor as long as he or she has not taken part in the investigations or is below the rank of an Inspector.

79. Section 25-A of the Code is also of importance for understanding the 'jurisdictional' limitations placed on a Public Prosecutor or a Special Public Prosecutor.³² However, this Section does not concern itself with Assistant Public Prosecutors.

³² **25-A. Directorate of Prosecution.**—(1) The State Government may establish a Directorate of Prosecution consisting of a Director of Prosecution and as many Deputy Directors of Prosecution as it thinks fit.

(2), (3) and (4) xxx xxx xxx

(5) Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under sub-section (1), or as the case may be, sub-section (8), of Section 24 to conduct cases in the High Court shall be subordinate to the Director of Prosecution.

(6) Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under sub-section (3), or as the case may be, sub-section (8), of Section 24 to conduct cases in District Courts and every Assistant Public Prosecutor appointed under sub-section (1) of Section 25 shall be subordinate to the Deputy Director of Prosecution.

(7) and (8) xxx xxx xxx

80. Section 25-A(5) of the Code provides that a Public Prosecutor and a Special Public Prosecutor appointed by the State Government under Section 24(8) of the Code to conduct cases in the High Court shall be subordinate to the Director of Prosecution.

81. Section 25-A(6) of the Code provides that a Public Prosecutor and a Special Public Prosecutor appointed by the State Government under Section 24(8) of the Code to conduct cases in District Courts (as in the case of Mr. Bhavani Singh) shall be subordinate to the Deputy Director of Prosecution.

82. In this background, Section 301(1) of the Code is required to be considered and appreciated. This provision applies not only to a Public Prosecutor as defined in Section 2(u) of the Code [which includes a Special Public Prosecutor] but it also applies to an Assistant Public Prosecutor. This is of some importance.

83. Section 301(1) of the Code has three ingredients for its applicability: (1) The Public Prosecutor or the Assistant Public Prosecutor must be in charge of the case; (2) If the Public Prosecutor or the Assistant Public Prosecutor is in

charge of a case, he or she is entitled to appear and plead without any written authority; (3) The Public Prosecutor or the Assistant Public Prosecutor in charge of a case is entitled to appear and plead without any written authority before any court in which that case is under enquiry, trial or appeal.

84. Learned counsel for the accused persons read this to mean that a Special Public Prosecutor [Mr. Bhavani Singh] in charge of a case in the District Courts [the case of the accused persons in the Special Court] is entitled to appear and plead (without any written authority) in any court [the High Court] since that 'case' is in appeal in the High Court.

85. If the argument of learned counsel for the accused persons is accepted, it could lead to an anomalous result and an anomalous situation. One anomalous result is that a Public Prosecutor in charge of a case in a district or an Assistant Public Prosecutor in charge of a case in the court of a Magistrate can claim, on the basis of Section 301(1) of the Code, to appear and plead without any written authority before any court in which that case is under appeal, including the High Court of the State. Since a

police officer can also be appointed as an Assistant Public Prosecutor, acceptance of the argument would mean that a police officer (appointed as an Assistant Public Prosecutor) can appear and plead without any written authority in the High Court of the State in which that case is under appeal! By no stretch of imagination can this be the intent of Section 301(1) of the Code.

86. An anomalous situation can also arise if the argument of learned counsel for the accused persons is accepted. One such situation could arise in the following circumstances: In an appeal in the High Court arising out of a case in a district, the Public Prosecutor for the High Court is engaged. However, the Public Prosecutor in charge of that case in the district or an Assistant Public Prosecutor (including a police officer) in charge of that case in the court of a Magistrate appears in the High Court in the appeal relying, for this purpose, upon Section 301(1) of the Code. Then, in the appeal, the said Public Prosecutor or the said Assistant Public Prosecutor could take a stand that is diametrically opposed to or in conflict with the stand of the Public Prosecutor before the High

Court. Is Section 301(1) of the Code liable or susceptible to such an unlikely interpretation as is canvassed by learned counsel for the accused persons? I do not think so.

87. That such an eventuality is not theoretical is clear from the facts of this case itself. As mentioned above, the accused persons applied for suspension of their sentence. Written objections were filed opposing the suspension of the sentence. However, when the application was heard, the Special Public Prosecutor (Mr. Bhavani Singh) did not oppose the suspension of the sentence. The learned Single Judge hearing the application recorded in his order rejecting the application as follows:

“When the Special Public Prosecutor was asked as to whether he has any submission in this regard to make, he has openly submitted that he has no arguments to make and that the sentence may be suspended and the accused may be released on imposing conditions deemed fit under the circumstances of the case. But he did not make any submission as to whether he does not press the written objections already filed.”³³

88. Had the State of Karnataka appointed a Public Prosecutor for the High Court to contest the appeals filed by the accused persons, it is quite possible that the said Public Prosecutor would have supported the written

³³ Selvi J. Jayalalithaa v. State, MANU/KA/2704/2014, ILR 2014 Karnataka 5696

objections and opposed the suspension of sentence. In that event, there would have been a rather piquant situation (if not a spectacle) - the Special Public Prosecutor (Mr. Bhavani Singh) supporting suspension of the sentence of the accused persons and the Public Prosecutor for the High Court opposing suspension of the sentence of the accused persons on the basis of the written objections. Surely, Section 301(1) of the Code is not required to be interpreted in a manner so as to cause confusion.

89. The only reasonable interpretation that can be given to the scheme laid out in Sections 24, 25, 25-A and 301(1) of the Code is that a Public Prosecutor appointed for the High Court and who is put in charge of a particular case in the High Court, can appear and plead in that case only in the High Court without any written authority whether that case is at the stage of inquiry or trial or appeal. Similarly, a Public Prosecutor appointed for a district and who is put in charge of a particular case in that district, can appear and plead in that case only in the district without any written authority whether that case is at the stage of

inquiry or trial or appeal. So also, an Assistant Public Prosecutor who is put in charge of a particular case in the court of a Magistrate, can appear and plead in that case only in the court of a Magistrate without any written authority whether that case is at the stage of inquiry or trial or appeal. Equally, a Special Public Prosecutor who is put in charge of a particular case can appear and plead in that case only in the court in which it is pending without any written authority whether that case is at the stage of inquiry or trial or appeal. In other words, Section 301(1) of the Code enforces the 'jurisdictional' or 'operational' limit and enables the Public Prosecutor and Assistant Public Prosecutor to appear and plead without written authority only within that 'jurisdictional' or 'operational' limit, provided the Public Prosecutor or the Assistant Public Prosecutor is in charge of that case.

90. The converse is not true, and a Prosecutor (Public Prosecutor, Assistant Public Prosecutor or Special Public Prosecutor) who is put in charge of a particular case cannot appear and plead in that case without any written authority outside his or her 'jurisdiction' whether it is the

High Court or the district or the court of a Magistrate. In other words, Section 301(1) of the Code maintains a case specific character and read along with Sections 24, 25 and 25-A of the Code maintains a court or district specific character as well.

91. The decision rendered by the Constitution Bench in **State of Punjab v. Surjit Singh**³⁴ is not quite apposite. [Though that decision was rendered under the Code of Criminal Procedure, 1898 the relevant sections under Constitution are more or less similar to those sections of the Code that this court is concerned with]. In **Surjit Singh** the issue that arose was noted in the following words:-

“The question that arises for consideration in this criminal appeal, by special leave, is regarding the right of a Public Prosecutor to file an application, under Section 494 of the Code of Criminal Procedure (hereinafter called the Code), in respect of a complaint, filed by a private party, and which was being prosecuted by him as such”.

92. In the context of the question that arose for consideration, it was held that a Public Prosecutor not in charge of a particular case and not conducting the

³⁴ [1967] 2 SCR 347

prosecution will not be entitled to ask for withdrawal of the prosecution under Section 494 of the old Code. On facts, it was held that the prosecuting Deputy Superintendent of Police was nowhere in the picture in the private complaint when he filed an application for its withdrawal under Section 494 of the old Code. In that view of the matter, it was held that the High Court was right in its conclusion that such a Public Prosecutor is not entitled to file an application for withdrawal. It will be seen that this decision has nothing to do with a Public Prosecutor in charge of the case at the stage of trial being entitled to appear in an appeal filed against an order of conviction in the trial.

93. The Constitution Bench referred to what would be an anomalous result if a Public Prosecutor who had nothing to do with the particular case is entitled to file an application for withdrawal under Section 494 of the old Code. By way of illustration, the Constitution Bench noted that if there are two Public Prosecutors appointed for a particular court and one of them is conducting the prosecution in a particular case and desires to go on with the proceedings,

it will be open to the other Public Prosecutor to ask for withdrawal from the prosecution. Similarly, it was illustratively observed that a Public Prosecutor appointed for case A before a particular court, can, by virtue of his being a Public Prosecutor file an application in case B, with which he has nothing to do, and ask for permission of the court to withdraw from the prosecution. Extrapolating this illustration to the facts of the present case, the result would certainly be anomalous if a Public Prosecutor appointed for case A before a particular Court (read Mr. Bhavani Singh appointed for the case against the accused persons before the Special Court) can by virtue of being a Public Prosecutor appear in case B with which he has nothing to do (read the criminal appeals filed in the Karnataka High Court).

94. It is in this context that the Constitution Bench held that Section 494 of the old Code refers only to a Public Prosecutor in charge of a particular case and is actually conducting the prosecution who can take steps in the matter. Under the circumstances, though Mr. Bhavani Singh was entitled to conduct the trial before the Special

Court in an appropriate manner, merely because he was in charge of the prosecution before the Special Court did not entitle him to continue with the 'case' in the criminal appeals filed in the High Court.

95. The High Court has, in the judgment and order under appeal, laid emphasis on the words 'any Court' appearing in Section 301(1) of the Code and understood them to mean that a Special Public Prosecutor in charge of a case at the stage of enquiry or trial, can appear and plead that case when an appeal is filed in respect of that case. In view of the above discussion, I am unable to agree with the overbroad opinion expressed by the High Court. The words 'any Court' have no reference to the hierarchy of courts. The crucial word in Section 301(1) of the Code is 'case' and not 'any Court'.

96. Consequently, Mr. Bhavani Singh having been appointed as a Special Public Prosecutor for a specific case pertaining to the accused persons before the Special Court was answerable in all respects to the Deputy Director of Prosecution in terms of Section 25-A(6) of the Code and his authorization was limited only to that case before the

Special Court. Therefore, this precluded him from appearing on behalf of the prosecution in the appeals filed by the accused persons in the High Court. He needed a specific authorization in that regard which would have then made him subordinate to the Director of Prosecution and not continued his subordination to the Deputy Director of Prosecution.

97. This interpretation of Sections 24, 25, 25-A and 301(1) of the Code also appears to have been the view of Karnataka, appearing through its Advocate General, that Mr. Bhavani Singh was engaged only to conduct the trial before the Special Court and that engagement did not automatically imply any authorization to him to appear for the prosecution in the appeals pending in the High Court.

98. The Advocate General of Karnataka had submitted before the learned Single Judge of the Karnataka High Court that no fresh appointment order was issued in favour of Mr. Bhavani Singh in respect of the criminal appeals filed by the accused persons, meaning thereby that for enabling Mr. Bhavani Singh to appear in those appeals, a fresh appointment order was necessary. This

was in the context that after the conviction of the accused persons, there had been no further consultations between the State Government of Karnataka and the Chief Justice of the Karnataka High Court in making any appointment of a Special Public Prosecutor.

99. Before the Division Bench, the submission of the Advocate General was more explicit. It was submitted that the appointment of the Special Public Prosecutor was made pursuant to the directions of this court and that “their understanding is that the obligation to appoint was only during trial. With the trial coming to an end with the order of conviction, that obligation ceases”.

100. Right or wrong, the view expressed by the Advocate General of Karnataka could not have been ignored by the High Court. It is altogether another matter that the proper course of action for Karnataka would have been to either make a specific appointment of Mr. Bhavani Singh as a Special Public Prosecutor to conduct the appeals pending in the High Court or to appoint the Public Prosecutor or another Special Public Prosecutor or to obtain a clarification from this court, if necessary with regard to the

appeals in the High Court. That Karnataka did neither and entertained an unnecessary doubt is unfortunate.

101. It may be recorded here that in this court, learned counsel for the State of Karnataka specifically stated the appointment of Mr. Bhavani Singh as a Special Public Prosecutor came to an end with the conviction and sentence of the accused persons. In the written submissions filed by the State of Karnataka, it is categorically stated as follows:

“It is submitted that order dated 02.02.2013 appointing Bhavani Singh is confined to the Special CC No.208/2004. It is submitted that Bhavani Singh is relying on the G.O. dated 29.09.2014 issued by State of Tamil Nadu to conduct the case as SPP before the Hon’ble High Court in CrI. Appeal No.835/2014 and the Division Bench quashed this order as one without jurisdiction”.

102. This written submission is a clincher and the debate should end with this categorical assertion by the State of Karnataka.

103. But, to be fair to Karnataka, it is not a party to the criminal appeals and that may perhaps be the reason for its inaction - if action had been taken, it could be misconstrued as interfering in a case in which it had no

concern. That this 'reason' is unjustified has already been adverted to. But then, it was equally the duty and responsibility of Tamil Nadu to either take the opinion of Karnataka on the future course of action with regard to representation in the criminal appeals or to have brought the 'vacuum' to the notice of the learned Judge hearing the criminal appeals rather than rushing in with the ill-advised order dated 29th September, 2014. That Tamil Nadu sought to take advantage of a situation that ought not to have even existed is also unfortunate. However, to give it the benefit of doubt, it is possible that Tamil Nadu was also in a state of confusion.

104. It seems that Tamil Nadu may also have been of the view (though not so expressed) that the appointment of Mr. Bhavani Singh as a Special Public Prosecutor had come to an end and that is the reason why the Principal Secretary to the Government of Tamil Nadu authorized the Directorate of Vigilance and Anti Corruption, Chennai to engage Mr. Bhavani Singh to appear in the High Court by issuing the order dated 29th September, 2014. If at law Mr. Bhavani Singh was automatically authorized to appear in

the appeals pending in the High Court by virtue of Section 301(1) of the Code, there was no occasion for Tamil Nadu to issue the order dated 29th September, 2014 and Mr. Bhavani Singh could have, on the basis of the earlier authorization given to him on 2nd February, 2013 by Karnataka entered appearance in the High Court on behalf of the prosecution. That the High Court held the order dated 29th September, 2014 was without jurisdiction is of no consequence - what is important is the understanding of Tamil Nadu of the position at law namely, that the appointment of Mr. Bhavani Singh as a Special Public Prosecutor came to an end with the conviction and sentence of the accused persons.

105. Learned counsel for the accused persons submits that a Special Public Prosecutor can be appointed in a case or for a class of cases and the word 'case' includes an appeal. In this context reliance was placed on ***Mansoor v. State of Madhya Pradesh***³⁵ wherein it was held that 'case' must mean a proceeding which at the end results whether in the discharge, conviction or acquittal of an accused person. The context in which ***Mansoor*** was

³⁵ (1971) 2 SCC 369

decided was completely different. In that case a gazette notification was issued appointing the Additional Government Advocate as a Public Prosecutor for the High Court in respect of cases arising in the State of Madhya Pradesh. The Additional Government Advocate cum Public Prosecutor filed an appeal in the High Court against an order of acquittal by the trial court. The argument raised was that the Additional Government Advocate cum Public Prosecutor could not be considered a Public Prosecutor for presenting an appeal against an acquittal in the High Court because an appeal against an acquittal could not be described as a case which arises in the High Court. This court observed that “The argument has merely to be stated to be rejected.” Nevertheless, this court went on to hold that “The case resulting in the acquittal of the accused persons would clearly be a case arising in the State and within the contemplation of the notification and the Additional Government Advocate who is a Public Prosecutor for the High Court would be entitled to present the appeal in such a case”. It is in this context that it was held that an appeal is a case. I am afraid this has no

relevance, one way or another, to the controversy in this court, namely, the authority of Mr. Bhavani Singh to appear in the appeals filed in the High Court by the accused persons.

106. The word 'case' occurring in Section 24 and Section 301(1) of the Code is required to be given its ordinary and natural meaning and in the context in which it is used. It cannot be given an extended meaning so as to include an appeal. Otherwise, as pointed out above, in a given situation, an Assistant Public Prosecutor in charge of a case before a Magistrate can argue for the displacement of a Public Prosecutor appointed for the High Court by the State Government after consultation with the High Court. How strange is that.

107. Learned counsel also sought to rely on Rule 30 of the Karnataka Law Officers (Appointment and Conditions of Service) Rules, 1977 which authorizes the Government of Karnataka to appoint an advocate as a Special Counsel for the conduct of a criminal case or any appeal or proceeding connected therewith pending in a court whether within the State or in any other State or in the

Supreme Court or in any High Court in the country. Learned counsels submits that since the appointment of Mr. Bhavani Singh is also in terms of Rule 30 of the aforesaid Rules, he is entitled to appear in the High Court in the appeals filed by the accused persons.

108. I am unable to accept this submission for the simple reason that it has not been anybody's case at any stage that Mr. Bhavani Singh appeared in the High Court in the appeals filed by the accused persons in his capacity as a Special Counsel and not in his capacity as a Special Public Prosecutor. This submission is being made for the first time and only in this court. That apart, the facts relating to the appointment of Mr. Bhavani Singh as a Special Counsel are not available on record. It is unclear whether the Chief Justice of the Karnataka High Court was consulted only about the appointment of Mr. Bhavani Singh as a Special Public Prosecutor or whether he was consulted about the appointment of Mr. Bhavani Singh as a Special Counsel as well. Unless the facts are clear in this regard it is difficult to come to any conclusion on this submission. If reliance by learned counsel for the accused persons is now solely

on the appointment of Mr. Bhavani Singh as a Special Counsel, then relying upon his appointment as such would fly in the face of the directions given by this court for the appointment of a Public Prosecutor.

109. In any event, Rule 30 of the aforesaid Rules enables the State Government to appoint an advocate as a Special Counsel either for the conduct of a civil case or a criminal case or any appeal or proceedings connected therewith. The provision enabling the appointment of a Special Counsel is obviously disjunctive. Rule 30 of the said Rules must be read as it is and the appointment of a Special Counsel would have to be made separately for a civil case or for a criminal case or for any appeal or for any proceedings connected with a civil case or a criminal case or any appeal. There is nothing to show that Mr. Bhavani Singh was appointed as a Special Counsel by the State of Karnataka for the appeals filed by the accused persons in the High Court.

110. I am not discussing the differences in the role of a Public Prosecutor and the role of a Special Counsel since it is not necessary to do so. All that need be said is that their

respective roles are distinct and separate as indeed their responsibilities with a Public Prosecutor having great responsibilities (as submitted by learned counsel for the accused persons), much more than a Special Counsel.

111. Learned counsel for the accused persons submit that due to certain developments having taken place, namely, that the hearing in the appeals has been concluded and judgment reserved, the *de facto* doctrine would apply to the facts of the present case since Mr. Bhavani Singh had in fact been appointed as the Special Public Prosecutor to contest the appeals filed by the accused persons in the High Court. Reference was made to **Gokaraju Rangaraju v. State of Andhra Pradesh**³⁶ wherein **Pulin Behari v. King Emperor**³⁷ was referred which held that “acts of the officers de facto performed by them within the scope of their assumed or official authority, in the interest of the public or third persons and not for their own benefit, are generally as valid and binding, as if they were the acts of officers de jure.”

112. I have serious reservations on this submission in the

³⁶ (1981) 3 SCC 132

³⁷ (1912) 15 Cal L.J 517, 574

context of a lawyer representing a litigant. No lawyer either in his capacity as a private lawyer or a lawyer for the State or as a Public Prosecutor can purport to represent a litigant without any authority for doing so. Acceptance of such a proposition and then relying on the *de facto* doctrine could lead to chaos in the dispensation of justice. If Mr. Bhavani Singh is not authorized to represent the prosecution in the High Court in the appeals filed by the accused persons, he simply cannot do so and if he does so, the accused persons cannot put forward a *fait accompli* or rely upon the *de facto* doctrine and say: So be it.

113. That apart, assuming **Gokaraju Rangaraju** is also applicable to the engagement or appointment of a lawyer by his or her client, this court has noted another rule, in the nature of an exception to the *de facto* doctrine, which is that while a collateral attack to the appointment of a judge cannot be made, a direct attack can certainly be made. It was held in **Gokaraju Rangaraju**:

“A judge, *de facto*, therefore, is one who is not a mere intruder or usurper but one who holds office, under colour of lawful authority, though his appointment is defective and may later be found to be defective.

Whatever be the defect of his title to the office, judgments pronounced by him and acts done by him when he was clothed with the powers and functions of the office, albeit unlawfully, have the same efficacy as judgments pronounced and acts done by a judge de jure. Such is the de facto doctrine, born of necessity and public policy to prevent needless confusion and endless mischief. There is yet another rule also based on public policy. The defective appointment of a de facto judge may be questioned directly in a proceeding to which he be a party but it cannot be permitted to be questioned in a litigation between two private litigants, a litigation which is of no concern or consequence to the judge except as a judge. Two litigants litigating their private titles cannot be permitted to bring in issue and litigate upon the title of a judge to his office. Otherwise so soon as a judge pronounces a judgment a litigation may be commenced for a declaration that the judgment is void because the judge is no judge. A judged title to his office cannot be brought into jeopardy in that fashion. Hence the Rule against collateral attack on validity of judicial appointments. To question a judges appointment in an appeal against his judgment is, of course, such a collateral attack.”

114. In so far as the present case is concerned, a direct attack has been made to the claimed validity of the continuation of Mr. Bhavani Singh as a Special Public Prosecutor in the High Court. This case, therefore, comes within the ‘another rule’ or the exception to the *de facto* doctrine. That the objection to Mr. Bhavani Singh’s appearance in the High Court was raised by Mr. Anbazhagan only on 24th December, 2014 and not earlier is neither here nor there. It is not as if the objection was

raised belatedly. In any event, the objection was raised before the hearing of the appeals commenced and that is good enough.

115. The submission that Mr. Bhavani Singh has impeccable credentials and the attempt of Mr. Anbazhagan is to somehow or the other get rid of him as the Special Public Prosecutor is not relevant since his competence is not in question. It is true that this court in **Jayalithaa**³⁸ had observed that “no issue has been raised by the respondents [including Mr. Anbazhagan] in respect of the eligibility, suitability or credibility of Respondent 4 [Mr. Bhavani Singh] as an SPP.” This court had also observed that the attempt to remove Mr. Bhavani Singh as the Special Public Prosecutor “is a product of mala fides”.³⁹ Furthermore, even in the judgment under appeal it has been noted that “Before the learned Single Judge, as the appellant submitted that, he would not go into the allegations made against the 5th respondent [Mr. Bhavani Singh], but confine his submissions to the legal issues.” Learned counsel for the accused persons submits that in the light of this, the desire of Tamil Nadu to have

³⁸ (2014) 2 SCC 401 paragraph 14

³⁹ Paragraph 38 of the judgment

the prosecuting agency effectively represented in the appeals in the High Court through an eligible, suitable and credible Special Public Prosecutor, in the face of Karnataka abdicating its duty and responsibility, cannot be faulted or misconstrued as is sought to be done by Mr. Anbazhagan. He further submits that the appointment of Mr. Bhavani Singh as the Special Public Prosecutor to contest the appeals in the High Court was really an act of necessity due to the default of the State of Karnataka. All this may be so, but as mentioned above, this is not in controversy in this court and I make no comment on it. However, I would like to make it explicit that I have referred to the credentials of Mr. Bhavani Singh only because a submission was made in that regard. Mr. Bhavani Singh has not been issued notice in these appeals and therefore nothing that I have said can be or should be construed as doubting the credentials of Mr. Bhavani Singh.

116. Learned counsel submits that Mr. Anbazhagan has been shifting stands from time to time as per his convenience. At the present moment, his view is that Mr. Bhavani Singh was not authorized to appear as the Special

Public Prosecutor in the appeals filed by the accused persons in the High Court. On an earlier occasion (and this fact has not been disclosed by Mr. Anbazhagan in the list of dates supplied by him) his contention was that it is only the Special Public Prosecutor who can appear in the High Court in proceedings arising out of CC No.7 of 1997.

117. In **K. Anbazhagan v. The Superintendent of Police**⁴⁰ one of the points for consideration was whether the Special Public Prosecutor appointed pursuant to the directions of this court could be by-passed by the Directorate of Vigilance and Anti-Corruption, Chennai and whether it was permissible to have another Public Prosecutor appear for the said Directorate in the Karnataka High Court ignoring the Special Public Prosecutor. It was held by the High Court that the Directorate of Vigilance and Anti-Corruption, Chennai could not be permitted representation in the High Court by a counsel of its own and that it would have to be represented by the Special Public Prosecutor. Notwithstanding this decision (which has not been disclosed by Mr. Anbazhagan to this court) an objection is

⁴⁰ MANU/KA/2530/2011 = 2012 (4) KAR LJ 635

now being raised in the present case to the Special Public Prosecutor appearing for the Directorate of Vigilance and Anti-Corruption, Chennai. This flip-flop by Mr. Anbazhagan reveals that he is not serious in his submissions. I am mentioning this submission only to reject it. The issue is not whether Mr. Bhavani Singh can or cannot appear for the Directorate of Vigilance and Anti-Corruption, Chennai - the issue is whether he can at all appear in the High Court as a Special Public Prosecutor without being authorized to do so in the appeals filed by the accused persons. In my opinion, he cannot, for more than one reason, as indicated above.

118. Finally, learned counsel submits that Mr. B.V. Acharya had appeared on several occasions in the High Court in matters arising out of the case pending before the Special Judge when he was the Special Public Prosecutor to conduct that case. Therefore, there is nothing wrong in Mr. Bhavani Singh appearing in the High Court in the same manner as Mr. Acharya did. I do not know the circumstances in which Mr. Acharya appeared and in any event his appearance in the High Court is not in issue. It is

not necessary to comment on this at all. For the record, it may be mentioned that the only example cited by learned counsel for the accused persons relates to **K. Anbazhagan v. The Superintendent of Police**⁴¹ but in that case, the Special Public Prosecutor was shown as the second respondent and therefore Mr. Acharya was entitled to appear in that case being a respondent therein.

Conclusion

119. For the reasons given, I hold that Mr. Bhavani Singh is not authorized to represent the prosecution in the Karnataka High Court in the appeals filed by the accused persons against their conviction by the Special Court. That being so, the final hearing proceedings in this regard before the High Court are vitiated and the appeals filed by the accused persons being Criminal Appeals Nos. 835-838 of 2014 will have to be heard afresh by the High Court.

120. The State of Karnataka should now ensure that the prosecution is duly represented by an authorized Public Prosecutor appointed under Section 24(1) of the Code. However, if the State of Karnataka decides to appoint a Special Public Prosecutor under Section 24(8) of the Code,

⁴¹ MANU/KA/2530/2011

it must do so only in consultation with the Chief Justice of the Karnataka High Court.

121. In line with the view expressed by the Delhi High Court, which I endorse, it is further directed that the State of Karnataka be made a party respondent in the appeals filed by the accused persons.

122. The earlier directions given by this court regarding payment of fees and assistance of another lawyer etc. will be incorporated in the terms of appointment of the Public Prosecutor or the Special Public Prosecutor as the case may be.

123. Criminal Appeal arising out of S.L.P. (Crl.) No.1632 of 2015 is allowed.

124. Criminal Appeal No.638 of 2015 arises out of SLP (Crl.) No.2013 of 2015. The challenge is to the decision of a learned Single Judge of the Karnataka High Court dated 5th February, 2015 whereby I.A. No.1 filed under Section 301(2) of the Code in Criminal Appeal Nos. 835-838 of 2014 was dismissed by the High Court. In that I.A., Mr. Anbazhagan had sought permission of the learned Single Judge to intervene in the pending appeals filed by the

accused persons and assist the Special Public Prosecutor.

125. The prayer in this court is for permission to file written submissions in the pending appeals filed by the accused persons. However, there is no such prayer in the application for permission to file written submissions.

126. In the order under appeal, the learned Single Judge framed the issues arising out of the application as follows:-

1. Whether the applicant/intervener can be permitted to intervene as a party/respondent in the above appeals?
2. Whether the intervener can be permitted to assist the Special Public Prosecutor before this Court?

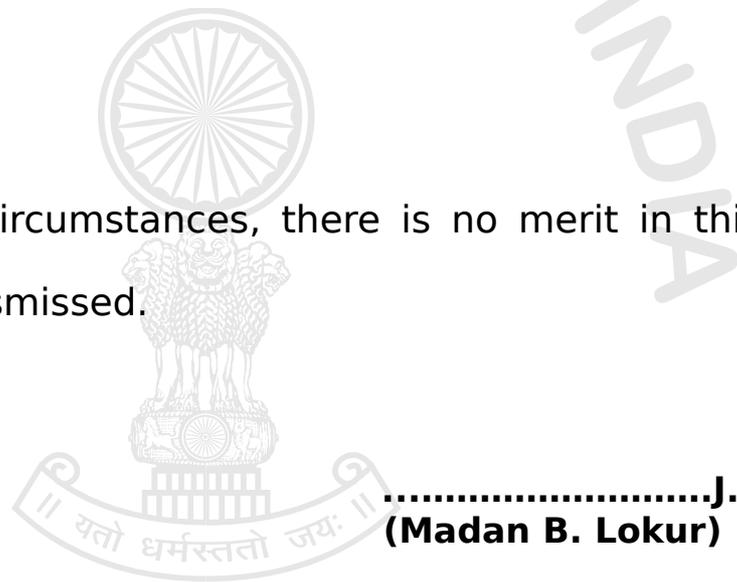
127. In my opinion, there is no question of permitting Mr. Anbazhagan to file written submissions. Section 301(2) of the Code does not postulate the filing of any written submissions. That apart, I cannot permit Mr. Anbazhagan to file written submissions in the High Court when no such prayer was made by him before the High Court. Even if such a prayer had been made by Mr. Anbazhagan before the High Court, it was entirely for the learned Single Judge to take a view in the matter.

128. In ***Haradhan Sen v. State***⁴² it was observed that there is no provision in the Code for permission to file

⁴² 2004 CrL. L.J. 3881

written submissions particularly at the appellate stage and there is no scope for filing any written arguments by a private counsel except when the court thinks it necessary for the purposes of a fair trial and only on the basis of permission granted by the court.

129. Under the circumstances, there is no merit in this appeal and it is dismissed.



.....J.
(Madan B. Lokur)

**New Delhi;
April 15, 2015**

JUDGMENT

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.637 OF 2015

(Arising out of S.L.P. (Crl.) No.1632/2015)

K. ANBAZHAGAN

..Appellant

Versus

STATE OF KARNATAKA & ORS.

..Respondents

WITH

CRIMINAL APPEAL NO.638 OF 2015

(Arising out of S.L.P. (Crl.) No. 2013/2015)

K. ANBAZHAGAN

..Appellant

Versus

SELVI J. JAYALALITHA & ANR.

..Respondents

J U D G M E N T

R. BANUMATHI, J.

Leave granted.

2. I have had the benefit of going through the draft judgment proposed by His Lordship Justice Madan B. Lokur. For the reasons which I have indicated below, I am unable to agree with the proposed final decision in criminal appeal arising out of S.L.P. (Crl) No.1632/2015 and in my considered view, the criminal appeal arising out of said S.L.P. is liable to be dismissed. However, I agree with the final decision taken by His Lordship in the criminal appeal arising out of SLP (Crl.) No.2013/2015.

3. Before the learned Single Judge of the Karnataka High Court, on behalf of the appellant, it was submitted that the appellant would not go into the allegations made against Mr. Bhavani Singh, but would confine his submissions only to the legal issues and the said submission is referred to in paragraph (13) of the impugned judgment. Before us, even though much arguments were advanced on the credibility of fifth respondent as a Special Public Prosecutor (SPP), in the

High Court, since the matter was restricted only on the legal issues, I consciously refrain from making any reference to the submissions touching upon the credibility of Mr. Bhavani Singh and would therefore confine my discussion only on the legal issues.

4. The following questions arise for consideration in this appeal:

- (i) **Whether the fifth respondent-Mr. Bhavani Singh appointed as Special Public Prosecutor for conducting the disproportionate assets case in Special C.C.No. 208/2004 (in the case of Kumari J. Jayalalitha and others) can continue to appear in the criminal appeals filed by the accused against the verdict of conviction and whether appearance of fifth respondent in the appeals is without authority and illegal ?**
- (ii) **Whether the appellant is entitled to assist the prosecution in the appeal stage by filing the written submission?**

5. **Shorn of details of chequered history of the case, brief facts giving rise to these appeals are as follows:-** A prosecution was launched against the respondents under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act for possessing assets disproportionate to their known sources of income

in the year 1996-1997 in the State of Tamil Nadu. Appellant in both the appeals is the General Secretary of Dravida Munnetra Kazhagam(DMK) and a political opponent of accused No.1. The appellant approached this Court on 18.11.2003 for transferring the trial of the case to the neighbouring State, on the ground that a fair trial was not possible in the State of Tamil Nadu. While transferring the matters to the State of Karnataka, in *K. Anbazhagan & Ors. vs. Supdt. of Police & Ors.*, reported in (2004) 3 SCC 767, in paragraph (34), this Court issued the following directions:

“34. In the result, we deem it expedient for the ends of justice to allow these petitions. The only point that remains to be considered now is to which State the cases should be transferred. We are of the view that for the convenience of the parties the State of Karnataka would be most convenient due to its nearness to Tamil Nadu. Accordingly, the petitions are allowed. CC No. 7 of 1997 and CC No. 2 of 2001 pending on the file of the XIth Additional Sessions Judge (Special Court No. 1), Chennai in the State of Tamil Nadu shall stand transferred with the following directions:

- a) The State of Karnataka in consultation with the Chief Justice of the High Court of Karnataka shall constitute a Special Court under the Prevention of Corruption Act, 1988 to whom CC No. 7 of 1997 and CC No. 2 of 2001 pending on the file of the XIth**

Additional Sessions Judge (Special Court No. 1), Chennai in the State of Tamil Nadu shall stand transferred. The Special Court to have its sitting in Bangalore.

- b) As the matter is pending since 1997 the State of Karnataka shall appoint a Special Judge within a month from the date of receipt of this order and the trial before the Special Judge shall commence as soon as possible and will then proceed from day to day till completion.**
- c) The State of Karnataka in consultation with the Chief Justice of the High Court of Karnataka shall appoint a senior lawyer having experience in criminal trials as Public Prosecutor to conduct these cases. The Public Prosecutor so appointed shall be entitled to assistance of another lawyer of his choice. The fees and all other expenses of the Public Prosecutor and the Assistant shall be paid by the State of Karnataka who will thereafter be entitled to get the same reimbursed from the State of Tamil Nadu. The Public Prosecutor to be appointed within six weeks from today.**
- d) The investigating agency is directed to render all assistance to the Public Prosecutor and his Assistant.**
- e) The Special Judge so appointed to proceed with the cases from such stage as he deems fit and proper and in accordance with law.**
- f) The Public Prosecutor will be at liberty to apply that the witnesses who have been recalled and cross-examined by the accused and who have resiled from their previous statement, may be again recalled. The Public Prosecutor would be at liberty to apply to the**

court to have these witnesses declared hostile and to seek permission to cross-examine them. Any such application if made to the Special Court shall be allowed. The Public Prosecutor will also be at liberty to apply that action in perjury to be taken against some or all such witnesses. Any such application(s) will be undoubtedly considered on its merit(s).

- g) The State of Tamil Nadu shall ensure that all documents and records are forthwith transferred to the Special Court on its constitution. The State of Tamil Nadu shall also ensure that the witnesses are produced before the Special Court whenever they are required to attend that court.**
- h) In case any witness asks for protection, the State of Karnataka shall provide protection to that witness.**
- (i) The Special Judge shall after completion of evidence put to all the accused all relevant evidence and documents appearing against them whilst recording their statement under Section 313. All the accused shall personally appear in court, on the day they are called upon to do so, for answering questions under Section 313 of the Criminal Procedure Code.”**

6. Pursuant to the above direction as in Para 34(c), after consultation with the Chief Justice of the High Court of Karnataka, on 19.02.2005, the Government of Karnataka, appointed Mr. B.V. Acharya, a former Advocate General, as Special Public Prosecutor to conduct the

prosecution. On 12.08.2012, Mr. Acharya expressed his inability to continue as Special Public Prosecutor. The Government of Karnataka accepted his resignation and discharged him from the case in January 2013.

7. The Government of Karnataka then initiated the process for appointment of a new Special Public Prosecutor and in pursuance with the directions of this Court submitted names of four advocates to the High Court for consideration by the Chief Justice. The then Acting Chief Justice of the Karnataka High Court on 29.01.2013 recommended the name of Mr. Bhavani Singh-respondent No.5 for appointment as Special Public Prosecutor, though his name was not submitted by the Government of Karnataka. The Government of Karnataka accepted the same and issued a notification dated 2.02.2013 appointing Mr. Bhavani Singh as Special Public Prosecutor.

8. Fifth respondent started working as Special Public Prosecutor and number of defence witnesses were examined and the trial of the case proceeded. Defence commenced arguments on 2.08.2013 and later concluded

the same. On 26.08.2013, Government of Karnataka issued a notification withdrawing the appointment of fifth respondent as Special Public Prosecutor without consulting the Chief Justice of Karnataka High Court. Aggrieved by the said notification, removing fifth respondent as Special Public Prosecutor, the accused preferred the Writ Petition (Crl.) No.154/2013. When the aforesaid writ petition was pending in this Court, the Government of Karnataka consulted the Chief Justice of the Karnataka High Court for withdrawing the appointment of Mr. Bhavani Singh as a Special Public Prosecutor and the Chief Justice concurred with the view of the State Government vide communication dated 14.09.2013. The appointment of Mr. Bhavani Singh stood withdrawn by the Government of Karnataka by a fresh notification No. LAW 149 LCE 2012 dated 16.9.2013. Being aggrieved, the accused have filed another writ petition being Criminal No.166/2013 before this Court challenging the communication dated 14.09.2013 and notification 16.09.2013. After hearing the parties and after taking note of the facts of the case, in *J. Jayalalithaa And Ors. vs. State of Karnataka & Ors.*, (2014)

2 SCC 401, this Court quashed the order of removal of fifth respondent as Special Public Prosecutor .

9. By the judgment dated 27.09.2014, the Special Judge convicted the accused No.1 under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act read with Section 120B IPC and other accused for the offences punishable under Section 109 IPC read with Section 13(2) of Prevention of Corruption Act. Challenging the verdict of conviction and sentence of imprisonment imposed, accused preferred appeals before the Karnataka High Court in Criminal Appeal Nos. 835-838 of 2014. During the pendency of the appeals in the High Court, the accused filed an application for enlarging them on bail and the learned Single Judge by an order dated 7.10.2014 dismissed the application for grant of bail. Aggrieved by the said order, accused preferred appeal before this Court by filing Special Leave Petition (Crl.) No.7900/2014. By an order dated 17.10.2014, this Court enlarged all the accused on bail. Thereafter, this Court passed an order on 18.12.2014 requesting the Chief Justice of Karnataka High Court to constitute a Special Bench for hearing of the

appeals and further directed that the criminal appeals be heard on day-to-day basis and dispose of the same as early as possible, at any rate not later than three months. After Christmas vacation, High Court of Karnataka reopened on 2.01.2015 and hearing of the arguments in the criminal appeals started on 6.01.2015 and hearing was concluded on 11.03.2015. It is submitted at the Bar that the learned Single Judge reserved the judgment in the criminal appeals on 11.03.2015.

10. After the Supreme Court has passed the Order dated 18.12.2014, the appellant who is the General Secretary of DMK Party made a representation on 24.12.2014 to the Government of Karnataka requesting it to appoint a suitable senior lawyer to appear for the Director of Vigilance and Anti-Corruption (for short 'D.V & A.C'), Tamil Nadu before the High Court of Karnataka at Bangalore in the Criminal Appeal Nos. 835-838/2014. The appellant also filed a memo on 7.01.2015 in Criminal Appeal Nos.835-838/2014 contending that the fifth respondent is not a Special Public Prosecutor appointed by the Karnataka Government in consultation with the Chief

Justice of High Court of Karnataka to appear in the appeals and therefore fifth respondent cannot appear in the appeals pending on the file of the High Court.

11. When the matters stood thus, on 6.01.2015, the appellant filed a Writ Petition being No.742/2015 seeking a direction to appoint any other Senior Lawyer as Special Public Prosecutor in criminal appeal Nos.835-838/2014. After hearing both the parties and after taking note of the order passed by the Apex Court granting bail on 17.10.2014 and order dated 18.12.2014, in which this Court has directed the appeals to be heard on day-to-day basis and the appeals be disposed of within three months, the learned Single Judge dismissed the writ petition holding that Mr. Bhavani Singh's continuance as Special Public Prosecutor may not cause prejudice in the proceedings. Learned Single Judge further held that since fifth respondent was appointed pursuant to the direction of the Supreme Court, it is therefore a matter of formality for the Supreme Court to clarify as to the procedure in appointing a counsel and his assistant, if any, and in the conduct of further proceedings.

12. Being aggrieved, the appellant has preferred appeal before the Division Bench of High Court of Karnataka being Writ Appeal No. 260/2015 (GM-RES). On 11.02.2015, the High Court of Karnataka passed the impugned order rejecting the appellant's challenge against the fifth respondent's authority as Special Public Prosecutor to appear in the appeals. By an order dated 5.02.2015 passed in I.A. No.1/2015 in Criminal Appeals No.835-838/2014, the High Court dismissed the appellant's plea to assist the prosecution in the above appeals observing that the appellant has no statutory right to intervene in the criminal appeal proceedings to assist the prosecution in the appeals. In these appeals, appellant has challenged the correctness of the impugned judgment/order.

13. **Appointment of respondent No5-Mr. Bhavani Singh as Special Public Prosecutor by the Government of Tamil Nadu to represent Directorate of Vigilance and Anti-Corruption in the appeals in the High Court of Karnataka:** The judgment in the criminal case was rendered by the Special Judge on

27.09.2014. Within two days thereafter i.e. on 29.09.2014, on the request made by Director, Vigilance and Anti-Corruption, Principal Secretary to the Government of Tamil Nadu passed the order authorizing D.V & A.C to engage Mr. Bhavani Singh as the Special Public Prosecutor to appear before the High Court of Karnataka in the criminal appeals. The order is extracted in paragraph (36) of the judgment of Hon'ble Justice Lokur.

14. As per the direction of this Court in *K. Anbazhagan vs. Supdt. of Police*, (2004) 3 SCC 767, the Special Public Prosecutor was appointed. The Appointment of the Special Public Prosecutor in the transferee court was thus as per the direction of this Court. As extracted earlier, this Court specifically directed the State of Karnataka to appoint a senior counsel as Special Public Prosecutor in consultation with the Chief Justice of Karnataka High Court.

15. While directing transfer of a criminal case from outside the State, this Court can in exercise of powers under Section 406 Cr.P.C. issue further direction to the transferee court to appoint Public Prosecutors/Additional

Public Prosecutors/Special Public Prosecutors. In *Jayendra Saraswati Swamigal @ Subramaniam vs. State of Tamil Nadu*, (2008) 10 SCC 180, when the criminal case was ordered to be transferred from State of Tamil Nadu to Union Territory of Pondicherry, this Court held that the Union Territory of the transferee court, namely, Government of Pondicherry is the appropriate government to appoint Public Prosecutor/ Additional Public Prosecutor or Special Public Prosecutor, in paragraphs (13), (15), (17) & (18) held thus:-

“13. Of course, this Court while passing order of transfer, can give an appropriate direction as to which State should appoint the Public Prosecutor to conduct that particular case. Such orders are passed having regard to the circumstances of the case and the grounds on which the transfer has been effected. This Court can certainly give directions irrespective of the provisions contained in Section 24 CrPC. But so far as this case is concerned, nothing had been stated in the order of the transfer. The provisions contained in Section 24 CrPC shall prevail and it is for the appropriate State Government within whose area the trial is conducted to appoint Public Prosecutor under sub-sections (3) to (7) of Section 24 CrPC.

15. The purpose of transfer of the criminal case from one State to another is to ensure fair trial to the accused. In this case, the main ground on which the transfer of the sessions case was ordered from the Sessions Court of Chinglepet in Tamil Nadu to the Principal District and

Sessions Judge, Pondicherry, was that the action of the prosecution agency had created a reasonable apprehension in the mind of the appellant-accused that he would not get justice if the trial was held in the State of Tamil Nadu.

17. As is evident from various provisions of CrPC, the State Government of Tamil Nadu can only appoint a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under Section 24 CrPC to conduct the prosecution and appeal, or other proceeding in any criminal courts in respect of any case pending before the courts of Tamil Nadu and in respect of any case pending before the courts at Pondicherry, the State Government of Pondicherry is the appropriate Government to appoint Public Prosecutor, Additional Public Prosecutor or Special Public Prosecutor.

18. However, we make it clear that the State of Pondicherry can appoint any counsel as Public Prosecutor having requisite qualifications as prescribed under sub-section (8) of Section 24 CrPC whether he is a lawyer in the State of Pondicherry or any other State. As it is a criminal case registered by the State of Tamil Nadu the expenses for conducting the trial are to be borne by the State of Tamil Nadu. The advocate's fees payable to the Public Prosecutor, Additional Public Prosecutor or Special Public Prosecutor by the State of Pondicherry shall be borne by the State of Tamil Nadu and the Home Departments of the two States may undertake consultations with each other and an appropriate decision may be taken by the authorities concerned in this regard".

16. When the criminal case is transferred from one court to another court which is subordinate to another High Court, then the transferee State acquires jurisdiction to appoint Public Prosecutor. The transferor court, namely, State of Tamil Nadu had no jurisdiction to appoint Special

Public Prosecutor to represent D.V & A.C in the criminal appeals before the High Court of Karnataka. After extracting Section 406 Cr.P.C. and paragraph (34) of the judgment in (2004) 3 SCC 767 and the notification appointing Mr. B.V. Acharya and the subsequent notification dated 2.02.2013 appointing fifth respondent, in the impugned judgment, Division Bench of the Karnataka High Court observed that the State of Tamil Nadu has no jurisdiction to appoint a Public Prosecutor in the appeals pending before the High Court of Karnataka and the order is *non-est* in the eye of law and held as under:-

“.....Therefore, the State of Tamil Nadu has no jurisdiction to appoint a Public Prosecutor in the Special Court nor in the appeals which are pending in this Court. Hence, the order passed by the State of Tamil Nadu authorizing the deleted third respondent herein to engage the services of the fifth respondent is without authority and non est in the eye of law. That order does not confer any right on the fifth respondent to represent either the State of Karnataka or the State of Tamil Nadu in the pending appeals before this Court. In view of our findings recorded above that the transferor court has no power to appoint a Public Prosecutor under Section 24 of the Code in respect of a case pending in the transferee Court, the argument that the appellant has not challenged the said order of appointment has no merit.”

17. As per the decision in *Jayendra Saraswati Swamigal's* case(supra), and the decision in (2004) 3 SCC 767, only the State of Karnataka can appoint a Special Public Prosecutor. Order hastily passed by the State of Tamil Nadu on 29.09.2014 authorizing D.V & A.C to engage Mr. Bhavani Singh as its Special Public Prosecutor is without authority and *non-est* in the eye of law. I fully agree with the view taken by the High Court of Karnataka. To this extent, I also agree with the view taken by Hon'ble Justice Lokur.

18. **Whether, fifth respondent can continue as the Special Public Prosecutor in the criminal appeals before the High Court of Karnataka.:** Mr. T.R. Andhyarujina, learned Senior Counsel appearing for the appellant contended that in pursuance of the direction of this Court in (2004) 3 SCC 767, after the disposal of the case, in consultation with the Chief Justice of High Court of Karnataka, a Special Public Prosecutor has to be appointed afresh for the purpose of conducting criminal appeals in the High Court and Mr. Bhavani Singh had no authority to appear in the appeals as his appointment was

limited to conduct only Special CC No. 208/2004 in the Court of Additional City Civil and Sessions Judge, Special Court, Bangalore. It was submitted that in the appellate court, the appointment of prosecutor could only be done in terms of the Supreme Court order by the State of Karnataka in consultation with the Chief Justice of High Court of Karnataka. It was contended that Section 24(8) Cr.P.C. does not authorize a Special Public Prosecutor appointed by the government to continue to appear in appeal and all the proceedings after the case is over and in the present case, Mr. Bhavani Singh has been appointed only for the limited purpose of Special CC No.208/2004 and Section 24(8) Cr.P.C. cannot overrule the express limitation in the notification appointing Mr. Bhavani Singh. Learned Senior Counsel further contended that Section 301 Cr.P.C. has no application in the present case and it does not give a right to any Public Prosecutor or Assistant Public Prosecutor to have a blanket authority to appear in any court originating from that case in which he is in charge.

19. Reiterating the above submissions, Mr. Vikas

Singh, learned Senior Counsel appearing for the appellant in the criminal appeal arising out of S.L.P.(Crl.) No.2013/2015 submitted that Section 301 Cr.P.C. is only a general provision in Chapter XXIV of the Code which is only a facilitating provision for a Public Prosecutor to appear without any written authority if he is in charge of a case and Section 301 Cr.P.C. does not confer unlimited authority to a Public Prosecutor to appear in the hierarchy of courts. In so far as SLP (Crl.) No.2013/2015 is concerned, it was submitted that the appellant has consistently intervened before the appropriate courts and learned Special Judge also permitted him to assist the prosecution and the appellant having filed written submissions in the trial court, the High Court ought to have permitted the appellant to intervene in the criminal appeals also.

20. We have heard Mr. M.N. Rao, learned Senior Counsel appearing for the State of Karnataka who submitted that in the case of Mr. Bhavani Singh, his appointment was limited to the conduct of trial and it came to an end after the trial was over. It was submitted

that Rule 30 of the Karnataka Law Officers (Appointment and Conditions of Service) Rules 1977, the words 'any appeal or proceedings connected therewith' read with preceding words 'civil or criminal case' negate the presumption that the order of appointment for trial will continue till the matter attains finality in the High Court or in the Supreme Court. The learned Senior Counsel further submitted that after the judgment in the criminal case the State Government could not take any initiative, since it could neither approach the Supreme Court nor the Chief Justice of the High Court on its own accord as there was no authority for the State Government to take action *suo moto* .

21. Mr. Fali S. Nariman, learned Senior Counsel appearing for the first accused submitted that by virtue of Section 24 (8) Cr.P.C., Mr. Bhavani Singh's appointment as a Special Public Prosecutor continues even in the appeal. It was argued that sub-section (1) of Section 301 Cr.P.C. gives right to any Public Prosecutor or Assistant Public Prosecutor 'in charge of a case to appear and plead in any court in which that case is under inquiry, trial or appeal'

without any written authority and the High Court rightly held that by virtue of sub-section (1) of Section 301 Cr.P.C., Mr. Bhavani Singh has the authority to continue to appear in the criminal appeals.

22. We have heard Mr. K.T.S. Tulsi, learned Senior Counsel appearing for other accused who reiterated the submissions of Mr. Nariman and also placed reliance on catena of judgments.

23. I have carefully considered the rival contentions and perused the impugned judgment and chronology of dates and events and material on record.

24. It will be convenient at this stage to refer to some of the provisions which have a bearing in the matter and are relevant for the purpose of these appeals. Section 2(u) of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') defines "Public Prosecutor" to mean any person appointed under Section 24 and includes any person acting under the directions of a Public Prosecutor. Section 24 provides for appointment of Public Prosecutors, Additional Public Prosecutors in High Courts and the Districts by the Central Government or the State

Government and also provides for appointment of the Special Public Prosecutors for purposes of any case or class of cases. Section 24 Cr.P.C. reads as under:-

“24. Public Prosecutors.—(1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be.

(2) The Central Government may appoint one or more Public Prosecutors for the purpose of conducting any case or class of cases in any district, or local area.

(3) For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district: Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.

(4) The District Magistrate shall, in consultation with the Sessions 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.

(5) 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).

(6)

(7) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (6), only if he has been in practice as an advocate for not less than seven years.

(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:

Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section.

(9) For the purposes of sub-section (7) and sub-section (8), the period during which a person has been in practice as a pleader, or has rendered (whether before or after the commencement of this Code) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an advocate.”

25. Analysis of Section 24 Cr.P.C. would show that for appointment of a Public Prosecutor in the High Court in terms of Section 24(1) Cr.P.C., there has to be a consultation with the High Court. In terms of Section 24(3), 24(4) and 24(5) Cr.P.C., the Public Prosecutor/Additional Public Prosecutor for the District or local area, shall be appointed from out of the panel

prepared by the District Magistrate in consultation with the Sessions Judge. Qualification prescribed for being eligible for appointment as Public Prosecutor, Additional Public Prosecutor under Section 24 (1) or Section 24(2) or Section 24(3) Cr.P.C., a person who is in practice as an advocate for not less than seven years. In terms of Section 24(8) Cr.P.C. for appointment of Special Public Prosecutor to conduct the case under Section 24(8) Cr.P.C., there is no such consultation with the High Court or the Sessions Judge. Section 24(8) Cr.P.C. says the Central Government or the State Government may appoint a Special Public Prosecutor 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. The scheme of the Code thus makes a clear distinction between the appointment of a Public Prosecutor ‘to a Court’ or a ‘District or local area’ and with limited territory and appointment of Special Public Prosecutor ‘to a case or class of cases.

26. As per the decision in *K. Anbazhagan vs. Supdt. of Police*, (2004) 3 SCC 767 in paragraph 34(c), the State

of Karnataka was to appoint a Senior Lawyer having experience in criminal trials as a Public Prosecutor in consultation with the Chief Justice of the High Court of Karnataka. After the resignation of Mr. B.V. Acharya, the Government of Karnataka initiated the process of appointment of new Special Public Prosecutor and submitted names of four advocates to the High Court. The Acting Chief Justice of the Karnataka High Court on 29.01.2013 recommended the name of Mr. Bhavani Singh, though his name was not submitted by the Government of Karnataka. The Government of Karnataka accepted the same and issued a notification appointing Mr. Bhavani Singh as a Special Public Prosecutor which reads as under:-

JUDGMENT
"GOVERNMENT OF KARNATAKA"

No. LAW 149 LCE 2012

Karnataka Government Secretariat
Vidhana Soudha
Bangalore, dated 02.02.2013

NOTIFICATION

In obedience to the judgment dated 18.11.2003 passed by the Hon'ble Supreme Court of India in Transfer Petition No.77-78/2003 (Criminal) in the matter of K. Anbazhagan Vs. The Superintendent of Police and Others and in exercise of the powers conferred by Sub-section (8) of Section 24 of the Code of Criminal Procedure,

Crl.Appeal No._____/2015 etc.
(Arising out of SLP (Crl.) No.1632/2015) etc.

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1973 (Central Act No.2 of 1974) as amended by the Code of Criminal Procedure (Amendment Act 1978) and Rule 30 of the Karnataka Law Officers (Appointment and Conditions of service) Rules, 1977 Sri G. Bhavani Singh, Senior Advocate, House No. 746, Srinidhi, Kadugodi, White Field Railway Station, Bangalore-560067, is appointed as Special Public Prosecutor in place of Sri B.V. Acharya on same terms to conduct Special C.C.No.208/2004 (in the case of Kum. Jayalalitha and others) pending on the file of XXXVIth Additional City Civil & Sessions Court, (Special Court), Bangalore in pursuance.

Further, Sri Sandesh J. Chouta, Advocate, is continued to assist Sri G. Bhavani Singh, Special Public Prosecutor, in this case.

By Order and in the name of the Governor of Karnataka.

(K. Narayana)

Deputy Secretary to Government (Admn-

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Law, Justice and Human Rights Department”

27. The appointment of Mr. Bhavani Singh, under Section 24(8) Cr.P.C. as directed by this Court was in consultation with the High Court and on the recommendation of the Chief Justice of the High Court of Karnataka. That is why when Mr. Bhavani Singh's appointment was cancelled by the Government of Karnataka by its notification dated 26.8.2013, the same was held to be vitiated as there was no consultation with the Chief Justice of High Court of Karnataka vide *J. Jayalalithaa And Ors. vs. State of Karnataka And Ors.*, (2014) 2 SCC 401. Withdrawal of appointment of Mr. Bhavani Singh by the Government of Karnataka even after

consultation with the Chief Justice of High Court of Karnataka by the subsequent notification dated 16.9.2013 did not find favour with this Court and was held to be *malafide* and vitiated.

28. As per Section 2(u) Cr.P.C., Public Prosecutor means any person appointed under Section 24 Cr.P.C. and thus includes a Special Public Prosecutor appointed under Section 24(8) Cr.P.C. In this case, we are only concerned with the appointment of Special Public Prosecutor who can be appointed by the Central Government or the State Government to deal with 'case or class of cases' under sub-section (8) of Section 24 Cr.P.C. By a plain reading of Section 24 Cr.P.C., three main categories of Public Prosecutors are discernible:- **First** are those who are attached to a particular High Court, District or Local Area; **Second** are those who are attached to a particular case or class of cases but in a specified jurisdiction and **lastly**, the one appointed to a particular case or class of cases. The last category belongs to 'Special Public Prosecutor' appointed under sub-section (8) of Section 24 Cr.P.C., in which there is no mention about the jurisdiction/territory in

which Special Public Prosecutor has to conduct the case or class of cases. The limitation of acting in particular court or area is conspicuously absent in the provision of Section 24(8) Cr.P.C, when compared with other provisions.

29. Thus, once Mr. Bhavani Singh was appointed as a Special Public Prosecutor to conduct the criminal case, in terms of Section 301 Cr.P.C. as a Public Prosecutor in charge of a case, he can appear and plead without any written authority before any court in which that case is under inquiry, trial or appeal. Section 301 Cr.P.C. reads as under:-

“301. Appearance by Public Prosecutors.- (1) The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.

(2) If in any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written argument after the evidence is closed in the case”.

30. Section 301 of the Code is a pivotal provision which deals with '*appearance of Public Prosecutor*' giving

a substantive right to the Public Prosecutor who is 'in charge of a case' to appear and plead in any court in which that case is under inquiry, trial or appeal without having any written authority. The scheme of the Code is that when a case is at the stage of inquiry, trial or appeal, the Public Prosecutor is in charge of the case and he is authorized to appear before any court in which that case is under inquiry, trial or appeal, without any written authority. One of the reasons for dispensing with the requirement of written authority to appear and plead under Section 301 of the Code is that the Special Public Prosecutor appears for the State to prosecute the accused. State in turn authorize and appoint the Special Public Prosecutor to act on its behalf by issuing a notification and until that notification is quashed by the State, the power under sub-section (1) of Section 301 of the Code, will continue the authority of Special Public Prosecutor to appear and plead even after end of trial.

31. Mr. Bhavani Singh appointed as a Special Public Prosecutor under Section 24(8) Cr.P.C. and in charge of the case, in terms of Section 301 Cr.P.C., may appear and

plead without any written authority before any court which that case is in inquiry or trial or appeal. The word 'any Court' occurring in Section 301 Cr.P.C. is significant. While the role of Public Prosecutors under sub-sections (1) to (3) of Section 24 Cr.P.C. is confined to the 'Courts' or 'Area' or 'District' to which they are attached, the role allotted to Special Public Prosecutor under sub-section (8) of Section 24 Cr.P.C. is specific to 'conduct a case' or 'class of cases'. If the construction of the phrase 'conduct of the case' or 'class of cases' is restricted only to the trial court as is argued by the appellant in the instant case, then the words 'any Court', 'trial', 'inquiry', 'appeal' occurring in Section 301(1) Cr.P.C. would become redundant.

33. Public Prosecutor defined under sub-section (u) of Section 2 is the genus and Special Public Prosecutor is the species. Though there is common section 2(u) Cr.P.C. defining all classes of Public Prosecutors i.e. Public Prosecutor, Special Public Prosecutor, Assistant Public Prosecutor etc., all of them stand on different footings and there cannot be a same scale to measure their functions. In fact, this is the intention which can be inferred from the

changes brought in the new Code as compared to the old Code of 1898. In the old Code, there were only two classes (i.e. those who have been empowered to prosecute generally and other who are empowered to deal with specific cases) that too in a single provision, which talked about Public Prosecutors under Section 492 of the old Code. In the new Code, under Sections 24, 25 & 26 Cr.P.C. all of them have independent specific role to play at various levels and it is in the light of these specific roles, Section 301 Cr.P.C. ought to be interpreted. That is the reason why Special Public Prosecutor can be allowed to appear in the case, when the same went in appeal from trial and the Public Prosecutor and the Assistant Public Prosecutor cannot be allowed to do so because of element of 'Court or area' limitation imposed upon them in which they have to work.

34. Considering the scope of Section 301 Cr.P.C., in *Shiv Kumar vs. Hukam Chand And Anr.*, (1999) 7 SCC 467, this Court has held as under:-

“12. In the backdrop of the above provisions we have to understand the purport of Section 301 of the Code. Unlike its succeeding provision in the Code, the

application of which is confined to Magistrate Courts, this particular section is applicable to all the courts of criminal jurisdiction. This distinction can be discerned from employment of the words “any court” in Section 301. In view of the provision made in the succeeding section as for Magistrate Courts the insistence contained in Section 301(2) must be understood as applicable to all other courts without any exception. The first sub-section empowers the Public Prosecutor to plead in the court without any written authority, provided he is in charge of the case. The second sub-section, which is sought to be invoked by the appellant, imposes the curb on a counsel engaged by any private party. It limits his role to act in the court during such prosecution “under the directions of the Public Prosecutor”. The only other liberty which he can possibly exercise is to submit written arguments after the closure of evidence in the trial, but that too can be done only if the court permits him to do so.”

35. Referring to *Shiv Kumar's* case(supra) and elaborating upon sub-section (1) of Section 301 Cr.P.C. and interpreting the word ‘a case’ in paragraph (49) of the impugned judgment, the High Court held as under:-

“49. Therefore, as held by the Apex Court in the aforesaid judgments, when the Code meticulously provides for appointment of Public Prosecutors to the High Court, District Court, Magistrate Court and Special Public Prosecutor for a case, and under Section 301 of the Code it declares that Special Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before “any Court” in which the case is under inquiry, trial or appeal, it only means once he is entrusted with a case, he is put in charge of the case till that said case ultimately reaches a finality either by way of discharge, conviction or by

way of acquittal, he is entitled to appear and plead without any written authority. A conviction or acquittal by a trial court is only a step amongst the several steps in which a criminal case has to pass through. These statutory provisions have to be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved. Otherwise, the word 'any Court' used in Section 301 would become redundant. When a Special Public Prosecutor is appointed to a case, he has a right to appear during inquiry, during trial and also during appeal. He is not appointed to any Court but appointed to a case. When criminal case has to pass through the stages of inquiry, trial or appeal, by virtue of his appointment, when he is in charge of a case he has a right to appear and plead without any written authority before any Court in which that case in whatever stage is pending."

I fully agree with the view taken by the High Court for the reasonings which I have elaborated supra and hereunder.

36. Role Assigned to Special Public Prosecutor appointed under Section 24(8) Cr.P.C. to conduct case or class of cases to be interpreted along with Section 301 Cr.P.C.:

For proper appreciation of this aspect, let us compare Section 301 of the New Code vis-à-vis Section 493 of the old Code.

| Section 301 | Section 493 |
|---|--|
| <p>Appearance by Public Prosecutors.-</p> <p>1. The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.</p> <p>2. If any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case.</p> | <p>Public Prosecutor may plead in all Courts in cases under his charge, Pleaders privately instructed to be under his direction.-</p> <p>The Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under inquiry, trial or appeal, and if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution, and the pleader so instructed shall act therein, under his directions.</p> |

A close look at both sections would show that Section 301 (1) of the new Code and Section 493 of the old Code are similar in language, except of one slight change i.e. in the new Code under Section 301(1) Cr.P.C., the word “Assistant Public Prosecutor” has been added.

37. Further the comparison of the provisions as to Public Prosecutors in the old Code and the new Code the

following emerge:-

(a) In the old Code, provisions as to 'Appointments of Public Prosecutor', 'Appearance of Public Prosecutor', 'Withdrawal from Prosecution and 'Permission to Conduct Prosecution' were put consecutively under Sections 492, 493, 494 & 495 respectively, in Chapter XXXVIII -'Of The Public Prosecutor' contained in the Part IX of the Code titled as Supplementary Provisions;

(b) However, in the new Code all the provisions relating to Public Prosecutors are scattered in different chapters of the Code. Section 24 and Section 25 which deal with appointment of Public Prosecutor and Assistant Public Prosecutor respectively, finds place in Chapter II-'Constitution of Criminal Courts and Offices' of the Code. Provisions as to Appearance of Public Prosecutor, Permission to Conduct Prosecution, Withdrawal from Prosecution have been enumerated under Sections 301, 302, 321 of the Code respectively under Chapter XXIV-'General Provisions as to inquiries and Trials'.

Thus, under the old Code, provisions corresponding to Section 24 Cr.P.C. and Section 301 Cr.P.C. were under the same Chapter. They have now been placed in different Chapters in the 1973 Code, however, this was done as merely a part of the scheme of the Code. Therefore, it would be wrong to suggest that interpretation of Section 24(8) Cr.P.C. alongwith Section 301(1) Cr.P.C. would be in violation to the scheme of the Code.

38. Whether Section 301 Cr.P.C. is only

procedural in nature: Section 301 has been placed under Chapter XXIV of the Code which is titled as '*General provisions as to inquiries and trials*'. Contention of learned Senior Counsel for the appellant is that since Section 301 Cr.P.C. finds mention in the Chapter containing '*General provisions as to inquiries and trials*', Section 301 Cr.P.C. is only procedural in nature and thus does not confer any substantive right to the Public Prosecutor who is in charge of a case, to appear and plead and it is only a facilitating provision to appear without any written authority. It was further submitted that when the notification appointing Mr. Bhavani Singh was confined only to Special CC No.208/2004, support cannot be drawn from Section 301 Cr.P.C. for continuance of his authority to appear in the appeal.

39. In my considered view, the said argument is misplaced. Though Chapter XXIV deals with the '*General provisions as to inquiries and trials*', it also contains various sections which if not observed mandatorily, will have serious repercussions on the substantive rights of the parties. For example, Section 327 provides that trial

should be conducted in open Court. If a by-pass is allowed through this provision which confers substantive rights in favour of party, then it may vitiate the entire trial. Moreover, Section 327 not only vests substantive right in favour of parties to have open trial and to have 'in camera' trial in certain matters, but also embodies the principle of natural justice of 'fairness in conduct of trial'.

40. Coming to the relevant Section, i.e. Section 301(1) Cr.P.C. also gives substantive right to the Public Prosecutor who is 'in charge of a case' to appear and plead without having any written authority. Further as per sub-section (2) of Section 301 Cr.P.C., if a victim chooses to appoint some private pleader on his/her behalf, then such private pleader will act under the direction of the Public Prosecutor. Mandatory nature of Section 301(2) Cr.P.C. has been considered and upheld by this Court in a catena of decisions. A Constitution Bench of this Court in the case of *State of Punjab vs. Surjit Singh And Anr.*, (1967) 2 SCR 347 while dealing with Section 493 of the old Code which is in *pari materia* with Section 301 of the new Code and held as under:-

“...That s.493 deals with a single specified case that it applies only to the Public Prosecutor, who is actually in charge of that case is also made clear by the later part of s.493. That is to the effect that if the Public Prosecutor is in charge of a particular case and, in that particular case, a private person instructs a pleader to prosecute any person, the Public Prosecutor alone is entitled to conduct the prosecution and the pleader appearing in that case for the private person is only to act under his instructions...”.

Though Chapter XXIV deals with '*General provisions as in inquiries and trials*', it also contains various sections dealing with substantive rights of the parties. The appellant is not right in contending that Section 301 Cr.P.C. is only procedural and such contention is not in consonance with the scheme of the Code. In my view, Section 301(1) Cr.P.C. gives substantive right to the Public Prosecutor who is in charge of a case to appear and plead without any written authority in any Court in which that case is under trial, inquiry or appeal.

41. Re. Contention: Special Public Prosecutor appointed under Section 24(8) Cr.P.C. appearing in the appeal might lead to an anomalous situation:

On behalf of the appellant it was submitted that since

there is a Public Prosecutor in the High Court appointed under Section 24(1) Cr.P.C. and there is a Special Public Prosecutor in charge of a case, then in the appeal before the High Court there might arise anomalous situation as to who could appear for the State as both Public Prosecutor and Special Public Prosecutor are 'Public Prosecutors' within the meaning of Section 2(u) of the Code and the Legislature would not have intended to create such an anomaly. Since both Public Prosecutor and Special Public Prosecutor have been entrusted with certain overlapping task, there is bound to be overlapping. To narrow down the overlapping, the Legislature has very carefully placed the word 'in charge of a case' under Section 301(1) Cr.P.C.

42. This issue has been addressed and answered by a Constitution Bench in the case of *Surjit Singh's* case (supra). In that case, while interpreting in *pari materia* i.e. Section 493 of the old Code and considering the question as to whether a Public Prosecutor or a Special Public Prosecutor will be entitled to file an application for withdrawing from prosecution and observing that only the

Public Prosecutor who is in charge of a particular case will be entitled to file an application to withdraw from the prosecution, this Court held as under:-

“.....If any Public Prosecutor, who had nothing to do with a particular case is held entitled to file an application under s. 494, in our opinion, the result will be very anomalous. For instance, if there are two Public Prosecutors appointed for a particular Court, and one of the Public Prosecutors is conducting the prosecution in a particular case, and desires to go on with the proceedings, it will be open to the other Public Prosecutor to ask for withdrawal from the prosecution. Similarly, a Public Prosecutor appointed for case A, before a particular Court, can, by virtue of his being a Public Prosecutor, file an application in case B, with which he has nothing to do, and ask for permission of the Court to withdraw from the prosecution.

The reasonable interpretation to be placed upon s. 494, in our opinion is that it is only the Public Prosecutor, who is in charge of a particular case and is actually conducting the prosecution, that can file an application under that section, seeking permission to withdraw from the prosecution. If a Public Prosecutor is not in charge of a particular case and is not conducting the prosecution, he will not be entitled to ask for withdrawal from prosecution, under s. 494 of the Code.”

43. Being placed ‘in charge of a case’, there is a specific role attributed to the Special Public Prosecutor under sub-section (8) of Section 24 Cr.P.C. which distinguishes the task of Special Public Prosecutor from

that of Public Prosecutors appointed under sub-sections (1), (2) and (3) of Section 24 Cr.P.C. and hardly there is any anomaly.

44. Re. Contention: the term “case” is restricted only to trial and does not ipso facto extend to appeal: It has been contended by the learned Senior Counsel for the appellant that the term ‘case’ is restricted to only trial of the accused and with the disposal of the matter in the trial court, the authority of Special Public Prosecutor comes to an end and does not extend *ipso facto* to plead and appear before the appellate forum also. Thus, the learned Senior Counsel for the appellant argues that the term ‘case’ under Section 24(8) Cr.P.C. and Section 301 Cr.P.C. has been used in the restrictive sense by the Legislature to include only the trial and not the appeal. According to the appellant this is reinforced by the appointment of Mr. Bhavani Singh by the Government of Tamil Nadu as a Special Public Prosecutor to represent the D.V & A.C in the criminal appeals before the High Court of Karnataka. It was submitted that by appointing Mr. Bhavani Singh as the Special Public

Prosecutor to appear and plead before the appellate court, the Government of Tamil Nadu was conscious that the authority of Mr. Bhavani Singh has come to an end with the conclusion of the trial.

45. The above contention does not merit acceptance. Hasty action of Government of Tamil Nadu in appointing Mr. Bhavani Singh is ill-advised and such *non-est* action of the Government of Tamil Nadu does not whittle down the provisions of law. In my considered view, the word 'case' has been given a broader meaning in the context of Section 301 of the Code. The term 'case' has to be interpreted only contextually and no universal rule can be laid down for its interpretation and therefore the Legislature in its wisdom has avoided to define the same in the Code inspite of abundant presence in the various provisions of the Code. (vide *Bhimappa Bassappa Bhu Sannavar vs. Laxman Shivarayappa Samagouda & Ors.*, (1970) 1 SCC 665).

46. I am conscious that the term 'case' in the Code at certain instances has been used to link only with 'trial' and has been categorically distinguished with the term

'appeal'. Cursory perusal of Section 407 of the Code which deals with '*Power of High Court to transfer cases and appeals*', would show that the word 'case' and 'appeal' has been distinguished by the Legislature in the context of the section. Further, sub-section (1) (ii) and (iv) of Section 407 Cr.P.C. would show that the terms 'case or class of cases' and 'appeal or appeals' have been used to mean different things. Moreover, the word 'case' as evident from Sub Clause (1) (ii) and (iv) of Section 407 Cr.P.C. would show that the word 'case' has been distinctly used by the Legislature in respect of trial. Similar distinction between term 'case' and 'appeal' has been maintained under Section 406 and Section 409 Cr.P.C. Section 209 of the Code also links the term 'case' with the 'trial' only. For example Section 209 deals "*Commitment of Case to Court of Session when offence is triable exclusively by it*". If we insert the word 'appeal' in place of word 'case', then such interpretation may lead to an absurdity.

47. The term 'case' had also become the subject matter of interpretation in relation to Section 429 of Code

of Criminal Procedure, 1898 ('Old Code') which deals with "*Procedure where Judges of Court of appeal are equally divided*". Section 429 of the Old Code is in *pari materia* with Section 392 of the New Code with a slight but significant change in the language. The term 'case' used in old Code has been replaced with term 'appeal' in the new Code, due to the reason of the mischief that had been created by the term 'case' in the old Code. The mischief was caused due to the wider meaning given to the term 'case' by the Courts then. It is to rectify this mischief; the new Code has replaced the word 'case' with 'appeal'.

48. When the Legislature has remedied the mischief under Section 429 of the old Code by replacing the term 'case' with term 'appeal' under Section 392 of the new Code, then at that point of time, the Legislature could have defined the term 'case'; but the Legislature opted not to do so and left it to the Courts of Law to interpret the term in the context of particular section and facts of the cases. In the light of the above discussion, in my view, the meaning that can be assigned to the term 'case' under

Section 301 Cr.P.C. is contextually different and wider than the provisions referred above.

49. As noted earlier, the definition of 'Public Prosecutor' under Section 2 (u) Cr.P.C. also includes a Special Public Prosecutor. When sub-section (8) of Section 24 is read harmoniously with Section 301 of the Code on the touchstone of the enunciated principles, then it would be evident that Special Public Prosecutor who is in charge of a case can appear and plead without any written authority in any court of criminal jurisdiction in which such case is under inquiry, trial or appeal and in my view there is no limitation either on territory or hierarchy of courts. There is no merit in the contention of the learned Senior Counsel for the appellant that the authority of Special Public Prosecutor ends with the conclusion of the trial and disposal of a case. If such a contention is to be accepted then the last few words of Section 301 Cr.P.C. 'in any court where that case is under inquiry, trial or appeal' would become redundant and ineffective. It is a cardinal rule of interpretation that every word in a section has a meaning and essence.

50. However, I am of the view that such authority of the Special Public Prosecutor to appear and plead a case in respect of which he is in charge in any court or at any stage of proceedings in such court may not emanate from the term 'case' or for that matter 'class of cases' as appearing under sub-section (8) of Section 24 Cr.P.C., but for the reason of the broader context in which term 'case' has been used in Section 301(1) Cr.P.C. to include any court in which that case is under 'inquiry, trial or appeal'. The Special Public Prosecutor, after the trial is over, derives its authority to continue to appear and plead before appellate forum by virtue of language used in sub-section (1) of Section 301 Cr.P.C. and the Special Public Prosecutor will continue to have such authority due to wide language of Section 301 Cr.P.C., until the notification appointing him has been cancelled by the appropriate State Government._

51. **To summarize the conclusion:** When the accused has filed appeal against conviction in the High Court, then who can appear before the High Court on behalf of State-whether the Public Prosecutor appointed to

the High Court under sub-section (1) of Section 24 Cr.P.C., or the Special Public Prosecutor already appointed, under Section 24(8) Cr.P.C., to the case under appeal. In my considered opinion, the Special Public Prosecutor appointed for the case would continue to be in charge of the case before the High Court also. The reason being, Special Public Prosecutor is not attached to a particular Court or Local area, but he is attached to the 'case' or 'class of cases' and therefore Special Public Prosecutor can appear without any written authority before any Court where that case is under inquiry, trial or appeal. Thus, the authority of Special Public Prosecutor will follow the stage of case, until his authority has been revoked by the State in express terms. This is what can be understood by the deliberate positioning of the words 'inquiry, trial or appeal' after the word 'case'. In my considered view, once Mr. Bhavani Singh was appointed as the Special Public Prosecutor in charge of a case, even after end of the trial, he has a right to appear and plead in any court where that case is pending trial, inquiry or appeal. The matter has been pending for more than eight years during which

many orders passed by the Special Court came to be challenged before the High Court, by way of revisions or other proceedings. It was submitted by the Senior Counsel, Mr. Nariman that in all those revisions and other proceedings before the High Court, Mr. Acharya, the then Special Public Prosecutor appeared in the High Court and to substantiate the said submission, the order passed by the High Court in Criminal Petition No. 3683/2011 dated 19.08.2011 was produced before us in which Mr. B.V. Acharya Special Public Prosecutor himself appeared before the High Court of Karnataka. Such appearance, in my view, is by virtue of the authority derived under Section 301(1) Cr.P.C. Thus, after the conclusion of the trial, by virtue of accused having filed the appeal against the decision of Sessions Court, the right of Special Public Prosecutor will remain subsisting to appear and plead in the appeal also.

52. **Sequence of events happened after the conviction:** In the entire matter, the conduct of the appellant and the State of Karnataka is very much relevant for which this Court is required to have a look on

the sequence of events happened after the conviction. It is apposite to briefly refer to chronology sequence of events happened after Criminal Proceedings:

27.09.2014 - Case in Special Court in Special CC No. 208/2004 ended in conviction against the accused.

29.09.2014 - All the Accused filed the Criminal Appeal Nos.835-838/2014 before the High Court of Karnataka against the order of conviction dated 27.09.2014. State of Karnataka was not made a party-respondent in the Criminal Appeal.

30.09.2014 - Mr. Bhavani Singh (respondent No.5) appeared for the State in the Criminal Appeal. Notably, no objection was taken either by the appellant or the State, that Bhavani Singh's authority as Special Public Prosecutor (SPP) was only till conclusion of trial.

01.10.2014 - Mr. Bhavani Singh (respondent No.5) filed Memo of Appearance in Criminal Appeal Nos. 835-838/2014 and submitted statement of objections that the accused should not be granted bail.

7.10.2014 - Learned Single Judge of the High Court of Karnataka refused to suspend the sentence awarded to the accused persons and declined to grant them bail.

17.10.2014 - Supreme Court enlarged all the accused on bail.

18.12.2014 - This Court confirmed the order dated 17.10.2014 and extended the bail of accused by another four months. This Court further requested the Chief Justice of High Court of Karnataka to constitute a Special Bench for hearing of the appeals exclusively on day to day basis and dispose of the same as early as possible at any rate within three months.

24.12.2014 - Appellant, for the first time filed representation to the Chief Secretary, Government of Karnataka objecting to the continuation of Mr. Bhavani Singh as SPP in the Criminal Appeals and requested for appointment of some other Senior Counsels to contest the appeals filed by the accused persons.

06.01.2015 - Appellant filed writ petition praying to appoint another Senior Lawyer as Special Public Prosecutor to represent the State in the criminal proceedings.

53. Notably, from 30.09.2014 till 24.12.2014, no objection was taken by the appellant or State of Karnataka on Mr. Bhavani Singh continuing to appear and plead in the Criminal Appeal for the State. In the Criminal Appeals before the High Court of Karnataka, though the bail applications were taken up on various hearing dates from the available material on record, it is seen that the State of Karnataka had not chosen to intervene raising objections for the authority of Mr. Bhavani Singh continuing to appear in the Criminal Appeals. There was no whisper of protest by any party even when the matter came to this Court in the bail proceedings on 17.10.2014 and 18.12.2014. When, this Court ordered the constitution of Special Bench in Criminal Appeals vide order dated 18.12.2014, none of the parties took pain to

seek clarification from this Court, on the authority of Special Public Prosecutor to continue in proceedings of Criminal Appeal.

54. The timing of representation dated 24.12.2014 filed by the appellant to the State of Karnataka is also interesting to note. The said representation was made after this Court by its order dated 18.12.2014 had directed hearing of the appeals on day-to-day basis and also fixed the period of three months for disposal of the appeals. Miserably, even the State of Karnataka did not attempt to react on the representation of the appellant. The issue could have been well resolved at that stage, if State would have consulted the Chief Justice of the High Court of Karnataka or would have asked the clarification from this Court.

55. On 6.01.2015, appellant filed a W.P. No.742/2015 before the High Court of Karnataka, seeking replacement of respondent No.5- Mr. Bhavani Singh, who was continuing to appear for the State in the Criminal Appeal Nos.835-838/2014. Interestingly, here again the appellant chose to file the Writ Petition before the High Court

instead of taking directly recourse to the jurisdiction of this Court. On 7.01.2015, appellant filed memo in the Criminal Appeal Nos. 835-838/2014 stating that respondent No.5- Mr. Bhavani Singh is not authorized to appear in Criminal Appeal Nos. 835-838/2014, as the respondent No.5 has not been appointed by the State Government of Karnataka in consultation with the Chief Justice of Karnataka High Court to appear in the Criminal Appeals. On 19.01.2015, learned Single Judge disposed of the W.P. No.742/2015 with an observation that "...it is open either for the State Government of Karnataka or the petitioner himself, to seek further clarifications from the Supreme Court as to the procedure that is to be followed in making appointment of a Special Public Prosecutor and an assistant or assistants, if any, to represent the State of Karnataka...". Noteworthy, in the proceedings before the Single Judge, the Advocate General for the State of Karnataka Mr. Ravi Kumar made the following submissions:

"The learned Advocate General would however, submit that after the judgment was pronounced by the trial court, there has been no further consultation between the State Government of Karnataka and the Chief Justice of the High Court of Karnataka, as directed by the Supreme Court in making any

appointment of a Special Public prosecutor and there is no appointment order issued in favour of respondent No.5, afresh; he would further submit that if it is a formality to be complied with, the State Government, in consultation with the Chief Justice, shall take further steps. Since the State Government is not formally authorized to take any steps in so far as the appointments of the prosecutor or counsel to conduct the appeals, no steps have been taken.”

56. Notably, State of Karnataka, even after the decision of Single Judge, did not take any action. The State of Karnataka did not file any appeal against the order of the Single Judge. They neither pursued the matter with the Chief Justice of High Court of Karnataka nor did they take the pain to approach the Supreme Court to seek clarification as to the appointment of Prosecutor/Counsel in Criminal Appeal.

57. On 28.01.2015, appellant filed the Writ Appeal No.260/2015 (GM-RES) before the Division Bench against the order dated 19.01.2015 of Single Judge instead of directly coming to this Court to seek the appropriate clarification as to the continuation of the Special Public Prosecutor in the Criminal Appeal or to pursue the matter with the State of Karnataka. The learned Advocate General again made his submissions that in absence of

clarification from Supreme Court, the State is unable to take the decision on the appointment of Prosecutor/Counsel for Criminal Appeal. The relevant submissions may be noted as below:

“As earlier, the appointment was made in pursuance of the direction issued by the Hon’ble Supreme Court, their understanding is that the obligation to appoint was only during trial. With the trial coming to an end with the order of conviction, that obligation ceases. As there is no fresh direction issued by the Hon’ble Supreme Court to appoint a Special Public Prosecutor, they have not made any such appointment. Though the State has appointed a Public Prosecutor under Section 24(1) of the Code, in the absence of any direction from the Apex Court, the said Public Prosecutor is not appearing in the pending appeals before the High Court. As the matter is *sub judice*, they have not taken any further action in this matter.”

On 11.02.2015, Division Bench disposed of the Writ Appeal with an observation that respondent No.5 is entitled to continue in Criminal Appeals. The Division Bench observed as under:

“In fact, what weighed with the learned Single Judge in rejecting the Writ Petition is the direction issued by the Apex Court that the Appeal should be heard on day to day basis and it should be disposed of within three months, any order to be passed by this Court which would come in the way of the disposal of the said appeal in terms of the direction of the Supreme Court should be avoided....”

58. Even after the decision of Division Bench in the Writ Appeal, the State did not pursue the matter to this Court. What the State did is that they took the shelter of the appeals filed by the appellant and kept on rhyiming about their inability to appoint a new Prosecutor/Counsel to conduct the appeal proceedings. If the State of Karnataka was of the view that Mr. Bhavani Singh cannot continue to appear for the appeals, in consultation with the Chief Justice of Karnataka High Court, it could have issued the notification appointing another Special Public Prosecutor or it could have sought direction from this Court. But that was not to be so. State of Karnataka did not take any initiative to actively resolve the dispute so that the appeal could have been disposed of within the outer limits of three months from the order dated 18.12.2014. Once the case was transferred under Section 406 Cr.P.C. to the State of Karnataka, it stepped into the shoes of State of Tamil Nadu and has the obligation to prosecute all the accused diligently by ensuring the fair and smooth proceedings of the case and as the transferee

State, the State of Karnataka was conscious about its obligations. However, the State with its inactive attitude did not take any step to terminate Bhavani Singh's service and thereby appoint a new incumbent to conduct the case in appeal. The appellant did not take steps immediately after the disposal of the matter in the trial court as the appellant was conscious of the right of Mr. Bhavani Singh-respondent No.5 to continue as the Special Public Prosecutor by virtue of the provision of Section 24 (8) and Section 301(1) of Cr.P.C. unless cancelled by the State of Karnataka. It is pertinent to note that the appellant had not even chosen to challenge the appointment of Mr. Bhavani Singh as Special Public Prosecutor by the State of Tamil Nadu (dated 29.9.2014) which is *prima facie non-est*. Only after this Court passed the order on 18.12.2014, fixing the outer time limit for disposal of the criminal appeals, the appellant seems to have made representation and thereafter filed writ petition, which in my considered view, lacks bona fide. The learned Single Judge and the Division Bench rightly dismissed the Writ Petition No.742/2015 and Writ Appeal No.260/2015 (GM-

RES) and the impugned judgment warrants no interference.

59. **Criminal Appeal No.637/2015 arising out of S.L.P. (Crl.) 1632/2015:** I hold that Mr. Bhavani Singh appointed as Special Public Prosecutor (SPP) under Section 24(8) Cr.P.C., by virtue of Section 301(1) Cr. P.C., has authority to continue to appear as Public Prosecutor in the criminal appeals filed by the accused in the High Court of Karnataka and the order of the High Court in Writ Appeal No. 260/2015 (GM-RES) is confirmed and the appeal is dismissed.

60. **Criminal Appeal No.638/2015 arising out of SLP (Crl.) No.2013/2015:** Confirming the order of the High Court in I.A. No.1/2015 in Criminal Appeal Nos.835-838/2014, this appeal is dismissed.

.....J.

(R. Banumathi)

New Delhi;

April 15, 2015.

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.637OF 2015
(Arising out of SLP(Crl.)No.1632 of 2015)

K. ANBAZHAGAN ... APPELLANT(S)

VS.

STATE OF KARNATAKA & ORS. ... RESPONDENT(S)

O R D E R

In view of difference of opinion, the matter is referred to a larger Bench.

The Registry is directed to place the matter before the Hon'ble the Chief Justice of India for appropriate orders.

.....J.
[MADAN B. LOKUR]

.....J.
[R. BANUMATHI]

New Delhi;
15th April, 2015.