Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.637 OF 2015

K. Anbazhagan ... Appellant

Versus

State of Karnataka and Others ... Respondents

J U D G M E N T

Dipak Misra, J.

In view of the difference of opinion by two learned Judges and regard being had to the referral order dated 15.4.2015[1], this appeal has been placed before us for consideration and decision. We are called upon in this appeal to decide whether the 4th respondent was authorised to represent the case of the prosecution in the High Court of Karnataka in the appeals filed by the accused persons

[1] (2015) 5 SCALE 183

against their conviction by the Special Court, and if he was not so authorised, whether there is necessitous warrant of criminal appeals to be heard afresh by the High Court.

2. The factual score exposited in this appeal has a history. The 5th respondent, Ms. J. Jayalalithaa, was the elected Chief Minister of Tamil Nadu from 1991 to 1996 and she was heading the political party called AIADMK. In 1996, she faced a political defeat at the hands of another political party, namely, DMK. Keeping in view the allegations pertaining to amassing assets disproportionate to the known sources of income, criminal proceedings were initiated against her and her associates, respondent nos. 6 to 8. The State of Tamil Nadu had constituted Special Courts for their prosecution. In pursuance of the constitution of Special Courts, C.C. No. 7 of 1997 was filed before the learned Special Judge, Chennai against the accused persons and they were chargesheeted for the offences punishable under Section 120B of the Indian Penal Code, 1860 (IPC) read with Section 13(1) and 13(2) of the Prevention of Corruption Act (for brevity, "the 1988 Act").

The constitution of the Special Courts was challenged before this Court in ***J. Jayalalitha v. Union of India***[2], which upheld the constitution of the Special Court. In the said case, the two-Judge Bench observed thus:-

> "Something more. The legislature has enacted the Prevention of Corruption Act and provided for a speedy trial of offences punishable under the Act in public interest as it had become aware of rampant corruption amongst the public servants. While replacing the 1947 Act by the present Act the legislature wanted to make the provisions of the Act more effective and also to widen the scope of the Act by giving a wider definition to the term "public servant". The reason is obvious. Corruption corrodes the moral fabric of the society and corruption by public servants not only leads to corrosion of the moral fabric of the society but is also harmful to the national economy and national interest, as the persons occupying high posts in the Government by misusing their power due to corruption can cause considerable damage to the national economy, national interest and image of the country. It is in the context of public interest that we have to construe the meaning of the word "necessary" appearing in Section 3. Considering the object and scheme of the Act and the context in which it is used it would mean requirement in public interest and cannot be said to be so vague as not to provide a good guideline. Thus the exercise of discretion by the Government under Section 3 has to be guided by the element of requirement in public interest."
>
> (emphasis supplied)

[2] (1999) 5 SCC 138

We have reproduced the said passage, as we would be saying something in this regard at a later stage.

3. As the exposé of facts would further reveal, the trial continued before the Special Court but with the time rolling by, in 2001 elections, the AIADMK headed by the 5th respondent got elected and she was appointed as the Chief Minister of Tamil Nadu. Her appointment was called in question before this Court in ***B.R. Kapur v. State of Tamil Nadu and Another***[3], wherein the majority speaking through Bharucha, J. (as his Lordship then was) held thus:-

> "**54.** We are satisfied that in the appointment of the second respondent as the Chief Minister there has been a clear infringement of a constitutional provision and that a writ of quo warranto must issue.
>
> xxxx xxxxx xxxxx
>
> **58.** We are of the view that a person who is convicted for a criminal offence and sentenced to imprisonment for a period of not less than two years cannot be appointed the Chief Minister of a State under Article 164(1) read with (4) and cannot continue to function as such.
>
> **59.** We, accordingly, order and declare that the appointment of the second respondent as the

[3] (2001) 7 SCC 231

> Chief Minister of the State of Tamil Nadu on 14-5-2001 was not legal and valid and that she cannot continue to function as such. The appointment of the second respondent as the Chief Minister of the State of Tamil Nadu is quashed and set aside."

In pursuance of the aforesaid judgment, the 5th respondent, ceased to hold the office of the Chief Minister of Tamil Nadu w.e.f. 21.9.2001.

4. In the first part of 2002, the Election Commission of India announced a bye-election of Andipatti constituency and Ms. J. Jayalalithaa contested the said election and was declared elected and eventually, she was sworn in as the Chief Minister of Tamil Nadu on 2.3.2002. The trial in C.C. No. 7 of 1997 went through some kind of a legal tumult narration of which is not necessary. Suffice it to say, the present appellant preferred two petitions under Section 406 of the Criminal Procedure Code (CrPC), 1973 seeking transfer of CC No. 7 of 1997 and CC No. 2 of 2001 on the file of 11th Additional Sessions Judge (Special Court I), Chennai in the State of Tamil Nadu to a court of equal and competent jurisdiction in any other State. The locus standi of the appellant was raised before this Court in ***K.***

Anbazhagan v. Supdt. of Police[4] and the Court upheld the locus standi of the appellant in an application under Section 406 CrPC. It gave immense emphasis on the concept of free and fair trial. To quote:-

> "Free and fair trial is sine qua non of Article 21 of the Constitution. It is trite law that justice should not only be done but it should be seen to have been done. If the criminal trial is not free and fair and not free from bias, judicial fairness and the criminal justice system would be at stake shaking the confidence of the public in the system and woe would be the rule of law. It is important to note that in such a case the question is not whether the petitioner is actually biased but the question is whether the circumstances are such that there is a reasonable apprehension in the mind of the petitioner. In the present case, the circumstances as recited above are such as to create reasonable apprehension in the minds of the public at large in general and the petitioner in particular that there is every likelihood of failure of justice."

5. Thereafter, the Court deliberated on all the issues and transferred the case to the State of Karnataka. The directions that were issued by the Court being apposite are reproduced below:-

> "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

[4] (2004) 3 SCC 767

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. After the case stood transferred, the State of Karnataka in consultation with the Chief Justice of the High Court of Karnataka, appointed Mr. B.V. Acharya as the Public Prosecutor to conduct the case against the accused persons. For certain reasons, before completion of the trial, Mr. Acharya resigned and thereafter Bhavani Singh, the 4th respondent, was appointed as the Special Public Prosecutor vide notification dated 2.2.2013. The said order of appointment was issued in exercise of powers conferred by Section 24(8) of CrPC and Rule 30 of the Karnataka Law Officers (Appointment and Conditions of Service) Rules, 1977. The notification appointing 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. Jayalalithaa 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 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."

7. After the appointment of Bhavani Singh, the trial continued and at that stage, the appellant filed an application to assist the Public Prosecutor by making oral submissions and the written arguments. The learned Special Judge, vide order dated 21.8.2013 permitted the

appellant to render such assistance to the Special Public Prosecutor as he may require. The appellant objected to the appointment of Bhavani Singh as Special Public Prosecutor by making representations to the Government of Karnataka as well as to the Chief Justice of the High Court of Karnataka. As there was no response, he preferred W.P. No. 38075/2013 before the High Court of Karnataka assailing the appointment of Bhavani Singh as a Special Public Prosecutor and making further prayer for appointment of an eminent lawyer in his place. During the pendency of the writ petition, the appointment of the 4th respondent was withdrawn on 26.8.2013 by the Government of Karnataka. The reason ascribed was that there had been no proper consultation with the Chief Justice of Karnataka High Court. The order of withdrawal of the Special Public Prosecutor was called in question in W.P.(Crl) No. 145/2013 and in pursuance of notice from this Court, a statement was made that the impugned Notification would be withdrawn with a view to consult the Chief Justice of the High Court of Karnataka and accordingly the writ petition was dismissed

having been rendered infructuous.

8. As the factual matrix would unfurl, certain developments occurred and on 10.9.2013, the Government of Karnataka withdrew the Notification dated 26.8.2013 and asked the 4th respondent not to appear before the Special Court. This compelled the accused persons to file W.P.(Crl) No. 154/2013 before this Court. There was stay of the operation of the Notification dated 10.9.2013 and on 14.9.2013, the Chief Justice of the Karnataka High Court concurred with the view of the Government of Karnataka that the 4th respondent should no longer continue as the Public Prosecutor before the Special Court. Pursuant to the said order on 16.9.2013, a consequential order was passed withdrawing the appointment of the 4th respondent. This led the accused persons to file W.P.(Crl.) No. 166/2013. Both the writ petitions were heard together and decided by the decision in ***J. Jayalalithaa and Others v. State of Karnataka and Others***[5], wherein this Court annulled the impugned order removing the 4th respondent, the same

[5] (2014) 2 SCC 401

being unsustainable in law. The 4th respondent continued during the trial and eventually the Special Court delivered the judgment on 27.9.2014 convicting all the accused persons. The elaborate submissions of the appellant were taken into consideration by the learned Special Judge.

9. Being aggrieved by the judgment of conviction and order of sentence, the accused persons preferred Criminal Appeal No. 835-838 of 2014. As the State of Karnataka was not arrayed as a party in criminal appeal, it did not appoint any Public Prosecutor. It is interesting to note that the State of Tamil Nadu exhibited enormous anxiety and on 29.9.2014, the Principal Secretary to the Government of Tamil Nadu passed an order being requested by the Directorate of Vigilance and Anti Corruption, Chennai to engage the services of 4th respondent as the Special Public Prosecutor to appear before the High Court of Karnataka for and on behalf of the said Directorate in appeal/bail application and other petition that might 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"

10. Being empowered by the aforesaid order, the 4th respondent appeared in the criminal appeals. The learned Single Judge declined to suspend the sentence awarded to the accused persons and grant them bail. The said order came to be assailed in SLP (Crl.) No. 7900 of 2014 wherein

this Court granted bail to the accused persons on 17.10.2014 and confirmed the same on 18.12.2014. The order passed on 18.12.2014 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."

11. In the meantime, hearing of criminal appeals proceeded in the High Court of Karnataka before the learned Single Judge. As the appellant was of the view that Bhavani Singh could not have represented the prosecuting agency in appeals, he submitted a representation on 24.12.2014 to

the Chief Secretary, Government of Karnataka to appoint a senior lawyer but there was no response. The said situation constrained him to file W.P. No. 742 of 2015 seeking appropriate direction from the High Court of Karnataka. The learned Single Judge disposed of the writ petition by observing that when there is a direction by this Court to hear the appeal on day to day basis before a Special Bench, it would be appropriate to allow the proceedings in appeal to continue notwithstanding the challenge as to the validity or otherwise of the appointment of the 4th respondent. The learned Single Judge further proceeded to hold that it is open either to the State Government or the writ petitioner to seek for clarification, if any, from this Court as to the procedure that would be followed in making appointment of a Special Public Prosecutor and assistant, if any, to represent the State of Karnataka. Be it noticed, on behalf of the State of Karnataka, which is reflectible from the order of the learned Single Judge, the following submission was put forth:-

> "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)

12. Being dissatisfied with the judgment and order passed by the learned Single Judge, the appellant preferred writ appeal no. 260/2015 and the Division Bench recorded the statement of the learned Advocate General, which is to the following effect:-

> "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."
> (emphasis supplied)

13. The Division Bench, after hearing the counsel for the parties and discussing the law in the filed, came to hold that the order passed on 29.9.2014 by the Principal Secretary to the Government of Tamil Nadu was *non est* inasmuch as the transferor court had no power to appoint Public Prosecutor under Section 24 of the CrPC in respect of

the case pending in the transferee Court. Interpreting Section 301(1) CrPC, the Division Bench opined that the language employed in the said provision would include an appeal. The Division Bench laid emphasis on the words "case" and "any court" and also referred to the language used in Section 24(1) and Section 24(8) CrPC and opined thus:-

> "By practice, by virtue of the appointment made in Section 24(1) of the Code, the Public Prosecutor attached to that Court would prosecute the case. But, a Special Public Prosecutor appointed under Section 24(8) of the Code to a case and not to a Court where experience of not less than 10 years of practice as an Advocate is insisted upon, such Public Prosecutor not only is capable of conducting trial at the lowest level he is equally competent to prosecute the case in appeal or revision. During trial, if on an interlocutory order, a revision is filed either by the accused or to be filed by the State, if the interpretation canvassed by the appellant is to be accepted, the Special Public Prosecutor appointed under Section 24(8) of the Code cannot without a fresh appointment under Section 24(8) of the Code appear in that revisional Court. To appear in the revisional Court, one more order under Section 24(8) of the Code has to be made. That is not the intention of the legislature."

Thereafter, the Division Bench referred to the notification appointing the Public Prosecutor and ruled

that:-

> "..... The language employed in the notification is unambiguous. The Public Prosecutor is appointed to conduct CC No. 7/1997 and CC No. 2/2001. As the name of the parties were not mentioned, in the brackets it is mentioned as regarding trial of Ms. Jayalalitha and others in the State of Karnataka. Not that the Public Prosecutor is appointed only for the purpose of the trial of the said case. However, in the subsequent notification appointing 5th respondent in the brackets it is mentioned, in the case of Kum. Jayalalitha and others. Therefore, 5th respondent is appointed as Special Public Prosecutor in the case of Kum. Jayalalitha and others. Accordingly, the 5th respondent by virtue of Section 301(1) of the Code is entitled to appear and plead in the appeals pending in the High Court in the case of Kum. Jayalalitha and others, without any written authority.
>
> In the light of the aforesaid discussions, as the State Government has already appointed a Public Prosecutor under Section 24(1) of the Code to the High Court of Karnataka, the question of this Court issuing any direction to the State of Karnataka to appoint a Public Prosecutor under Section 24(1) of the Code would not arise."

14. The first issue that arose before the two-Judge Bench was whether the State of Tamil Nadu could have appointed Bhavani Singh as the Special Public Prosecutor for the Karnataka High Court to defend the cause of the State. Lokur, J. referred to the pronouncement by a three-Judge

Bench in ***Jayendra Saraswati Swamigal @ Subramaniam v. State of Tamil Nadu***[6] wherein at the instance of the appellant therein, the matter had already been transferred from the State of Tamil Nadu [See *Jayendra Saraswathy Swamigal (II) v. State of T.N.*[7]]. After transfer, the case was pending before the District and Sessions Judge, Pondicherry. The Home Department of State of Tamil Nadu had appointed one Special Public Prosecutor and four Additional Special Public Prosecutors for conducting the trial before the learned Sessions Judge at Pondicherry. The High Court of Madras being moved had ruled that offence having been committed in the State of Tamil Nadu and the investigation having been done by the Tamil Nadu police, the transferee court cannot normally venture to appoint any Special Public Prosecutor to handle the case. Setting aside the order of the High Court, this Court held:-

> "**12.** As per the procedure prescribed under Section 24, the State of Tamil Nadu can appoint a Public Prosecutor to conduct criminal cases in any of the court in that State. Such powers can-

[6] (2008) 10 SCC 180
[7] (2005) 8 SCC 771

not be exercised by the State Government to conduct cases in any other State. 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 to appoint a Public Prosecutor to conduct the case which is pending in the sessions division of that State.

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14. Sub-section (8) of Section 24 CrPC is a special provision regarding the appointment of a Special Prosecutor. This power can be exercised by the Central Government and the State Government for the purpose of any case or class of cases, and a person who has been in practice as an advocate for not less than ten years may be appointed as a Special Public Prosecutor. These powers are also to be exercised by the State Government of the transferee court where the sessions case is pending. Of course, the transferee State can appoint any person having qualification prescribed under sub-section (8) of Section 24 CrPC.

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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."

15. Relying on the said decision and the directions given by this Court while transferring the case, Lokur, J. opined that the State of Tamil Nadu had no authority to appoint the 4th respondent as Public Prosecutor to contest the appeals in the High Court. Banumathi, J. concurred with the view expressed by Lokur, J. by holding thus:-

> "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."

We have referred to this facet only to highlight the anxiety expressed by the State of Tamil Nadu possibly being worried about the "borrowed troubles of future" and forgetting the age old sagacious saying that "anxiety is the poison of human life".

16. The difference of opinion between the learned Judges starts from here. The submission that was canvassed

before the Division Bench was to the effect that once the State of Karnataka had appointed Bhavani Singh as the Special Public Prosecutor under Section 24(8) and 301(1) CrPC to conduct the trial after Mr. Acharya resigned, his appointment would continue for the purpose of appeal. Lokur, J. referring to the language of the Notification, which we have already reproduced hereinbefore, and thereafter analysed the various provisions i.e. Sections 24, 25, 25-A, 301(1) of the CrPC and came to hold thus:-

> "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.
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> 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."

17. After so stating, Lokur, J. referred to the Constitution Bench judgment in ***State of Punjab v. Surjit Singh***[8] and held:-

> "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 de-

[8] [1967] 2 SCR 347

sires 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.

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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."

18. Lokur, J. in his Judgment has pointed out two anomalous situations that are likely to arise if such an interpretation is accepted. The first anomalous situation which is pointed out by him 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, which, by

no stretch of imagination, can be the intent of Section 301(1) of the Code. The other anomalous situation which the learned Judge has taken note of is that 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 and, therefore, such an interpretation cannot be placed on Section 301(1) of CrPC.

19. Banumathi, J. referred to the language employed in Sections 24 and 301(1) of CrPC, relied upon the authority in ***Shiv Kumar v. Hukam Chand and Anr***.[9], and came to

[9] (1999) 7 SCC 467

hold that:-

> "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 Code of Criminal Procedure which distinguishes the task of Special Public Prosecutor from that of Public Prosecutors appointed under Sub-sections (1), (2) and (3) of Section 24 Code of Criminal Procedure and hardly there is any anomaly."

After so stating, the learned Judge has referred to the meaning of the term 'case' and the context in which it is used, and expressed the opinion in following terms:-

> "..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."

20. First, we shall advert to this difference of opinion and

thereafter proceed to dwell upon the pertinent consequent impact.

21. Section 2(u) of CrPC defines "Public Prosecutor". It reads as follows:-

> "(u) "Public Prosecutor" means any person appointed under Section 24, and includes any person acting under the directions of a Public Prosecutor."

22. Section 24 CrPC deals with Public Prosecutors. For our purpose, Section 24(1), 24(3) and 24(8) being relevant are reproduced below:-

> "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.
>
> xxxxx xxxxx xxxxx
>
> (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.

xxxxx xxxxx xxxxx

(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."

23. Sub-section (1) of Section 24 CrPC has been amended in the State of Karnataka (vide Karnataka Act 20 of 1982 w.e.f. 3.9.1981). It provides thus:

"In Section 24, in sub-section (1), --

(i) Omit the words "or the State Government shall";

(ii) for the words "appoint a Public Prosecutor", substitute the words "or the State Government shall appoint a Public Prosecutor"."

24. Section 25A deals with the Directorate of Prosecution. It reads as follows:-

"25A. 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) A person shall be eligible to be appointed as

a Director of Prosecution or a Deputy Director of Prosecution, only if he has been in practice as an advocate for not less than ten years and such appointment shall be made with the concurrence of the Chief Justice of the High Court.

(3) The Head of the Directorate of Prosecution shall be the Director of Prosecution, who shall function under the administrative control of the Head of the Home Department in the State.

(4) Every Deputy Director of Prosecution shall be subordinate to the Director of Prosecution.

(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 Deputy 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 24 shall be subordinate to the Deputy Director of Prosecution.

(7) The powers and functions of the Director of Prosecution and the Deputy Directors of Prosecution and the areas for which each of the Deputy Directors of Prosecution have been appointed shall be such as the State Government may, by notification, specify.

(8) The provisions of this section shall not apply

> to the Advocate General for the State while performing the functions of a Public Prosecutor."

25. Section 301(1) CrPC that deals with the appearance by Public Prosecutors reads thus:-

> "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."

26. The aforesaid provisions have to be appreciated in a schematic context. All the provisions reproduced hereinabove are to be read and understood as one singular scheme. They cannot be read bereft of their text and context. If they are read as parts of different schemes, there is bound to be anomaly. Such an interpretation is to be avoided, and the careful reading of the CrPC, in reality, avoids the same. The dictionary clause in 2 (u) only refers to a person appointed under Section 24 CrPC and includes any person acting under the directions of a Public Prosecutor. The class or status of the Public Prosecutor is controlled by Section 24 and 25A of the CrPC. On a careful x-ray of the provisions of Section 24 it is clearly demonstrable that Section 24(1) has restricted the

appointment of Public Prosecutor for the High Court, for the provision commences with words “for every High Court.” Sub-section (3) deals with the appointment of Public Prosecutor or Additional Public Prosecutor for the districts. There is a procedure for appointment with which we are not concerned. Sub-section (8) of section 24 deals with appointment of Special Public Prosecutor for any case or class of cases. A Public Prosecutor who is appointed in connection with a district his working sphere has to be restricted to the district unless he is specially engaged to appear before the higher court. A Special Public Prosecutor when he is appointed for any specific case and that too for any specific court, it is a restricted appointment. In this context Section 25A of the Code renders immense assistance. The State Government is under obligation to establish directorate of prosecution. Section 25A clearly stipulates that Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor are appointed by the State Government under sub-Section (1) or under sub-Section (8) of Section 24 to conduct cases in the High

Court, shall be subordinate to the Director of Prosecution. Sub-section (6) postulates that the three categories named herein appointed by the State Government to conduct cases in the district courts shall be subordinate to Deputy Director of Prosecution. Thus, the scheme makes a perceptible demarcation and compartmentalization for the Public Prosecutor in the High Court and the district courts. In this context we may refer with profit to Rule 30 of Karnataka Law Officers (Appointments and Conditions of Service) Rules 1977 (for short 'the Rules"). The said rules read as follows:-

> "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 proceeding 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."

27. The said rule as far as the State of Karnataka is concerned has its own significance. It clearly lays down that before making an 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. Sub-rule (1) of Rule 30 makes a distinction between a case and an appeal and same is the language used in sub-rule (2). We are only referring to this Rule to highlight that this Rule has been framed by the State of Karnataka by way of abundant caution. This Rule clarifies that if any counsel is to be appointed for the purpose of an appeal, the State Government may do so after consulting the authorities mentioned therein. There is nothing on record that the 4th respondent was appointed to defend the prosecution in appeal in the High Court. The authority to appear before the High Court as the analysis would show, is fundamentally founded on the interpretation of Section 301 of CrPC. We have already reproduced Section 301 (1). In

this context we may refer with profit to Section 493 of the old Code. It reads as follows:-

> "**493 - Public Prosecutor may plead in all Courts in cases under his charge, Pleaders privately instructed o be under his direction.-** 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, an if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecution, and the pleader so instructed shall act therein, under his directions."

28. In the aforesaid provision the legislature had employed the words "before any Court in which any case of which he has charge". In ***Bhimpappa Basappa Bhu Sannavar v. Laxman Shivarayappa Samagouda and others***[10] explaining the word "case" the court held:-

> "The word "case" is not defined by the Code but its meaning is well-understood in legal circles. In criminal jurisdiction means ordinarily a proceeding for the prosecution of a person alleged to have committed an offence. In other contexts the word may represent other kinds of proceedings but in the context of the sub-section it must mean a proceeding which at the end results either in discharge, conviction, or acquittal of an accused person."

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[10] (1970) 1 SCC 665

29. In ***Surjit Singh*** (supra) while dealing with an application for withdrawal from prosecution under Section 494 of the Code by the Public Prosecutor, though in a different fact situation, observed that:-

> "Section 492 only deals with the appointment of Public Prosecutors by the Government or by the District Magistrate, in circumstances mentioned therein and Section 493 specifically refers to the Public Prosecutor who is in charge of the case which is under enquiry, trial or appeal, when appearing and pleading before such Court. Section 493 only dispenses with the Public Prosecutor having to file any written authority. That section also makes it clear that if any private person is instructing a pleader to prosecute any person "in any such case" — which must have reference to the case of which the Public Prosecutor is in charge — nevertheless, the Public Prosecutor shall conduct the prosecution and the pleader is to act under his directions. Section 494 also, in our opinion, must refer only to the Public Prosecutor who is in charge of the particular case in which he makes a request to withdraw from the prosecution. Some of these aspects have been already adverted to by us earlier. If any Public Prosecutor, who had nothing to do with a particular case, is held entitled to file an application under Section 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 Section 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 Section 494 of the Code."

30. We have referred to this judgment in extenso only to show the responsibility of a Public Prosecutor in charge of a case. Section 301 occurs in Chapter XXIV CrPC that deals with the "General provisions as to Inquiries and Trials". Sections 24 (8) and 301 (1) when read together, needless to say, confers a right on the Public Prosecutor who is in charge of a case to appear and plead without having any written authority. He remains and functions as the sole authority in charge of the case. There can be no cavil over the same. The core question is, whether "in charge of the

case" would include an appeal arising out of the said case in the hierarchical system. Section 24 (1) deals with the specific power of the Government to appoint Public Prosecutor. Section 24(8) confers the power on the State Government to appoint a Special Public Prosecutor for any case or class of cases. To give an example, there can be a batch of cases under the Prevention of Corruption Act against number of persons arising out of different FIRs but involving similar transactions. To have a proper trial the Government is entitled to appoint a Special Public Prosecutor. If the word "case" is given a meaning to include the appeal, it will be denuding the power of appointing authority. The law does not so countenance. If the Government by a notification appoints an eligible person clearly stating that he shall conduct the trial as well as pursue the appeal arising out of it, there will be no difficulty. Therefore, much stress cannot be given on the words "without any written authority" as used in Section 301. It can only mean that the Public Prosecutor once engaged/appointed by the State, he can prosecute the

appeal without filing any formal authority for the said purpose. It cannot be construed to the extent that solely because he has been appointed in connection with the trial case, he can appear before the High Court for which he has not been appointed in pursuance of Section 24 (1) CrPC. Section 301(1) CrPC cannot be stretched to that extent. In that event, it would really lead to an anomalous situation. A Public Prosecutor has to be specifically appointed for the appeals or revisions or other proceedings in the High Court. The anomalous situations, which have been highlighted by Lokur, J. have our respectful concurrence. In fact, the Code does not remotely so envisage and the contextual reading of all the provisions do not so convey. Therefore, we ingeminate that a Public Prosecutor who is appointed to conduct a case before the trial court cannot be deemed to be appointed for the purpose of appeal arising therefrom solely because of the language employed in Section 301(1) of CrPC.

31. In view of our preceding analysis the 4th respondent was not appointed by the State of Karnataka to argue the

appeals before the High Court. Lokur, J. after holding that he was not authorised to represent the prosecution in the Karnataka High in the appeals has opined thus:-

> "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."

Banumathi, J. as has been discussed has upheld the appointment of 4th respondent and, therefore, she has dismissed the appeal.

32. As we have already held that the 4th respondent could not have appeared in the appeal, the issue that has become germane at this juncture is whether annulment of appointment of Bhavani Singh as Public Prosecutor would entail *de novo* hearing of the appeal. We have been apprised that in pursuance of the order passed by this Court the appeal has been heard on day to day basis. The learned Judge has already heard the appeal and is in the process of preparation of the judgment. The appellant had submitted written note of submissions before the trial court which is more than 400 pages. The allegations against Bhavani

Singh had been dropped by the appellant in course of hearing of the writ petition and hence, we refrain from delving into such allegations.

33. Be it noted, the appeal has been heard by the learned Single Judge of the High Court and the appeal assails the judgment of conviction and order of sentence passed under the various provisions of the 1988 Act. It needs no special emphasis that the appellate court has the sacrosanct duty to evaluate, appreciate and consider each material aspect brought on record before rendering the judgment. That is sacred duty of a Judge; and the same gets more accentuated when the matter is in appeal assailing the defensibility of the conviction in a corruption case.

34. The case under the 1988 Act has its own significance. In ***Niranjan Hemchandra Sashittal v. State of Maharashtra***[11], it has been held thus:-

> "It can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder, destroys .societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health

[11] (2013) 4 SCC 642

> of a country, corrodes the sense of civility and mars the marrows of governance. It is worth noting that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered. The only redeeming fact is that collective sensibility respects such suffering as it is in consonance with the constitutional morality."

35. In ***Subramanian Swamy v. CBI***[12], the Constitution Bench while declaring Section 6-A of the Delhi Special Police Establishment Act, 1946 unconstitutional, observed that:-

> "Corruption is an enemy of the nation and tracking down corrupt public servants and punishing such persons is a necessary mandate of the PC Act, 1988. It is difficult to justify the classification which has been made in Section 6-A because the goal of law in the PC Act, 1988 is to meet corruption cases with a very strong hand and all public servants are warned through such a legislative measure that corrupt public servants have to face very serious consequences."
>
> And again,
>
> "Corruption is an enemy of nation and tracking down corrupt public servant, howsoever high he may be, and punishing such person is a necessary mandate under the PC Act, 1988. The status or position of public servant does not qualify such public servant from exemption from . equal treatment. The decision-making power does not segregate corrupt officers into two classes as they are common crimedoers and have to be

[12] (2014) 8 SCC 682

> tracked down by the same process of inquiry and investigation."

36. We have referred to the aforesaid two authorities only to highlight the gravity of the offence. We are absolutely sure that the learned Single Judge, as the appellate Judge, shall keep in mind the real functioning of an appellate court. The appellate court has a duty to make a complete and comprehensive appreciation of all vital features of the case. The evidence brought on record in entirety has to be scrutinized with care and caution. It is the duty of the Judge to see that justice is appropriately administered, for that is the paramount consideration of a Judge. The said responsibility cannot be abdicated or abandoned or ostracized, even remotely, solely because there might not have been proper assistance by the counsel appearing for the parties. The appellate court is required to weigh the materials, ascribe concrete reasons and the filament of reasoning must logically flow from the requisite analysis of the material on record. The approach cannot be cryptic. It cannot be perverse. The duty of the Judge is to consider the evidence objectively and dispassionately. The reasonings in

appeal are to be well deliberated. They are to be resolutely expressed. An objective judgment of the evidence reflects the greatness of mind – sans passion and sans prejudice. The reflective attitude of the Judge must be demonstrable from the judgment itself. A judge must avoid all kind of weakness and vacillation. That is the sole test. That is the litmus test. This being the position of a Judge, which is more elevated as the appellate Judge, we are of the considered opinion that there is no justification for rehearing of the appeal as the matter has been heard at length and reserved for verdict. The appellant has submitted his written note of submissions before the trial court and, therefore, we are inclined to permit him to file a written note of submissions within 90 pages before the learned Single Judge/Appellate Judge. The State of Karnataka, which is the prosecuting agency, is granted permission to file written note of submissions within 50 pages. The written submissions be filed latest by 28.4.2015. The written note of submissions filed before the trial court and the High Court along with written note of

submissions of State of Karnataka shall be considered by the learned Single Judge and the consideration should be manifest in the judgment. Written note of submissions, if any, by the 4th respondent shall not be considered by the learned Judge. A copy of our judgment be sent by the Registry of this Court in course of the day to the Registrar General of the High Court of Karnataka so that he can place the judgment before the learned Single Judge for perusal and guidance.

37. In view of our preceding analysis, we proceed to record our conclusions in seriatim:-

(a) The State of Tamil Nadu had no authority to appoint the 4th respondent, Bhavani Singh as the Public Prosecutor to argue the appeal.

(b) It is the State of Karnataka which is the sole prosecuting agency and it was alone authorized to appoint the Public Prosecutor.

(c) The appointment of 4th respondent, Bhavani Singh as the Public Prosecutor for the trial did not make him eligible to prosecute the appeal on behalf of prosecuting agency

before the High Court.

(d) The appointment of a Public Prosecutor, as envisaged under Section 24(1) CrPC in the High Court is different than the appointment of a Public Prosecutor for the District Courts; and that the Notification appointing the 4th respondent did not enable him to represent the State of Karnataka in appeal.

(e) Though the appointment of the 4th respondent is bad in law, yet there is no justification to direct for de novo hearing of the appeal, regard being had to the duties of the appellate Judge, which we have enumerated hereinbefore, especially in a case pertaining to the Prevention of Corruption Act, 1988;

(f) The appellant as well as the State of Karnataka are entitled to file their written note submissions within the framework, as has been indicated in para 36.

(g) The learned Appellate Judge, after receipt of our judgment sent today, shall peruse the same and be guided by the observations made therein while deciding the appeal.

38. Consequently, the appeal stands disposed of in above terms.

.....J.
[Dipak Misra]

....., J.
[R.K. Agrawal]

....., J.
[Prafulla C. Pant]

New Delhi
April 27, 2015