

W.P.(MD)No.19480 of 2020

N.KIRUBAKARAN, J.

AND

B.PUGALENDHI, J.

ORDER

(Order of the Court was made by **N.KIRUBAKARAN,J.**)

All crimes are treated as offences against the State as those acts disturb the public order and tranquillity. Therefore, the State is prosecuting the offenders appointing Public Prosecutor under Section 24 of Cr.P.C. Section 2(u) of Cr.P.C. Defines “Public Prosecutor”. He/She is considered as agent of the State to represent the interest of common people in the criminal justice delivery system. He is not only represents the State but also the victim and aggrieved party. Public Prosecutors are appointed by the State with a fond hope that the Public Prosecutors would prosecute the case in the interest of the Society. In the case of *Tigam Singh v. State and others* [2006 (4) WLC 46], it has been held that to the office of the Public Prosecutor, there is a public element attached and the Prosecutor is the representative of the State, but not a complainant. It has been held by the Hon'ble Supreme Court in *Shiv Kumar v. Hukam Chand and another* [1999 (7) SCC 467], that a Public

Prosecutor is not expected to show a thirst to reach the case in the conviction of the accused somehow or the other irrespective of the true fact involved in the case. The expected attitude of the Public Prosecutor while conducting the prosecution must be couched in fairness not only to the Court and to the investigating agencies, but to the accused as well. In ***Kunja Subudhi and another v. Emperor [116 Ind Cas 770]***, it has been held that the duty of the Prosecutor is to place before the Court all the relevant materials, whether in favour or against the accused and leave it open to the Court to decide the matter. From the above, it is clear that the Public Prosecutor should be impartial, fair and honest and he should help the Court in rendering justice and he has to help the Court in finding the facts of the case.

2.However, in this case, the third respondent has allegedly not completed 10th Standard and got M.A. Degree in an Open University and LLB Degree from Mysore, has been appointed as Public Prosecutor, that too, for prosecuting the NDPS cases. It is also surprising to note that the third respondent is in charge of the bail Court.

3. The facts as narrated in the affidavit are shocking. It is alleged that the third respondent as a Special Public Prosecutor (bail) is in the habit of receiving final reports from the Inspector of Police in time and would not file before the Court, so as to enable the accused to get statutory bail. It is alleged that for that, he used to adopt the practice for extraneous considerations deliberately.

4. It seems that it is only the tip of the ice berg, which has been brought before this Court. It is not known how many Law Officers are acting against the interest of the Society and State and not discharging their duties as Law Officers/Public Prosecutors.

5. One such case came up before this Court in CrI.O.P. (MD)No.13232 of 2019. In paragraph No.2 of the order, dated 23.09.2019, it is specifically stated that even though, the Inspector of Police gave a final report in time, the third respondent herein is said to have delayed and kept the final report with him for two full months to enable the accused to get statutory bail. In paragraph No.2 of the order,

dated 23.09.2019, a specific reference has been made about the conduct of the third respondent and the same extracted as follows:

“2.The contraband that was seized is a commercial quantity of Gancha weighing 23 Kilograms. The petitioner is having two previous cases. The petitioner seeks bail by contenting that the final report has not been filed within the period of 180 days. Mrs.P.Annamayil, The Inspector of Police, NIB CID, Madurai, is in-charge of the investigating officer in this case. She is present in person before me and I asked her as to why the final report was not filed within the mandatory period of 180 days. She replied that she made the final report ready as early as 25.04.2019 and handed over the same to Thiru.Seetharaman, learned Special Public Prosecutor for NDPS Act Cases, Madurai, on 25.04.2019. The Inspector of Police would make a specific statement that for full two months Thiru.Seetharaman, learned Special Public Prosecutor for NDPS Act Cases, Madurai, was retaining the final report with him and that he returned the same with some endorsements. The Inspector of Police is said to have complied with the

same and handed over the same. Once again, the final report was returned with an endorsement on 17.09.2019.”

6. Subsequently, before the same learned Single Judge, a petition in CrI.M.P.(MD)No.8878 of 2019 was filed for cancellation of bail and by order, dated 18.10.2019, this Court directed the third respondent herein to appear before the Court and extracted an undertaking from him that he would ensure that in all future cases, which are to be entrusted to him, he will file final report within the time, so that, the accused would not go out of statutory bail or default bail.

7. It is relevant to extract hereunder the paragraph Nos. 3 and 4 of the order dated 18.10.2019, passed in CrI.M.P.(MD)No.8878 of 2019:

“3.In this view of the matter, the bail granted in favour of Selvaraj, vide order dated 23.09.2019 in CrI.O.P.(MD)No.13232 of 2019 stands cancelled. The CrI.M.P.(MD)No.8878 of 2019 is allowed. In my earlier order, I noted that the final report was made ready by the Investigation Officer as early as on

25.04.2019 and that for reasons best known, the final report was not filed. Only after this Court took a serious view, the final report came to be filed on the afternoon of 23.09.2019. The strong observations made by this Court in the earlier order still hold good.

4. Today, Thiru. Seetharaman, learned Special Public Prosecutor (in-charge) in this case, appears in person before this Court and gives a solemn undertaking that he will ensure that in all future cases, in which, he is in-charge, he will see to it that final reports are filed within time and that the accused will not go out on statutory or default bail. The undertaking given by the learned Special Public Prosecutor is placed on record. This Court cautions the said Law Officer to be careful in future and be diligent in the discharge of his duty. Therefore, the directions given by this Court in Paragraph Nos.5 and 6 on the earlier occasions, stand recalled.”

The said order has been passed on 18.10.2019. Thereafter, another matter came up before this Court in CrI.O.P.(MD)No.18396 of 2019 seeking bail and by order, dated 09.12.2019, this Court observed as follows:

“6.I am constrained to make this observation because I have come across quite a few cases involving serious offences where on account of delay by the Additional Public prosecutors the accused were able to come out on statutory bail. If the final report is not filed in time, the accused is entitled to default bail and courts have no option but to grant it.

7.In the case on hand, the learned Government Advocate states that the petitioner is having 27 previous cases. The property was recovered at his instance. Therefore, this is a case in which the trial can be fast tracked. The people clamour for instant justice, only because of gross delay in the legal system. At least in cases where the evidence is readily available and the facts are not complicated, we can ensure speedy justice.”

From the above it is clear that time and again, this Court summoned him to extract the undertaking that in all future cases, which would be entrusted to him, he would file final report within the time.

8. However, he has not changed his attitude and he has not filed the final report in time. The details regarding the cases, in which, the third respondent allowed the accused to get statutory bail, as he failed to file final report within the time, are as follows:

S.No	POLICE STATION	CRIME No.	ACCUSED NAME	CASE No.	DATE
1	Sindupatti P.S	38/2020	Anand	445/2020	18.06.2020
2	Vikramangalam P.S.	252/2020	Thirunavukarasu	157/2020	23.06.2020
3	Dindigul Taluk	727/2019	Muruga	158/2020	23.06.2020
4	Teppakulam P.S.	652/2019	--	159/2020	23.06.2020
5	Dindigul Town P.S	56/2020	Arun	160/2020	23.06.2020
6	Silaiman P.S.	4/2020	Saravanan	197/2020	03.07.2020
7	Cumbum North P.S.	92/2020	Sivanammal	198/2020	03.07.2020
8	Sindupatti P.S.	277/2019	Selvam	200/2020	06.07.2020
9	Devathanapatti P.S.	566/2020	Veeramani	253/2020	17.07.2020
10	Gudalur P.S.	33/2020	Selvam	281/2020	04.08.2020
11	Kodaikanal P.S.	531/2020	Pandi Veeramani	283/2020	06.08.2020
12	Kodaikanal P.S.	438/2020	Karpagamani Harish Kumar	285/2020	07.08.2020
13	Kodaikanal P.S.	43/2020	Dharunkumar	310/2020	17.08.2020
14	Chekkannurani P.S.	95/2020	Selvam	311/2020	17.08.2020
15	Cumbum North P.S.	834/2020	Rathina Kumar	312/2020	17.08.2020

16	Cumbum North P.S.	43/2020	Arasan	324/2020	21.08.2020
17	Karimedu P.S.	1083/2020	Boominathan	346/2020	25.08.2020
18	Vikramangalam P.S.	50/2020	Vijayakumar	347/2020	25.08.2020
19	Kodaikanal P.S.	--	Sakthivel	372/2020	01.09.2020
20	Pettai P.S.	80/2019	Mani	1631/2019	16.05.2019
21	K.Pudur P.S.	106/2019	Jeyakumar	1630/19	17.05.2019
22	NIB CID, Madurai	37/2019	Muniyammal	2196/2019	12.06.2019
23	Kovilpatti P.S.	50/2019	Mariselvam Subbuselvam	2218/2019	12.06.2019
24	Appanthirupathi P.S.	104/2019	Ramalakshmi	2482/2019	28.06.2019
25	Anna Nagar P.S.	275/2019	Balakrishnan	-	03.08.2019
26	Tirunelveli P.S.	214/2019	Ramesh	3260/2019	20.08.2019
27	Kottar P.S.	278/2019	--	3304/2019	22.08.2019
28	Usilai Town P.S.	328/2019	Sivamayan	3489/2019	04.09.2019
29	Tharavaikulam P.S.	16/2019	Sekar	4210/2019	22.10.2019
30	Karimedu P.S.	795/2019	Panchavarnam	4585/2019	20.11.2019
31	Kottar P.S.	372/2019	Alex	4666/2019	26.11.2019
32	Anna Nagar P.S.	459/2019	Manikandan	5037/2019	18.02.2019
33	N.P.Kottai P.S.	490/2019	Thangapandi	5102/2019	26.12.2019
34	Kannivadi P.S.	147/2019	Manoj	33/2020	07.01.2020
35	Vadaseri P.S.	353/19	Ravikumar	163/2020	13.01.2020
36	Gudalur P.S.	69/2020	Vairamuthu	301/2019	27.01.2020
37	Thoothukudi P.S.	739/2019	Ragu	351/2020	01.02.2020

38	Usilai Town P.S.	-	Vanaraja	391/2020	-
39	Cumbum North P.S.	430/2019	Sudhakar	415/2020	08.02.2020
40	Thoothukudi	507/2019	Murugan	373/2019	
41	Usilai Town P.S.	429/2019	Veeramani	6017/2020	26.02.2020
42	Pettai P.S.	306/2019	Mani	798/2020	03.03.2020
43	Reddiyarchatram	8/2020	Ramesh	889/2020	06.03.2020

9. It is very shocking and surprising to note that even after appearing before this Court and giving undertaking before this Court that he will ensure that he will file the final reports within the time, especially, in NDPS cases, final reports were not filed in 43 cases and statutory bails have been obtained by the accused and merrily walked away from the jail. This would show that he is not discharging his duties as a Special Public Prosecutor. Therefore, he should be restrained from acting as Public Prosecutor. If he continues to act as a Public Prosecutor, definitely it will not be in the interest of public, especially, when the drug addiction is affecting more and many people, especially, young people are becoming addicts to Narcotic drugs. Therefore, there shall be an order of interim direction prohibiting the third respondent from acting as Special Public Prosecutor in NDPS cases until further orders.

10. It is alleged that the third respondent has amassed wealth by using his position as a Special Public Prosecutor by indulging in malpractices and corrupt acts and letting off the accused in NDPS Act.

11. Therefore, the following officials are *suo motu* impleaded as respondents 4 and 5 in this writ petition:

- “1. The Director,
Directorate of Vigilance and Anticorruption,
No.293, MKN Road,
Alandur, Chennai-600 106.
2. The Deputy Superintendent of Police,
Office of the Deputy Superintendent of Police,
Vigilance and Anticorruption,
1/165-G, Alagarkoil Road,
Race Course Colony,
Madurai-625 002.”

The Registry is directed to carry out the necessary amendments in the cause title.

12. It is not known as to whether as per the Rules framed by the Department with regard to the appointment of Public Prosecutors and Law Officers and the directions issued by this Court, have been complied with or not, while appointing the third respondent.

13. The fourth respondent shall conduct an enquiry with regard to the third respondent and file a report before this Court with regard to acquiring of wealth after his assumption of office as Public Prosecutor and family members and friends.

14. Mrs.J.Padmavathi Devi, learned Special Government Pleader takes notice for the respondents 1, 2, 4 and 5.

15. Notice to the third respondent returnable on **21.01.2021**. Private notice through all permissible modes including Courier, Speed Post, E-mail and Whats App is also permitted.

Call on **21.01.2021** in the motion list.

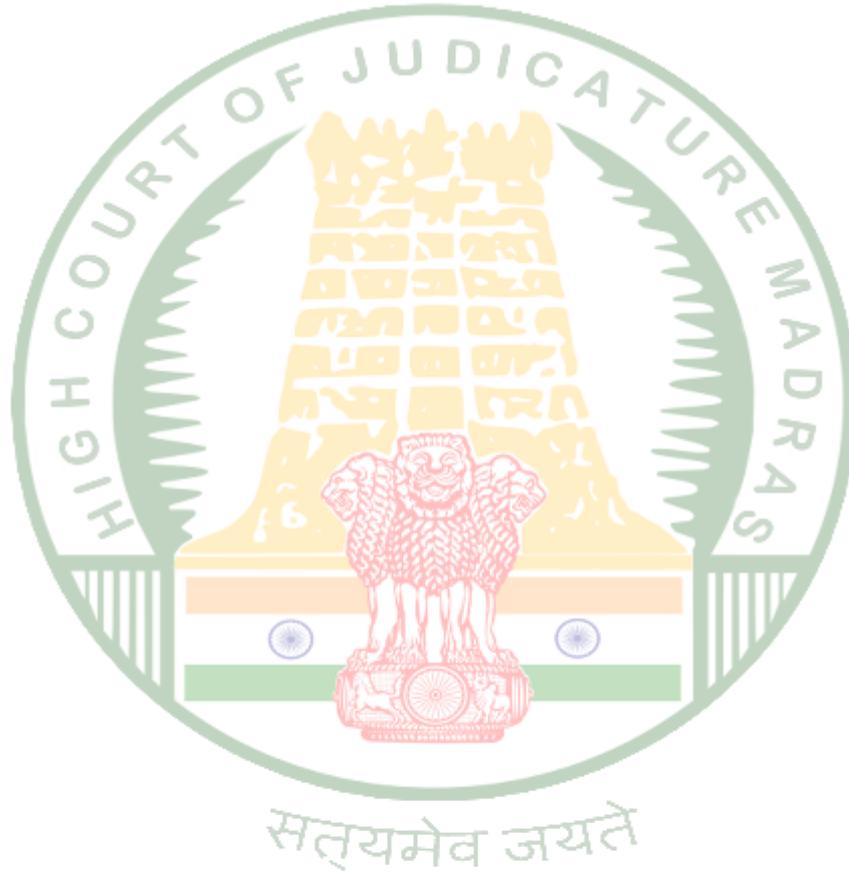
Index : Yes/No
Internet : Yes/No
SSL

[N.K.K.J.] [B.P.J.]
22.12.2020

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order

12/14

may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

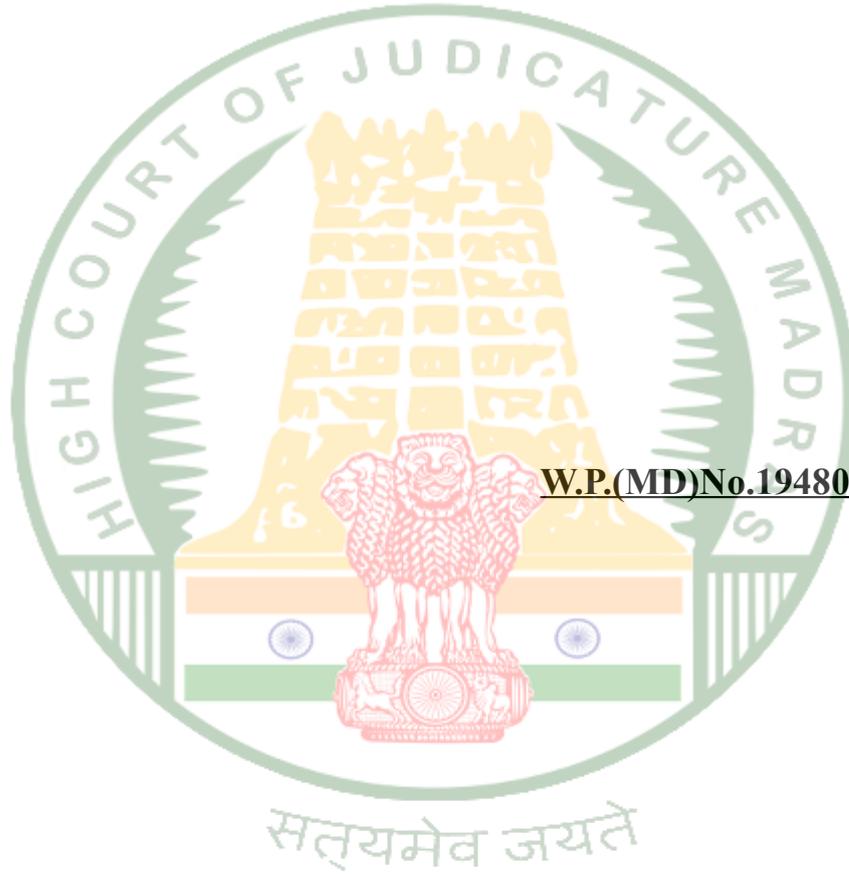


WEB COPY

W.P.(MD)No.19480 of 2020

N.KIRUBAKARAN, J.
AND
B.PUGALENDHI, J.

SSL



W.P.(MD)No.19480 of 2020

WEB COPY 22.12.2020