



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE N S SANJAY GOWDA

WRIT PETITION NO. 24143 OF 2023

C/W

WRIT PETITION NO. 22988 OF 2023,

WRIT PETITION NO. 23408 OF 2023 (S-RES)

IN WRIT PETITION No.24143/2023:

BETWEEN:

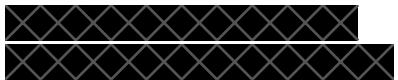
1 . MR. RAGHAVEDRA YT



SPECIAL PUBLIC PROSECUTOR
COURT OF SESSIONS AND SPECIAL COURT
UDUPI,
NOTIFIED AS PER SECTION 28
OF THE POCSO ACT, 2012,
UDUPI DISTRICT-574118.



2 . MR M MANJUNATH



SPECIAL PUBLIC PROSECUTOR
COURT OF SESSIONS AND SPECIAL COURT,
UDUPI
NOTIFIED AS PER SECTION 28 OF
THE POCSO ACT 2012
RAICHUR DISTRICT-581401.

3 . MR AMARESH(AMARAYYA) HIREMATH





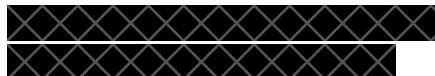
SPECIAL PUBLIC PROSECUTOR
COURT OF SESSIONS AND SPECIAL COURT
UDUPI
NOTIFIED AS PER SECTION 28 OF
THE POCSO ACT 2012
GADAG DISTRICT-582101.

4 . SMT GOURAMMA L DESAI



SPECIAL PUBLIC PROSECUTOR
COURT OF SESSIONS AND SPECIAL COURT
UDUPI
NOTIFIED AS PER SECTION 28 OF
THE POCSO ACT 2012
KOPPAL DISTRICT-583238.

5 . MR BHARAT KUMAR



SPECIAL PUBLIC PROSECUTOR
COURT OF SESSIONS AND
SPECIAL COURT UDUPI
NOTIFIED AS PER SECTION 28 OF
THE POCSO ACT 2012
CHIKKAMAGALURU DISTRICT-577101.

6 . MRS SHUBH RAMAKRISHNA GAONKAR



SPECIAL PUBLIC PROSECUTOR
COURT OF SESSIONS AND SPECIAL COURT
UDUPI
NOTIFIED AS PER SECTION 28 OF
THE POCSO ACT 2012
UTTARA KANNADA DISTRICT-581301.

7 . MRS VEENA KUMARI N

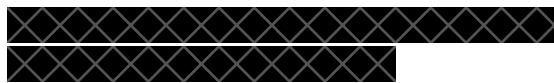


SPECIAL PUBLIC PROSECUTOR



COURT OF SESSIONS AND SPECIAL COURT
UDUPI
NOTIFIED AS PER SECTION 28 OF
THE POCSO ACT 2012
RAMANAGARA DISTRICT-562159.

8 . MRS M PRABHAVATHI



SPECIAL PUBLIC PROSECUTOR
COURT OF SESSIONS AND SPECIAL COURT
UDUPI
NOTIFIED AS PER SECTION 28 OF THE
POCSO ACT 2012
BELLARY DISTRICT-583101

...PETITIONERS

(BY SRI. P.P.HEGDE, SENIOR COUNSEL FOR
SRI.VENKATESH SOMAREDDI, ADVOCATE)

AND:

1. STATE OF KARNATAKA,
MINISTRY OF HOME AFFAIRS,
REPRESENTED BY PRINCIPAL SECRETARY
VIDHANA SOUDHA,
BANGALORE-560 001.
2. DEPARTMENT OF PROSECUTION
AND GOVERNMENT LITIGATION
REPRESENTED BY ITS DIRECTOR
6TH FLOOR, KHB COMPLEX, CAUVERY BHAVAN,
KEMPEGOWDA RAOD,
BANGALORE-560 009.

...RESPONDENTS

(BY SRI.SHASHI KIRAN SHETTY, ADVOCATE GENERAL
ALONGWITH SRI.V.G. BHANU PRAKASH, ADDITIONAL
ADVOCATE GENERAL AND SRI.B.RAVINDRANATH, AGA
FOR RESPONDENTS)



THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECTING RESPONDENT Nos.1 AND 2 OF PAY SALARY AND OTHER SERVICE BENEFITS TO THE PETITIONERS HEREIN FROM THE DATE OF THEIR APPOINTMENT IN DEPT OF PROSECUTION / RESPONDENT No.2, ETC.

IN WRIT PETITION No.22988/2023

BETWEEN:

SRINIVASA GOWDA,

PRESENTLY WORKING AS
PUBLIC PROSECUTOR
ADDL DISTRICT AND SESSIONS JUDGE (FTSC-1),
HASSAN-573 201.

...PETITIONER

(BY SRI. P.P.HEGDE, SENIOR COUNSEL FOR
SRI.VENKATESH SOMAREDDI, ADVOCATE)

AND:

1. STATE OF KARNATAKA
MINISTRY OF HOME AFFAIRS
REPRESENTED BY PRINCIPAL SECRETARY,
SHRI G SHYAM HILLA,
VIDHANA SOUDHA, BANGALORE-560 001.
2. DEPARTMENT OF PROSECUTION
AND GOVERNMENT LITIGATION
REPRESENTED BY ITS DIRECTOR
SHRI.H.K.JAGADISH,
6TH FLOOR, KHB COMPLEX, CAUVERY BHAVAN,
KEMPEGOWDA ROAD, BANGALORE-560 009.
3. MRS.PARVATHI,
[REDACTED]



LAW OFFICER (JUNIOR)
SP OFFICE, HASSAN
WORKING AS PUBLIC PROSECUTOR
90TH ADDL. CITY CIVIL AND
SESSIONS COURT (MLA, MP COURT)
BENGALURU-560 001.

...RESPONDENTS

(BY SRI. SHASHI KIRAN SHETTY, ADVOCATE GENERAL
ALONGWITH SRI.V.G. BHANU PRAKASH, ADDITIONAL
ADVOCATE GENERAL AND SRI.B.RAVINDRANATH, AGA
FOR R-1 AND R-2;
SRI.G.S.BALAGANGADHAR, ADVOCATE FOR R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO
QUASHING THE IMPUGNED ORDER BEARING No OE 185 PPE
(BHA-1) DATED 09/10/2023 PASSED BY THE RESPONDENT
No.1 VIDE ANNEXURE-E IN SO FAR AS THE PETITIONER AND
RESPONDENT No.3 IS CONCERNED.

IN WRIT PETITION No.23408/2023:

BETWEEN:

MR.HARIKRISHNA,
[REDACTED]
[REDACTED]
[REDACTED]

PRESENTLY WORKING AS
SPECIAL PUBLIC PROSECUTOR,
FAST TRACK SPECIAL COURT-1 (POCSO SPECIAL
COURT)
EARLIER 1ST ADDITIONAL DISTRICT AND
SESSIONS JUDGE, SHIVAMOGGA
SHIVAMOGGA-577201.

...PETITIONER

(BY SRI.P.P.HEGDE, SENIOR COUNSEL FOR
SRI.VENKATESH SOMAREDDY, ADVOCATE)



AND:

1. STATE OF KARNATAKA
MINISTRY OF HOME AFFAIRS
REPRESENTED BY PRINCIPAL SECRETARY,
SHRI G SHYAM HILLA,
VIDHANA SOUDHA,
BANGALORE-560 001.
2. DEPARTMENT OF PROSECUTION
AND GOVERNMENT LITIGATION
REPRESENTED BY ITS DIRECTOR
SHRI.H.K.JAGADISH,
6TH FLOOR, KHB COMPLEX,
CAUVERY BHAVAN,
KEMPEGOWDA ROAD,
BANGALORE-560 009.
3. MR.K.C.DEEPAK,
AGED MAJOR,
FATHER NAME NOT KNOWN
LAW OFFICER (JUNIOR)
SP OFFICE, SHIVAMOGGA-577 201
PUBLIC PROSECUTOR
9TH ADDL. CITY CIVIL AND SESSIONS COURT
BENGALURU-560 001.

...RESPONDENTS

(BY SRI. SHASHI KIRAN SHETTY, ADVOCATE GENERAL
ALONGWITH SRI.V.G. BHANU PRAKASH, ADDITIONAL
ADVOCATE GENERAL AND SRI.B.RAVINDRANATH, AGA
FOR R-1 & R-2;
SRI.G.S.BALAGANGADHAR, ADVOCATE FOR R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO
QUASH THE IMPUGNED ORDER BEARING NO.OE 185 PPE (E)
DATED 9.10.2023 PASSED BY R-1 VIDE ANNEXURE-B IN SO
FAR AS THE PETITIONER AND R-3 IS CONCERNED, ETC.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED
FOR ORDERS ON 20.12.2023, COMING ON FOR



PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING :

ORDER

1. The petitioners herein are advocates who were appointed as Special Public Prosecutors, on contract basis, under Section 32 of *the Protection of Children from Sexual Offences Act, 2012* (in short, "**the POCSO Act**"). They are aggrieved by the order dated 24.11.2022, by which the State Government has issued a Notification assigning Public Prosecutors to Special Courts and thereby, nominating the Public Prosecutors as Special Public Prosecutors.

2. It is their contention that it is impermissible for the State to appoint regular Public Prosecutors as Special Public Prosecutors under Section 32 of the POCSO Act. It is also their case that the tenure of some of the petitioners is still subsisting and they could not, therefore, be displaced by posting regular Public Prosecutors in their place. They contend that by virtue of the order dated



24.11.2022, they are sought to be displaced and hence, the same was required to be quashed.

3. The petitioners also seek regularisation of their appointment as Special Public Prosecutors.

4. The State Government, on the other hand, contends that it is permissible for them to post regular Public Prosecutors as Special Public Prosecutors and assign them to work as Special Public Prosecutors in POCSO Courts. It is also the case of the State Government that it possesses the requisite powers as indicated in the POCSO Act, and therefore, there can be no challenge laid to the assigning of said Public Prosecutors as Special Public Prosecutors for the Special Courts established to try cases under the POSCO Act.

5. The State Government also contends that the petitioners, being advocates, had entered into a contract, whereby the tenure was fixed as three years and therefore, they cannot plead that they are entitled to be



regularised as Special Public Prosecutors. It is contended that the petitioners had given an undertaking that they would not seek regularisation and hence, their argument in respect of their regularisation is totally without any merit.

6. In light of the arguments advanced, the only point that would arise in these petitions is:

"Whether the State Government could have issued the order dated 24.11.2022, by which it assigned the existing Public Prosecutors as Special Public Prosecutors for functioning in the Special Courts established for conducting the cases under the POCSO Act? "

7. The POCSO Act has been enacted to protect children from offences of sexual assault, sexual harassment and pornography, and to provide for establishment of Special Courts for trial of such offences and matters concerned therewith.



8. Chapter VII of the POCSO Act specifically provides for Special Courts.

9. Section 28¹ of the POCSO Act makes it mandatory to try the offences specified under the POCSO Act and Section 31² of the POCSO Act declares that the Special Courts constituted would be deemed to be a Court of Sessions and the person conducting the prosecution before a Special Court shall be deemed to be a Public Prosecutor.

¹28. Designation of Special Courts.—(1) For the purposes of providing a speedy trial, the State Government shall in consultation with the Chief Justice of the High Court, by notification in the Official Gazette, designate for each district, a Court of Session to be a Special Court to try the offences under the Act:

Provided that if a Court of Session is notified as a children's court under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) or a Special Court designated for similar purposes under any other law for the time being in force, then, such court shall be deemed to be a Special Court under this section.

(2) While trying an offence under this Act, a Special Court shall also try an offence other than the offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974) be charged at the same trial.

(3) The Special Court constituted under this Act, notwithstanding anything in the Information Technology Act, 2000 (21 of 2000), shall have jurisdiction to try offences under section 67B of that Act in so far as it relates to publication or transmission of sexually explicit material depicting children in any act, or conduct or manner or facilitates abuse of children online.

²31. Application of Code of Criminal Procedure, 1973 to proceedings before a Special Court.— Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.



However, Section 32³ of the Act categorically states that the State Government should, by way of a notification in the Gazette, appoint a Public Prosecutor for every Special Court for conducting cases only under the provisions of the POCSO Act.

10. Sub-section (2) of Section 32 of the POCSO Act prescribes the eligibility for appointing such Special Public Prosecutor and states that a person, to be so appointed, had to have necessarily practiced for not less than seven years as an advocate. Sub-section (3) of Section 32 of the POCSO Act declares that a person appointed as a Special Public Prosecutor under Section 32 of the POCSO Act is deemed to be a Public Prosecutor within the meaning of

³32. Special Public Prosecutors.—(1) The State Government shall, by notification in the Official Gazette, appoint a Special Public Prosecutor for every Special Court for conducting cases only under the provisions of this Act.

(2) A person shall be eligible to be appointed as a Special Public Prosecutor under sub-section (1) only if he had been in practice for not less than seven years as an advocate.

(3) Every person appointed as a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 (2 of 1974) and provision of that Code shall have effect accordingly.



Clause (u) of Section 2⁴ of the *Criminal Procedure Code, 1973* (for short, "**the Cr.P.C.**").

11. One significant factor to be noticed in Section 32 of the POCSO Act is that the State Government should appoint a Special Public Prosecutor for every Special Court and the person so appointed shall conduct cases only under the provisions of the POCSO Act. This makes it clear that the person appointed as a Special Public Prosecutor cannot conduct any cases other than the cases that are to be tried in the Special Courts.

12. The learned Advocate General, at the very outset, brought on record the decision rendered by the Hon'ble Supreme Court in ***Alarming Rise in the Number of Reported Child Rape Incidents, In re***⁵, and has very fairly and candidly submitted that the procedure, as prescribed in the said decision, would have to be followed in the matter of appointment of Special Public Prosecutors.

⁴**2. Definitions.**—In this Code, unless the context otherwise requires,— xxx (u) "Public Prosecutor" means any person appointed under section 24, and includes any person acting under the directions of a Public Prosecutor;

⁵ *Alarming Rise in the Number of Reported Child Rape Incidents, In re, (2020) 7 SCC 130.*



13. This submission of the Advocate General requires to be appreciated and it is placed on record.

14. The Hon'ble Supreme Court, in the aforesaid case, has passed the following order in respect of the Public Prosecutors to be appointed for the POCSO Courts and the same reads as follows:

“ **7.** In our earlier orders we had emphasised the need to have exclusive Special Public Prosecutors for Pocso cases. Section 32 of the Pocso Act clearly lays down that there shall be Special Public Prosecutors for the Pocso cases. Sub-section (1) of Section 32 reads as follows:

“32. Special Public Prosecutors.—(1) Every State must by notification appoint a Special Public Prosecutor for every Special Court for conducting cases only *under the provisions of the Act.*”

(emphasis supplied)

The language of the Act leaves no manner of doubt that the Special Public Prosecutor under the Act should not deal with other cases.

8. There is a salutary reason for appointing Public Prosecutors



exclusively for POCO cases. Public Prosecutors must be trained to deal with child victims and child witnesses. They need to understand the psychology of children. They need to empathise with children. They need to know how to bring out the truth from children who are victims of sexual abuse and have to undergo the trauma again while recounting the traumatic experience.

9. The job assigned to the Public Prosecutor for POCO cases is a very onerous one which must be carried out with great care and sensitivity. Therefore, not only is there a need to have exclusive Public Prosecutors but there is also a need to develop a training programme where these Special Public Prosecutors should be trained to deal with issues which will arise in their courts. These issues may not be confined to legal issues which otherwise Public Prosecutors may be trained to deal with. The issues may be psychological, health and other related issues.

10. Keeping in view these factors, we direct all the States who are present before us to take steps to appoint exclusive Public Prosecutors in all the courts which have been set up



exclusively for Pocso cases. We request the Chief Justices of all the High Courts to ensure that in the Judicial Academy of the State special programmes are developed so that these Special Public Prosecutors attached to Pocso Courts are imparted training not only in law but also in child psychology, child behaviour, health issues, etc. We also request the Director of the National Judicial Academy to ensure that a training programme is developed in the National Judicial Academy to train master trainers who can then work in the Judicial Academies in each State. We realise that the National Judicial Academy cannot train all the Special Public Prosecutors in the country but they can prepare a team of master trainers who can travel from State to State to impart training to the persons appointed as Special Public Prosecutors."

15. As could be seen from the aforesaid decision, the Hon'ble Supreme Court has clearly laid down the law that Special Public Prosecutors under the POCSO Act should not deal with any other cases. It is, therefore, clear that the Special Public Prosecutors, to be appointed by the State Government, cannot take up any work other than the



cases entrusted to him/her in that Special Court to which he/she is appointed. This basically excludes an advocate who has been appointed, from continuing with his/her practice in any other Court and creates a bar on him/her to conduct any other cases in any other Court.

16. In light of this decision, the State Government would not be justified in issuing a Notification assigning the existing Public Prosecutors as Special Public Prosecutors.

17. It is to be stated here that Clause (u) of Section 2 of the Cr.P.C. defines a "**Public Prosecutor**" to be a person appointed under Section 24 of the Cr.P.C. and it also states that it includes any person acting under the directions of the Public Prosecutor.

18. Section 24 of the Cr.P.C. provides for the appointment of Public Prosecutors. It contemplates that the State Government shall, in consultation with the High Court, appoint a Public Prosecutor and also an Additional Public Prosecutor for conducting, in the High Court, any



prosecution, appeal or proceedings on behalf of the State Government.

19. In respect of every District Court, it contemplates that the State Government shall appoint a Public Prosecutor and one or more Additional Public Prosecutors to the District Courts.

20. It also stipulates that the District Magistrate, in consultation with the Sessions Judge, is required to prepare a panel containing names of persons who are, in his opinion, fit to be appointed as Public Prosecutors or Additional Public Prosecutors. It is, therefore, clear that the manner of appointment of Public Prosecutors under the provisions of the Cr.P.C. are markedly different, in the sense, that the District Magistrate would prepare a panel of names in consultation with the Sessions Judge and thereafter, appoint them.

21. However, under Section 32 of the Cr.P.C., the language used makes it clear that it is the State



Government which shall appoint a Special Public Prosecutor who is required to exclusively deal with the cases arising only under the POCSO Act, in each of the Special Courts established under the Act.

22. Sub-section (6) of Section 24 of the Cr.P.C. reads as follows:

" 24. Public Prosecutors.—(1) x xx

(6) Notwithstanding anything contained in sub-section (5), wherein a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre:

Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub-section (4).



Explanation.—For the purposes of this sub-section,— (a) "*regular Cadre of Prosecuting Officers*" means a Cadre of Prosecuting Officers which includes therein the post of a Public Prosecutor, by whatever name called, and which provides for promotion of Assistant Public Prosecutors, by whatever name called, to that post;

(b) "*Prosecuting Officer*" means a person, by whatever name called, appointed to perform the functions of a Public Prosecutor, an Additional Public Prosecutor or an Assistant Public Prosecutor under this Code. "

23. As could be seen from the above, in a State where there exists a regular cadre of prosecuting officers, the State Government is mandated to appoint a Public Prosecutor among the persons constituting such cadre. This would indicate that an employee of the State Government would have to be appointed as a Public Prosecutor. Thus, a conjoint reading of sub-section (6) of Section 24 of the Cr.P.C. and Section 24 of the POCSO Act makes it abundantly clear that there is a vast difference between the mode of appointing a Special Public Prosecutor under the POCSO Act and a Public Prosecutor under the Cr.P.C.



24. In this view of the matter, the State Government cannot appoint its employees who are in the regular cadre of prosecuting officers for the purpose of conducting criminal cases under the Cr.P.C., as Special Public Prosecutors under Section 32 of the POCSO Act, and consequently, the order dated 24.11.2022 assigning such Public Prosecutors as Special Public Prosecutors under Section 32 of the POCSO Act, is ***quashed***.

25. In light of the above legal position, the State Government was also not right in appointing the present petitioners as Special Public Prosecutors. The Notification under which the present petitioners were appointed does not create a bar as envisaged by the decision of the Hon'ble Supreme Court, inasmuch as there is no restriction for the Special Public Prosecutors to be appointed under the POCSO Act to deal with other cases.

26. It is, therefore, obvious that the appointments of the present petitioners are also contrary to the directions issued by the Hon'ble Supreme Court, and as a



consequence, even if their tenure as Special Public Prosecutors is subsisting, they cannot be permitted to continue as it would violate the law declared by the Hon'ble Supreme Court.

27. The State Government is hereby directed to appoint Special Public Prosecutors for conducting cases under the POCSO Act, strictly in accordance with the directions issued by the Hon'ble Supreme Court in the decision reported in **(2020) 7 SCC 130** (*supra*).

28. The exercise of appointing such Special Public Prosecutors shall be undertaken and completed within a period of three months from the date of receipt of a copy of this order.

29. Having regard to the vacuum that would be created as a result of this order, until such appointments are made, the persons who were working as Special Public Prosecutors in Special Courts on Contract basis shall continue to function as Special Public Prosecutors as an



interim measure, till Special Public Prosecutors are appointed as ordered above.

30. The writ petitions are ***disposed of*** accordingly.

Sd/-
JUDGE

RK/-
CT: SN