

IN TH E SUP R E M E COUR T OF IN D I A

CR I M I N A L AP P E L L A T E JUR I S D I C T I O N

CR I M I N A L AP P E A L NO.748 OF 2009

[AR I S I N G OUT OF SL P (CR I M I N A L) NO.6797 OF 2008]

STAT E OF M A H A R A S H T R A & ORS.

Appellant (s)

VE R S U S

P R A K A S H P R A H L A D PAT I L & ORS.

Respondent(s)

O R D E R

Dr. Arijit Pasayat, J .

Leave granted.

Challenge in this appeal is to the judgment of a Division Bench of the Bombay High Court allowing the Writ Petition filed by present respondent No.1. In the Writ Petition before the High Court challenge was to the appointment of the present respondent No.3 as a Special Public Prosecutor for conducting Sessions Case No.41 of 2006 pending before the Sessions Court at Islampur in Sangli District. The basic grievance of respondent No.1 was that the appointment of respondent No.3 as a Special Public Prosecutor was in violation of the scheme of Section 24(8) of the Code of Criminal Procedure, 1973 (in short "the Code") and Rule 22 of the Rules for the Conduct of the Legal Affairs of Government, 1984 (in short "The Rules"). It was also the stand of respondent No.1 that the view expressed by this Court in *Mu kul Dalal v. Union of India*, 1988 (3) SCC 144 , was not kept in view while making the appointment. The appointment of respondent No.3 appears to have been made on the basis of a petition filed by the

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brother and the son of the victim. This was a case where two persons were killed. Several accused persons are facing trial. Though initially it was not disclosed by respondent No.1 that he is related to one of the accused, but later on that fact surfaced during the hearing of the matter before the High Court. Then respondent No.1 took the stand that he was a social worker and in greater public interest the writ petition was filed. The State opposed the petition on several grounds:

primarily indicating that the scope of judicial review of the executive, administrative and quasi-judicial action, was extremely limited and this is not a case where any interference was called for. It appears from the impugned order of the High Court that the original file was called for and scanned as if the High Court was hearing an appeal against a decision taken. The scope for judicial review has been examined by this court in several cases. It has been consistently held that the power of judicial review is not intended to assume a supervisory role or don the robes of omnipresent. The power is not intended either to review governance under the rule of law nor do the courts step into the areas exclusively reserved by the supreme lex to other organs of the State. A mere wrong decision, without anything more, in most of the cases will not be sufficient to attract the power of judicial review. The supervisory jurisdiction conferred upon a court is limited to see that the authority concerned functions within its limits of its authority and that its decisions do not occasion miscarriage of justice.

The courts cannot be called upon to undertake governmental duties and functions. Courts should not ordinarily interfere with a

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policy decision of the State. While exercising power of judicial review the court is more concerned with the decision making process than the merit of the decision itself.

In the instant case, acting on a petition filed by close relatives of a victim decisions have been taken at various levels. The High Court was not justified to pick up stray sentences from the records to conclude that there was non-application of mind. In any event, the appointment of a Special Public Prosecutor to conduct a proceeding does not in any way cause prejudice to the accused. In that sense the writ petition before the High Court was wholly misconceived. The impugned judgment of the High Court is set aside. Since the trial appears to have been held up, we direct that the trial court shall make all possible endeavours to see that the trial is completed expeditiously and in any event not later than by the end of October, 2009. The appeal is, accordingly, allowed.

Criminal Miscellaneous Petition No.4051 of 2009 also stands disposed of.

.....J.
(Dr. Arijit Pasayat)

.....J.
(Asok Kumar Ganguly)

New Delhi;
April 16, 2009.

IT E M NO.1 COURT NO.3 SECT I O N I I A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

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CRL M P No.4051 / 2009 in
Petition(s) for Special Leave to Appeal (Crl) No(s).6797 /2008

(From the judgment and order dated 04/07 / 2008 in CRL W P No. 234/2008 of
The H I G H C O U R T O F B O M B A Y)

STAT E OF M A H A R A S H T R A & ORS. Petitioner(s)

V E R S U S

P R A K A S H P R A H L A D PAT I L & ORS. Respondent(s)

(For directions and office report)

Date: 16/04 / 2 009 This Petition was called on for hearing today.

COR A M :

HON' B L E Dr. JUST IC E AR I J I T PAS A Y A T
HON' B L E M R. JUST I C E ASO K KU M A R GANGUL Y

For Petitioner(s) Mr. Sanjay Kharde, Adv.
Ms. Asha Gopalan Nair,Adv.

For Respondent(s) Mr. Nikhil Goel, Adv.
Mr. Sayid Marzook Bafaki, Adv.
Mrs Sheela Goel, Adv.

Mr. Sudhanshu S. Choudhari, Adv.
Ms. Arundhati S. Sukhtankar, Adv.
Mr. Naresh Kumar,Adv.

UPON hearing counsel the Court made the following

O R D E R
Leave granted.

The appeal is allowed in terms of the signed order.
Criminal Miscellaneous Petition No.4051 of 2009 also stands disposed of.

(K.K. Chawla) (Shashi Bala Vij)
A.R.- Cum- P.S. Court Master

[signed reportable order is placed on the file]