

STATE OF RAJASTHAN

v.

SMT. MANBHAR ETC.

March 12, 1981

[A.D. KOSHAL AND BAHARUL ISLAM, JJ.]

Criminal Procedure Code, Section 378 (i)—Deputy Govt. Advocate whether means Public Prosecutor—Section 24 read with clause (u) of section 2—Authority of the Advocate General.

The Advocate General of the Appellant State issued notification under section 94 read with clause (u) of section 2 of the Code of Criminal Procedure published on 25th of September, 1974, directing that three categories of various law officers of the Government including the Deputy Govt. Advocate shall have the authority to act and, plead and argue in all matters covered by the Code.

The High Court held that the Deputy Govt. Advocate had no *locus standi* under the Code of Criminal Procedure to prefer an application under section 378 thereof for leave to appeal against an order of acquittal recorded by a lower Court in a murder case. The respondent contended that an application under Section 378 would be incompetent unless its contents disclosed that it was being presented by a Public Prosecutor.

Accepting the appeals

HELD: (1) The High Court was not justified in throwing out the application presented to it as one having been filed by a person incompetent to do so. For the application to be treated as incompetent, the High Court was bound to enquire into the status of the person presenting it and could throw it out only if it was found as a fact that he did not enjoy the status of a Public Prosecutor. Such a status is for all practical purposes settled by the notification dated 25th September, 1974, of which after its publication in the Government Gazette, the High Court could take judicial notice. [211 G, 212 B-C]

2(i) The Advocate General being admittedly a Public Prosecutor for the State High Court, he had the authority by virtue of the provisions of clause (u) of section 2 of the Code to issue directions authorising other persons to act; and once a person was so authorised, he would be Public Prosecutor for the purpose of the Code. [211E-F]

(ii) A Deputy Government Advocate being a person so authorised under the notification dated 25th September, 1974, is thus a Public Prosecutor having full competence to present an application under section 378 of the Code. [211F-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 285 of 1977.

A

From the Judgment and Order dated 29.7.1974 of the Rajasthan High Court in D. B. Cr. Leave to Appeal No. 839/74.

AND

B

Criminal Appeal Nos. 10 & 11 of 1976.

Appeals by special leave from the Judgment and Order dated 29.7.1974 of the Rajasthan High Court in D.B. Criminal Misc. Leave to Appeal No. 857/74 and D.B. Criminal Appeal No. 350/74.

C

Badri Dass Sharma for the Appellant in all the Appeals.

S. Balakrishnan for RR in Criminal Appeal No. 10/76.

The Judgment of the Court was delivered by

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KOSHAL, J. By this Judgment we shall dispose of three appeals, viz., Criminal Appeals Nos. 10 and 11 of 1976 and Criminal Appeal 285 of 1977 in each of one of which the question arising for determination by us is the same. The first of them is by Special leave granted by this Court and the other two are by certificate granted by the High Court of Rajasthan against its three orders dated 29th July, 1974, all holding that the Deputy Government Advocate of Rajasthan had no *locus standi* under the Code of Criminal Procedure thereafter referred to as the Code) to prefer an application under section 378 thereof for leave to appeal on behalf of the State against an order of acquittal recorded by a lower court in a murder case.

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F

2. The relevant provisions of the Code are sub-section (1) of section 378, sub-section (1) of section 24 and clause (u) of section 2. The same are reproduced below in that order :—

G

“378(1) : Save as otherwise provided in sub-section (2) and subject to the provisions of sub-sections (3) and (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court or an order of acquittal passed by the Court of Session in revision.

H

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

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

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

It will be seen that under sub-section (1) of section 378, only a Public Prosecutor can present an appeal to the High Court from an original or appellate order of acquittal passed by any court subordinate to the High Court, if so directed by the State Government. Again, for a person to be a Public Prosecutor, it is necessary that he is either appointed as such under section 24 or acts under the directions of a Public Prosecutor so appointed.

3 Learned counsel for the State has referred to Notification No. F. 32(1) Judl/74 dated 30.3.1974 issued by the State Government of Rajasthan appointing the Advocate General of the State to be a Public Prosecutor under section 24 of the Code. Another notification on which he relies is Notification No. P-36/AG/D dated 1.4.74 published on 25th September, 1974 issued by the then Advocate General of Rajasthan under section 24 read with clause (u) of section 2 of the Code and directing that three categories of various Law Officers of the Government including the Deputy Government Advocate shall have the authority to act, plead and argue in all matters covered by the Code. These two notifications read together in our opinion, clinch the issue in favour of the State. The Advocate General being admittedly a Public Prosecutor for the State High Court he had the authority by virtue of the provisions of clause (u) of section 2 of the Code to issue directions authorising other persons to act; and once a person was so authorised, he would be a Public Prosecutor for the purpose of the Code. A Deputy Government Advocate being a person so authorised under the notification dated 25th September, 1974 above mentioned is thus a Public Prosecutor having full competence to present an application under section 378 of the Code. In this view of the matter, the High Court was not justified in throwing out the application presented to it as one having been filed by a person incompetent to do so.

4. Mr. Balkrishnan, learned Counsel for the respondent in Criminal Appeal No. 10 of 1976 has contended that as the Deputy Government Advocate did not specify his status as Public Prosecutor

- A** in the application rejected by the High Court, that application could not be regarded as having been filed by a competent person. According to learned counsel, an application under section 378 would be incompetent unless from its contents disclosed that it was being presented by a Public Prosecutor. We do not agree with this contention and that for two reasons. Firstly, no principle of law
- B** has been brought to our notice that if the proper designation of a person does not appear on a document authenticated by him, that document would lose its authenticity, even though that person factually holds such designation. For the application to be treated as incompetent, the High Court was bound to enquire into the status of the person presenting it and to throw it out only if it was found as a fact that he did not enjoy the status of a Public Prosecutor.
- C** Secondly, such status is for all practical purposes settled by the notification dated 25th September, 1974 of which, after its publication in the Government Gazette, the High Court could take judicial notice. Had that been done, the problem would not have arisen as the Deputy Government Advocate would have been found to be holding the status of a Public Prosecutor.

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5. For the reasons stated, we accept all the three appeals and set aside the impugned orders with a direction that the applications made under section 378 of the Code shall be heard and decided by the High Court on merits.

E N.K.A.

Appeals allowed.