

SELVI J. JAYALALITHAA & ORS.

v.

STATE OF KARNATAKA & ORS.
(Writ Petition (Crl.) No.154 of 2013)

SEPTEMBER 30, 2013

[DR. B.S. CHAUHAN AND S.A. BOBDE, JJ.]

Advocates – Appointment of Special Public Prosecutor (SPP) – Withdrawal/revocation of the appointment – Validity – Proceedings against the petitioners for allegedly having assets disproportionate to their known income – Warrant case under the Prevention of Corruption Act – Respondent no.4 appointed as SPP – Seven months thereafter, when the trial was nearing completion, appointment of respondent no.4 withdrawn by the State Government – Notification purporting to revoke the appointment of respondent no.4 as SPP – Validity – Held: On facts, it is liable to be struck down – Appointment of respondent no.4 was made by the Government without questioning the ability or suitability of the incumbent nor the government raised any issue in respect of the manner/issue of consultation – If the Government found the name of respondent no.4, which was sent by the Acting Chief Justice of the High Court, not acceptable on any ground, it was duty bound to refer the name back to the Acting Chief Justice along with views and suggestions, which was not done – On the contrary, they proceeded to appoint respondent no.4 as SPP without demur, who had already been a Public Prosecutor for several years – Nothing on record to indicate that the State Government had been forced by anyone to appoint respondent no.4 – The Government voluntarily acquiesced in the process and is now not entitled to raise grievance – Further, the appointment continued un-objected for almost seven months – Though there is undoubted power with the Government to withdraw or revoke appointment within

A s.21 of the General Clauses Act, but that exercise of power appears to be vitiated in the present case by malafides in law inasmuch as it is apparent on record that the switch-over of government in between resulted in a sudden change of opinion for no discernable legally sustainable reason – The sharp transitional decision was an act of clear unwarranted indiscretion actuated by intention that does not appear to be founded on good faith – Order of removal of respondent no.4 was a product of malafides – General Clauses Act, 1897 – Prevention of Corruption Act, 1988.

C Criminal Trial – Fair trial – Held: Is the main object of criminal procedure and such fairness should not be hampered or threatened in any manner – Fair trial entails the interests of the accused, the victim and of the society – Free and fair trial is a sine qua non of Art. 21 of the Constitution – Any hindrance in fair trial could be violative of Art.14 of the Constitution – Fair trial is the heart of criminal jurisprudence and, in a way, an important facet of a democratic polity and is governed by rule of law – Denial of fair trial is crucifixion of human rights – Constitution of India, 1950 – Arts. 12 and 14
 D –Universal Declaration of Human Rights – Art. 12.

F Criminal Trial – Proceedings against the petitioners for allegedly having assets disproportionate to their known income – Warrant case under the Prevention of Corruption Act – Trial nearing completion – Impending retirement of the Special Judge concerned – Prayer made before Supreme Court for direction to extend the tenure of the Special Judge till the conclusion of the trial – Held: It is a matter within the jurisdiction of the State in accordance with the relevant law – Services of judicial officers in the State governed by the 2004 Rules – State Government competent to appoint Special Judge on contractual basis after his retirement for the period required to conclude the present trial, though with the consultation of the High Court as required u/Art.235 of the Constitution – Further, such a course must be adopted in the

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manner prescribed under the 2004 Rules – Matter referred to the High Court to decide on the administrative side as to whether, in order to conclude the trial expeditiously as guaranteed under Art.21 of the Constitution requires the extension of the services of the Special Judge – Karnataka Judicial Service (Recruitment) Rules, 2004 – r.11(2) – Maxim “Expressio unius est exclusio alterius” – Constitution of India, 1950 – Arts. 21 and 235. – Prevention of Corruption Act, 1988.

Prosecution was launched against the petitioners for allegedly having assets disproportionate to their known income in the State of Tamil Nadu. The petitioners approached the Supreme Court for transferring their trial to the neighbouring State of Karnataka in the interest of justice, on the ground that a fair trial was not possible in the State of Tamil Nadu. While transferring the matters to the State of Karnataka, the Supreme Court issued directions for appointment of a Special Public Prosecutor (SPP).

The Government of Karnataka appointed ‘B’, a former Advocate General, as SPP to conduct the prosecution. ‘B’, however, expressed his inability to continue as SPP. The Government of Karnataka then issued a Notification appointing respondent no.4 as SPP. Subsequently, after about seven months, the State Government issued letter dated 10-09-2013, asking respondent no.4 not to appear in the pending matter before the Special Judge. The petitioners then filed a Writ Petition challenging the said letter written to the respondent no.4 and to direct the Special Judge to conclude the trial.

While the said writ petition was pending in this Court, the Government of Karnataka consulted the Chief Justice of the Karnataka High Court for withdrawing the appointment of respondent no.4 as SPP. The Chief Justice concurred with the view of the State Government,

A vide communication dated 14.9.2013 and thus, the
 appointment of respondent no.4 stood withdrawn by the
 Government of Karnataka vide Notification dated
 16.9.2013. Aggrieved, the petitioners filed another Writ
 Petition, challenging the said orders dated 14.9.2013 and
 B 16.9.2013.

The petitioners submitted before this Court that the
 order withdrawing the appointment of respondent no.4
 as SPP was a calculated step to protract the trial in view
 of the impending retirement of the Special Judge; that the
 C trial had almost been completed and in the
 circumstances, the withdrawal of appointment of SPP
 after seven months of his functioning was motivated by
malafides with a view to protract the trial as there had
 been a change of the government in the State. Prayer was
 D accordingly made before this Court to quash the order
 of withdrawal/revocation of the appointment of
 respondent no.4 as SPP and to also further extend the
 duration of tenure of the Special Judge till the conclusion
 of the trial.

E Disposing of the writ petitions, the Court

HELD:1. The order of removal of respondent no.4 is
 a product of *malafides* and the impugned order is not
 sustainable in the eyes of law as such the same is hereby
 F quashed. [Para 32] [785-C-D]

2. The reason put forth by the Government of
 Karnataka for removing respondent no.4 as SPP appears
 to be rather unusual. It may be true that the name of
 G respondent no.4 was not in the list of four names
 submitted by the Government of Karnataka to the then
 Acting Chief Justice of the High Court and the name
 originated from the Acting Chief Justice, prior to making
 of appointment of SPP by the Government of Karnataka;
 H but it is equally true that the appointment was made by

the Government without questioning the ability or suitability of the incumbent nor the government raised any issue in respect of the manner/issue of consultation. On the contrary, upon receiving the recommendation, the Government proceeded to appoint respondent no.4 by issuing a Notification without any demur. Apart from this the appointment continued un-objected for almost seven months. [Para 15] [775-C-E]

3. Whenever consultation is mandated by law, it necessarily involves two authorities; one, on whom a duty is cast to consult and the other who has the corresponding right(s) to be consulted. The grievance that there has been no consultation or insufficient consultation is normally raised by the authority who has a right to be consulted, in this case the Chief Justice. It is not legitimate for the party who has a duty to consult and who has failed in that duty, to make a grievance that there has been no consultation. This is exactly what has happened in the present case. If the Government found the name of respondent no.4, which was sent by the Acting Chief Justice, not acceptable on any ground, it was duty bound to refer the name back to the Acting Chief Justice along with their views and suggestions, which was not done by them. On the contrary, they proceeded to appoint respondent no.4 as SPP without demur, who had already been a Public Prosecutor for several years. There is nothing on record to indicate that the Government of Karnataka had been forced by anyone to make the said appointment. The Government thus voluntarily acquiesced in the process and is now not entitled to raise this grievance. The grievance is thus baseless and does not carry any conviction. [Para 17] [776-B-F]

Chandramouleshwar Prasad v. The Patna High Court & Ors. AIR 1970 SC 370: 1970 (2) SCR 666; *Union of India v. Sankalchand Himatlal Sheth & Anr.* AIR 1977 SC 2328: 1978

A (1) **SCR 423**; *State of Gujarat v. Gujarat Revenue Tribunal Bar Association*, AIR 2013 SC 107; 2012 (10) SCR 816 and *State of Gujarat & Anr. v. Justice R.A. Mehta (Retired) & Ors.* (2013) 3 SCC 1; 2013 (1) SCR 1 – held inapplicable.

B 4. In the instant case, as disclosed during the course of arguments, there has been a change of the political party in power in May 2013 and thus, the order of the State Government is alleged to be politically motivated. Though there is an undoubted power with the Government to withdraw or revoke the appointment within Section 21 of the General Clauses Act, but that exercise of power appears to be vitiated in the present case by *malafides* in law inasmuch as it is apparent on record that the switch-over of government in between has resulted in a sudden change of opinion that is abrupt for no discernable legally sustainable reason. The sharp transitional decision was an act of clear unwarranted indiscretion actuated by an intention that does not appear to be founded on good faith. [Para 20] [778-D-F]

E 5. The record of the case reveals that the Special Judge had started hearing of the present case on 20.11.2012. He had recorded the statements of the accused in December 2012 and January 2013 under Section 313 Cr.P.C. The Judge examined 99 defence witnesses and 384 defence exhibits were marked before F him. The defence concluded its argument before the Special Judge and SPP commenced the final arguments on 23.8.2013. He was interrupted abruptly as on 26.8.2013, the SPP was asked not to continue with the work. The evidence led in the case is very bulky as it runs G into 34000 pages. In case a new Judge starts hearing the matter, he is bound to take a long time to understand the factual and legal niceties involved in the case. Accordingly, the Notification purporting to revoke the appointment of respondent no.4 as SPP is liable to be H struck down. [Para 21] [778-G-H; 779-A-B]

6.1. The principles of governance have to be tested on the touchstone of justice, equity and fair play. Unless it is found that the act done by the authority earlier in existence is either contrary to the statutory provisions or unreasonable, or is against public interest, the State should not change its stand merely because the other political party has come into power. If discretionary power has been exercised for an unauthorised purpose, it is generally immaterial whether its repository was acting in good faith or in bad faith and the order becomes vulnerable and liable to be set aside. [Paras 22 and 25] [779-C-E; 780-F]

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6.2. Fair trial is the main object of criminal procedure and such fairness should not be hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society. In all circumstances, the courts have a duty to maintain public confidence in the administration of justice and such duty is to vindicate and uphold the 'majesty of the law' and the courts cannot turn a blind eye to vexatious or oppressive conduct that occurs in relation to criminal proceedings. [Para 26] [780-G-H; 781-A-B]

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6.3. Free and fair trial is a *sine qua non* of Article 21 of the Constitution. Right to get a fair trial is not only a basic fundamental right but a human right also. Therefore, any hindrance in a fair trial could be violative of Article 14 of the Constitution. Article 12 of the Universal Declaration of Human Rights provides for the right to a fair trial what is enshrined in Article 21 of our Constitution. Therefore, fair trial is the heart of criminal jurisprudence and, in a way, an important facet of a democratic polity and is governed by rule of law. Denial of fair trial is crucifixion of human rights. [Para 26] [781-D, F-G]

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- A *Ltd. v. V. Radhey Shyam Sahu & Ors.* AIR 1999 SC 2468: 1999 (3) SCR 1066; *Onkar Lal Bajaj etc. etc. v. Union of India & Anr. etc.etc.* AIR 2003 SC 2562: 2002 (5) Suppl. SCR 605; *State of Karnataka & Anr. v. All India Manufacturers Organization & Ors.* AIR 2006 SC 1846: 2006 (1) Suppl. SCR
- B 86; *A.P. Dairy Development Corporation Federation v. B. Narasimha Reddy & Ors.* AIR 2011 SC 3298; *Smt. S.R. Venkataraman v. Union of India & Anr.* AIR 1979 SC 49: 1979 (2) SCR 202; *Ravi Yashwant Bhoir v. District Collector, Raigad & Ors.* AIR 2012 SC 1339: 2012 (3) SCR 775;
- C *Kalabharati Advertising v. Hemant Vimalnath Narichania & Ors.* AIR 2010 SC 3745: 2010 (10) SCR 971; *Smt. Triveniben v. State of Gujarat* AIR 1989 SC 1335: 1989 (1) SCR 509; *A.R. Antulay & Ors. v. R.S. Nayak* AIR 1992 SC 1701: 1991 (3) Suppl. SCR 325; *Raj Deo Sharma (II) v. State of Bihar (1999)* 7 SCC 604: 1999 (3) Suppl. SCR 124;
- D *Dwarka Prasad Agarwal (D) by L.Rs. & Anr. v. B.D. Agarwal & Ors.* AIR 2003 SC 2686: 2003 (1) Suppl. SCR 336; *K. Anbazhagan v. Supdt. of Police* AIR 2004 SC 524: 2003 (5) Suppl. SCR 610; *Zahira Habibullah Sheikh (5) v. State of Gujarat* AIR 2006 SC 1367 2006 (2) SCR 1081; *Noor Aga v. State of Punjab & Anr.* (2008) 16 SCC 417: 2008 (10) SCR 379; *Capt. Amarinder Singh v. Parkash Singh Badal & Ors.* (2009) 6 SCC 260: 2009 (9) SCR 194; *Mohd. Hussain @ Julfikar Ali v. State (Govt. of NCT of Delhi)* AIR 2012 SC 750: 2012 (1) SCR 64; *Sudevanand v. State through CBI* (2012)
- F 3 SCC 387; *Rattiram & Ors. v. State of M.P.* (2012) 4 SCC 516: 2012 (3) SCR 496 and *Natasha Singh v. CBI* (2013) 5 SCC 741 – relied on.

G 7.1. The petitioner contended that this would be a fit case for exercise of powers under Article 142 of the Constitution for a direction to the competent authority to extend the tenure of the Special Judge, who is due to reach the age of retirement on 30th September, 2013; however, such powers are used in consonance with the statutory provisions. This Court generally should not

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pass any order in exercise of its extraordinary power under Article 142 of the Constitution to do complete justice if such order violates any statutory provisions. This is not to say that it would be illegal to extend the term of the special judge, but that it is a matter within the jurisdiction of the State in accordance with the relevant law. When the statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. The aforesaid settled legal proposition is based on a legal maxim "*Expressio unius est exclusio alterius*", meaning thereby that if a statute provides for a thing to be done in a particular way, then it has to be done in that manner and in no other manner and following any other course is not permissible. [Paras 27, 28 and 29] [782-C, H; 783-B-E]

7.2. So far as judicial officers are concerned, their services were governed by the Karnataka Judicial Services (Recruitment) Rules, 1983. The Rules of 1983 stand repealed by the Karnataka Judicial Service (Recruitment) Rules 2004. From Rule 11(2) thereof, it is evident that the State Government is competent to appoint the Special Judge on contractual basis after his retirement for the period required to conclude the present trial, though with the consultation of the High Court as required under Article 235 of the Constitution. Further, such a course must be adopted in the manner prescribed under the 2004 Rules and in view thereof, the matter requires to be considered by the State Government with the consultation of the High Court. [Para 30] [784-C-D, G-H; 785-A]

7.3. The matter is referred to the High Court of Karnataka to decide on the administrative side as to whether, in order to conclude the trial expeditiously as guaranteed under Article 21 of the Constitution requires

A the extension of the services of the Special Judge. [Para 31] [785-B]

- A.B. Bhaskara Rao v. Inspector of Police, CBI Vishakapatnam* (2011) 10 SCC 259; 2011 (12) SCR 718; *Teri Oat Estates (P) Ltd. v. UT, Chandigarh & Ors.* (2004) 2 SCC 130; 2003 (6) Suppl. SCR 1235; *Manish Goel v. Rohini Goel* AIR 2010 SC 1099; 2010 (2) SCR 414; *State of Uttar Pradesh v. Sanjay Kumar* (2012) 8 SCC 537; 2012 (7) SCR 359; *State of Uttar Pradesh v. Singhara Singh & Ors.* AIR 1964 SC 358 and *Accountant General, State of Madhya Pradesh v. S.K. Dubey & Anr.* (2012) 4 SCC 578 – relied on.

Taylor v. Taylor (1876) 1 Ch D – referred to.

Case Law Reference :

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|---|-------------------------|-------------------|---------|
| D | 1970 (2) SCR 666 | held inapplicable | Para 17 |
| | 1978 (1) SCR 423 | held inapplicable | Para 17 |
| | 2012 (10) SCR 816 | held inapplicable | Para 17 |
| E | 2013 (1) SCR 1 | held inapplicable | Para 17 |
| | 2011 (11) SCR 1094 | relied on | Para 22 |
| | 1999 (3) SCR 1066 | relied on | Para 22 |
| | 2002 (5) Suppl. SCR 605 | relied on | Para 22 |
| F | 2006 (1) Suppl. SCR 86 | relied on | Para 22 |
| | AIR 2011 SC 3298 | relied on | Para 22 |
| | 1979 (2) SCR 202 | relied on | Para 23 |
| G | 2012 (3) SCR 775 | relied on | Para 24 |
| | 2010 (10) SCR 971 | relied on | Para 24 |
| | 1989 (1) SCR 509 | relied on | Para 26 |
| H | 1991 (3) Suppl. SCR 325 | relied on | Para 26 |

1999 (3) Suppl. SCR 124	relied on	Para 26	A
2003 (1) Suppl. SCR 336	relied on	Para 26	
2006 (2) SCR 1081	relied on	Para 26	
2008 (10) SCR 379	relied on	Para 26	B
2009 (9) SCR 194	relied on	Para 26	
2012 (1) SCR 64	relied on	Para 26	
(2012) 3 SCC 387	relied on	Para 26	
2012 (3) SCR 496	relied on	Para 26	C
(2013) 5 SCC 741	relied on	Para 26	
2011 (12) SCR 718	relied on	Para 26	
2003 (6) Suppl. SCR 1235	relied on	Para 26	D
2010 (2) SCR 414	relied on	Para 26	
2012 (7) SCR 359	relied on	Para 26	
AIR 1964 SC 358	relied on	Para 26	E
(1876) 1 Ch D	referred to	Para 29	
(2012) 4 SCC 578	relied on	Para 26	

CRIMINAL ORIGINAL JURISDICTION : Writ Petition (Criminal) No. 154 of 2013 etc. F

Under Article 32 of the Constitution of India.

WITH

W.P. (Crl.) No. 166 of 2013 G

Shekhar Naphade, B. Kumar, C. Manishankar, S. Senthil, A. Ashokan, Jay Kishor Singh for the Petitioners.

Ravi Verma Kumar, A.G Prof. Vikas Singh, R. H

A Shunmugasundaram, Anita Shenoy, Visruti Vijay, Neha Singh, V. G. Pragasam, S. Prabhu Ramasubramanian, S. J. Aristotle, Deepika Kalia, Sanket, Deeptakirti Verma, Neha Sharma, M. Yogesh Kanna, A. Shanta Kumar, K. Sasikala, Vanita Chandrakant Giri for the Respondents.

B The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. The petitioners have challenged the order dated 10.9.2013 passed by the Government of Karnataka asking Shri G. Bhavani Singh -
C respondent no.4, Special Public Prosecutor (hereinafter referred to as 'SPP') in a pending prosecution against the petitioners not to appear in the said matter; the communication dated 14.9.2013 passed by the Chief Justice of High Court of Karnataka at Bangalore by which the Chief Justice has
D approved the removal of Shri G. Bhavani Singh as SPP, as well as the consequential order dated 16.9.2013 issued by the State Government removing the respondent no.4 from the post of SPP.

E 2. A prosecution was launched against the petitioners for having assets disproportionate to their known income in the year 1996-1997 in the State of Tamil Nadu. Thiru. K. Anbazhagan (respondent no. 5) is a political rival of the petitioner no.1, who is and has been the Chief Minister of Tamil Nadu on a number of occasions. The petitioners approached
F this Court on 18.11.2003 for transferring the petitioners' trial to the neighbouring State of Karnataka in the interest of justice, on the ground that a fair trial was not possible in the State of Tamil Nadu. While transferring the matters to the State of Karnataka, this Court for appointment of SPP issued the
G following directions:

H *"The State of Karnataka in consultation with the Chief Justice of High Court of Karnataka shall appoint a senior lawyer having experience in criminal trials as public prosecutor to conduct these cases. The public prosecutor*

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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."

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(Emphasis added)

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3. On 19.2.2005, the Government of Karnataka, after consultation with the Chief Justice of the High Court of Karnataka, appointed Shri B.V. Acharya, a former Advocate General, as SPP to conduct the prosecution. On 12.8.2012, Shri Acharya expressed his inability to continue as SPP. The Government of Karnataka accepted his resignation in January, 2013 and discharged him from the case.

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4. The Government of Karnataka then initiated the process for appointment of a new SPP and in accordance with the directions of this Court, submitted names of four Advocates to the High Court for consideration by the Chief Justice.

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5. The Acting Chief Justice of Karnataka High Court on 29.1.2013 recommended the name of Shri G. Bhavani Singh, respondent No.4 for appointment though his name was not submitted by the Government of Karnataka. The Government of Karnataka accepted the same and issued a Notification appointing Shri G. Bhavani Singh as SPP. After issuance of the notification dated 2.2.2013, Shri G. Bhavani Singh started working and 99 defence witnesses were examined and 384 defence exhibits were marked between 28.2.2013 and 29.7.2013. The defence commenced arguments on 2.8.2013 and concluded the same. However, it was on 13.8.2013 that respondent no.5 filed an application under Section 301(2) Cr.P.C. The learned Special Judge permitted respondent no.5 vide order dated 21.8.2013 to file Memo of Arguments and to render such assistance to the SPP as he may require. The respondent no.5 filed two applications on 23.8.2013 before the trial court, one under Section 309 Cr.P.C. seeking adjournment

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A by 4 weeks and another under Section 311 Cr.P.C. to recall PW.259, the Investigating Officer (whose examination was over on 24.2.2003) and to examine him as a court witness.

B 6. On 26.8.2013, the Government of Karnataka issued a Notification withdrawing the appointment of respondent no.4 as SPP without assigning any reason and without consulting the Chief Justice of Karnataka High Court.

C 7. The petitioners, apprehending delay in the trial approached this Court challenging the removal of respondent no.4 as SPP by filing a Writ Petition (Criminal) No. 145 of 2013 under Article 32 of the Constitution of India (hereinafter referred to as the 'Constitution'). This Court issued notice to the respondents on 30.8.2013. On 6.9.2013, Mr. G.E. Vahanvati, learned Attorney General appeared for the State of Karnataka and informed the court that the Notification dated 26.8.2013 would be withdrawn with a view to consult the Chief Justice of the Karnataka High Court. In view thereof, the afore-stated writ petition was dismissed as having become infructuous.

E 8. The State Government withdrew the Notification dated 26.8.2013 vide Notification dated 10.9.2013 and simultaneously, vide letter of the same date, asked Shri G. Bhavani Singh, respondent no.4 not to appear in the matter before the Special Judge. The petitioners then filed the present Writ Petition (Criminal) No. 154 of 2013 challenging the said letter written to the respondent no.4 and to direct the learned Special Judge to conclude the trial. On 13.9.2013, this Court issued notice returnable in ten days and stayed the operation of the letter being No. LAW 149 LCE 2012 dated 10.9.2013 passed by respondent Nos.1-2.

G 9. While the afore-stated writ petition was pending in this Court, the Government of Karnataka consulted the Chief Justice of the Karnataka High Court for withdrawing the appointment of respondent no.4 as SPP. The Chief Justice concurred with H the view of the State Government, vide communication dated

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14.9.2013 and thus, the appointment of Shri G. Bhavani Singh stood withdrawn by the Government of Karnataka vide Notification No.LAW 149 LCE 2012 dated 16.9.2013.

10. Aggrieved, the petitioners have filed Writ Petition (Criminal) No.166 of 2013, challenging the said orders dated 14.9.2013 and 16.9.2013.

11. Both petitions have been heard together.

Shri Shekhar Naphade and Shri U.U. Lalit, learned senior counsel appearing for the petitioners submitted that it is settled law that an accused has a right to a speedy trial, as guaranteed under Article 21 of the Constitution; the order withdrawing the appointment of respondent no.4 as SPP is a calculated step to protract the trial in view of impending retirement of the learned Special Judge on 30th September, 2013; and any Judge who takes over the matter would require considerable time to get familiar with the lengthy record as the recorded evidence oral and documentary run into 34000 pages; the trial has almost been completed since the entire evidence of the prosecution and the defence has been recorded and statements of the accused persons (petitioners) under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') have also been recorded; the withdrawal of appointment of SPP after six months of his functioning is motivated by malafides with a view to protract the trial as there has been a change of government in the State of Karnataka; the present case being a warrant case under the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'Act 1988'), final submissions of the defence already stood concluded. Eventually, according to the learned counsel, the scheduled conclusion of the trial has become impossible and the petitioners face the prospect of remaining under trial for a long time, which would be to the political advantage of their rivals in the ensuing elections. In view thereof, this court must quash the order of withdrawal/revocation of the appointment of respondent no.4 as SPP, and to also further extend the duration

A of tenure of the learned Special Judge till the conclusion of this trial.

B 12. Shri G.E. Vahanvati, the learned Attorney General submitted that the act of revoking the appointment is substantially under Section 21 of the General Clauses Act and has been made in the like manner to the appointment i.e. after consultation with the Chief Justice of the Karnataka High Court as, contemplated by this Court. The main reason for revocation of the appointment, according to the learned Attorney General, C was that the appointment itself was not made after due consultation since the name of Shri G. Bhavani Singh did not find place in any of the four names submitted by the Government of Karnataka to the then learned Acting Chief Justice of Karnataka High Court for appointment as SPP. In an action D contrary to the true purpose of consultation, the Acting Chief Justice recommended the name of Shri G. Bhavani Singh on his own, thus preventing any consultation on the name. Further, in exercise of its extraordinary power under Article 142 of the Constitution, this court cannot force the Government of Karnataka to allow the Special Judge to continue in service E after reaching the age of superannuation on 30.9.2013. Therefore, the petitions lack merit and are liable to be dismissed.

F 13. Shri Vikas Singh, learned senior counsel appearing for the respondent no.5 has submitted that the petitioners themselves have been adopting dilatory tactics in the trial and it is only in the recent past that they have become very punctual and had been forcing the learned Special Judge to proceed with the matter in haste. The trial has been conducted in an G unwarranted manner and an example of the same is that the arguments of the defence had been entertained by the learned Special Judge before the arguments of the prosecution. Mr. G. Bhavani Singh had been appointed on the suggestion of learned Acting Chief Justice of the High Court of Karnataka, H though his name had not been there in the panel sent by the

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State Government. Thus, in the facts and circumstances of the case, no interference is warranted and petitions are liable to be dismissed.

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14. We have heard learned counsel for all the parties and perused the record produced before us by the Karnataka High Court.

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15. The reason put forth by the Government of Karnataka for removing Shri G. Bhavani Singh as SPP appears to be rather unusual. It may be true that the name of Shri G. Bhavani Singh was not in the list of four names submitted by the Government of Karnataka to the then Acting Chief Justice of the High Court and the name originated from the Acting Chief Justice, prior to making of appointment of SPP by the Government of Karnataka; but it is equally true that the appointment was made by the Government without questioning the ability or suitability of the incumbent nor the government raised any issue in respect of the manner/issue of consultation. On the contrary, upon receiving the recommendation, the Government proceeded to appoint Shri G. Bhavani Singh by issuing a Notification without any demur. Apart from this the appointment continued un-objected for almost seven months.

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16. Even before us, no issue has been raised by the respondents in respect of the eligibility, suitability or credibility of the respondent no.4 as a SPP.

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In the letter dated 29.1.2013 communicated by the learned Registrar General of the High Court of Karnataka to the State Government, the experience of Shri Bhavani Singh has been recited as under:

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"Sri G. Bhavani Singh, who is presently working as State Public Prosecutor-II has standing experience of 38 years at the Bar exclusively on criminal side, he has conducted the cases before the Trial Court as a defence counsel and he has served as a Government Pleader from 1977 for a

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A period of three years in the High Court of Karnataka and as Additional Public Prosecutor for a period of 3 years and currently for the past 8 years working as State Public Prosecutor-II in the High Court of Karnataka."

B 17. Whenever consultation is mandated by law, it necessarily involves two authorities; one, on whom a duty is cast to consult and the other who has the corresponding right(s) to be consulted. The grievance that there has been no consultation or insufficient consultation is normally raised by the authority who has a right to be consulted, in this case the Chief Justice. It is not legitimate for the party who has a duty to consult and who has failed in that duty, to make a grievance that there has been no consultation. This is exactly what has happened in the present case. If the Government found the name of Shri G. Bhavani Singh, which was sent by the Acting Chief Justice, not acceptable on any ground, it was duty bound to refer the name back to the Acting Chief Justice along with their views and suggestions, which was not done by them. On the contrary, they proceeded to appoint Shri G. Bhavani Singh as SPP without demur, who had already been a Public Prosecutor for several years. There is nothing on record to indicate that the Government of Karnataka had been forced by anyone to make the said appointment. The Government thus voluntarily acquiesced in the process and is now not entitled to raise this grievance. The grievance is thus baseless and does not carry any conviction.

G In the facts and circumstances of the case, the judgments relied upon by the Hon'ble Chief Justice of Karnataka High Court in his communication, concurring with the suggestion made by the Government of Karnataka to withdraw the appointment of respondent no.4 as SPP, particularly in *Chandramouleshwar Prasad v. The Patna High Court & Ors.*, AIR 1970 SC 370; *Union of India v. Sankalchand Himatlal Sheth & Anr.*, AIR 1977 SC 2328; *State of Gujarat v. Gujarat Revenue Tribunal Bar Association*, AIR 2013 SC 107; and

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State of Gujarat & Anr. v. Justice R.A. Mehta (Retired) & Ors., (2013) 3 SCC 1, have no application. A

18. We may record that though some criticism was made of the letter dated 14.9.2013 of the Chief Justice of Karnataka approving the revocation of the appointment of Shri G. Bhavani Singh and certain observations therein, we are not inclined to go into the merits, demerits or validity of the letter. In the first place, the said letter is not an order that may affect any of the rights of the petitioners. It is merely an approval given in the course of consultation for the removal of Shri G. Bhavani Singh who has not questioned his removal. The petitioners have challenged the validity of the action of the State Government removing Shri G. Bhavani Singh on the ground that fundamental rights under Article 21 for speedy trial have been breached thereby. In the circumstances, it is not necessary to pronounce on the correctness or otherwise of the contents of the letter written by Hon'ble the Chief Justice. B C D

19. Mr. Vikas Singh, learned senior counsel appearing for respondent No. 5, referred to the entire proceedings after the case was transferred to the State of Karnataka and submitted that the prosecution has been proceeding in a most undesirable manner, particularly, after the appointment of Shri G. Bhavani Singh as SPP. According to the learned counsel, the Investigating Officer has been permitted to be examined as a defence witness and the Special Judge has proceeded to pass certain orders even in the absence of SPP. These allegations have been denied as factually incorrect by Mr. Naphade, learned senior counsel appearing for the petitioners. We are, however, not inclined to go into all these submissions since they would form a subject of entirely different enquiry and the allegedly illegal proceedings and orders if any, can be challenged separately. It was also argued by Mr. Vikas Singh that the Special Judge has wrongly permitted the defence to commence their arguments before the arguments of the prosecution. On the other hand, according to the petitioners, E F G H

A this is entirely permissible in view of the fact that this is a
 prosecution under Section 13 of the Act 1988 and being so,
 any party including the defence is entitled to begin its
 submissions on the close of its evidence by virtue of Section
 314 Cr.P.C., which applies to warrant cases. Further, by virtue
 B of Section 5 of the Act 1988, cases under this Act are liable to
 be tried as warrant cases and there is therefore, no illegality in
 this regard.

C The respondents' contention that the prosecution alone
 must begin their arguments is based on Section 234 Cr.P.C.,
 which is not applicable to the present trial at all. Having regard
 to the scope of the present dispute, we do not consider it
 necessary or appropriate to decide this question either.

D 20. In the instant case, as disclosed during the course of
 arguments, there has been a change of the political party in
 power in May 2013 and thus, the order of the State Government
 is alleged to be politically motivated. In our opinion, though there
 is an undoubted power with the Government to withdraw or
 revoke the appointment within Section 21 of the General
 E Clauses Act, but that exercise of power appears to be vitiated
 in the present case by malafides in law inasmuch as it is
 apparent on record that the switch-over of government in
 between has resulted in a sudden change of opinion that is
 abrupt for no discernable legally sustainable reason. The sharp
 F transitional decision was an act of clear unwarranted
 indiscretion actuated by an intention that does not appear to
 be founded on good faith.

G 21. The record of the case reveals that the learned Special
 Judge had started hearing of the present case on 20.11.2012.
 He had recorded the statements of the accused in December
 2012 and January 2013 under Section 313 Cr.P.C. The learned
 Judge examined 99 defence witnesses and 384 defence
 exhibits were marked before him. The defence concluded its
 argument before the learned Special Judge and SPP
 H commenced the final arguments on 23.8.2013. He was

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interrupted abruptly as on 26.8.2013, the SPP was asked not to continue with the work. The evidence led in the case is very bulky as it runs into 34000 pages. In case a new Judge starts hearing the matter, he is bound to take a long time to understand the factual and legal niceties involved in the case. Accordingly, we have no hesitation in holding that the Notification purporting to revoke the appointment of Shri G. Bhavani Singh as SPP is liable to be struck down.

22. In *State of Tamil Nadu & Ors. v. K. Shyam Sunder & Ors.*, AIR 2011 SC 3470, this Court has observed that the Government has to rise above the nexus of vested interests and nepotism and eschew window-dressing. The principles of governance have to be tested on the touchstone of justice, equity and fair play. A decision may look legitimate but as a matter of fact, if the reasons are not based on values but to achieve popular accolade, the decision cannot be allowed to operate. Therefore, unless it is found that the act done by the authority earlier in existence is either contrary to the statutory provisions or unreasonable, or is against public interest, the State should not change its stand merely because the other political party has come into power. "Political agenda of an individual or a political party should not be subversive of rule of law."

(See also: *M.I. Builders Pvt. Ltd. v. V. Radhey Shyam Sahu & Ors.*, AIR 1999 SC 2468; *Onkar Lal Bajaj etc. etc. v. Union of India & Anr. etc.etc.*, AIR 2003 SC 2562; *State of Karnataka & Anr. v. All India Manufacturers Organization & Ors.*, AIR 2006 SC 1846; and *A.P. Dairy Development Corporation Federation v. B. Narasimha Reddy & Ors.*, AIR 2011 SC 3298).

23. In *Smt. S.R. Venkataraman v. Union of India & Anr.*, AIR 1979 SC 49, this Court explained the concept of legal malice observing that malice in its legal sense means malice such as may be assumed from the doing of a wrongful act

A intentionally but without just cause or excuse, or for want of reasonable or probable cause.

24. In *Ravi Yashwant Bhoir v. District Collector, Raigad & Ors.*, AIR 2012 SC 1339, while dealing with the issue, this Court held:

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"37..... *Legal malice*" or "*malice in law*" means something done without lawful excuse. It is a deliberate act in disregard to the rights of others. It is an act which is taken with an oblique or indirect object. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill-feeling and spite. *Mala fide* exercise of power does not imply any moral turpitude. It means exercise of statutory power for "*purposes foreign to those for which it is in law intended.*" It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, where intent is manifested by its injurious acts. Passing an order for unauthorized purpose constitutes malice in law."

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(See also: *Kalabharati Advertising v. Hemant Vimalnath Narichania & Ors.*, AIR 2010 SC 3745).

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25. Thus, it is trite law that if discretionary power has been exercised for an unauthorised purpose, it is generally immaterial whether its repository was acting in good faith or in bad faith and the order becomes vulnerable and liable to be set aside.

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26. Fair trial is the main object of criminal procedure and such fairness should not be hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society. Thus, fair trial must be accorded to every accused in the spirit of the right to life and personal liberty and the accused must get a free and fair, just and reasonable trial on the charge imputed in a criminal case. Any breach or violation of public rights and duties adversely affects the

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community as a whole and it becomes harmful to the society in general. In all circumstances, the courts have a duty to maintain public confidence in the administration of justice and such duty is to vindicate and uphold the 'majesty of the law' and the courts cannot turn a blind eye to vexatious or oppressive conduct that occurs in relation to criminal proceedings.

Denial of a fair trial is as much injustice to the accused as is to the victim and the society. It necessarily requires a trial before an impartial judge, a fair prosecutor and an atmosphere of judicial calm. Since the object of the trial is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities and must be conducted under such rules as will protect the innocent and punish the guilty. Justice should not only be done but should seem to have been done. Therefore, free and fair trial is a sine qua non of Article 21 of the Constitution. Right to get a fair trial is not only a basic fundamental right but a human right also. Therefore, any hindrance in a fair trial could be violative of Article 14 of the Constitution.

"No trial can be allowed to prolong indefinitely due to the lethargy of the prosecuting agency or the State machinery and that is the *raison d'etre* in prescribing the time frame" for conclusion of the trial.

Article 12 of the Universal Declaration of Human Rights provides for the right to a fair trial what is enshrined in Article 21 of our Constitution. Therefore, fair trial is the heart of criminal jurisprudence and, in a way, an important facet of a democratic polity and is governed by rule of law. Denial of fair trial is crucifixion of human rights. (Vide: *Smt. Triveniben v. State of Gujarat*, AIR 1989 SC 1335; *A.R. Antulay & Ors, v. R.S. Nayak*, AIR 1992 SC 1701; *Raj Deo Sharma (II) v. State of Bihar*, (1999) 7 SCC 604; *Dwarka Prasad Agarwal (D) by L.Rs. & Anr. v. B.D. Agarwal & Ors.*, AIR 2003 SC 2686; *K. Anbazhagan v. Supdt. of Police*, AIR 2004 SC 524; *Zahira Habibullah Sheikh (5) v. State of Gujarat*, AIR 2006 SC 1367;

- A *Noor Aga v. State of Punjab & Anr.*, (2008) 16 SCC 417; *Capt. Amarinder Singh v. Parkash Singh Badal & Ors.*, (2009) 6 SCC 260; *Mohd. Hussain @ Julfikar Ali v. State (Govt. of NCT of Delhi)*, AIR 2012 SC 750; *Sudevanand v. State through CBI*, (2012) 3 SCC 387; *Rattiram & Ors. v. State of M.P.*, (2012) 4 SCC 516; and *Natasha Singh v. CBI*, (2013) 5 SCC 741).

C 27. It was lastly contended by Mr. Naphade, learned senior counsel appearing for the petitioners that this would be a fit case for exercise of powers under Article 142 of the Constitution for a direction to the competent authority to extend the tenure of the Special Judge, who is due to reach the age of retirement on 30th September, 2013.

D 28. The learned Attorney General, however, submitted that this Court could not exercise its powers under Article 142 of the Constitution in the present case since such an exercise would be contrary to laws under which each Judge must retire on reaching the age of superannuation. In order to fortify his submission, learned Attorney General placed reliance on the judgment of this court in *A.B. Bhaskara Rao v. Inspector of Police, CBI Vishakapatnam*, (2011) 10 SCC 259, wherein this court held that the powers under Article 142 of the Constitution cannot be exercised by this court in contravention of any statutory provisions, though such powers remain unfettered and create an independent jurisdiction to pass any order in public interest to do complete justice. However, such exercise of jurisdiction should not be contrary to any express provision of law.

G The powers under Article 142 of the Constitution stand on a wider footing than ordinary inherent powers of the court to prevent injustice. The constitutional provision has been couched in a very wide compass that it prevents "clogging or obstruction of the stream of justice." However, such powers are used in consonance with the statutory provisions.

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(See also: *Teri Oat Estates (P) Ltd. v. UT, Chandigarh & Ors.*, (2004) 2 SCC 130; *Manish Goel v. Rohini Goel*, AIR 2010 SC 1099; and *State of Uttar Pradesh v. Sanjay Kumar*, (2012) 8 SCC 537). A

29. We find force in the submissions advanced by the learned Attorney General that this Court generally should not pass any order in exercise of its extraordinary power under Article 142 of the Constitution to do complete justice if such order violates any statutory provisions. We do not intend to say that it would be illegal to extend the term of the special judge, but that it is a matter within the jurisdiction of the State in accordance with the relevant law. B C

There is yet an uncontroverted legal principle that when the statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. In other words, where a statute requires to do a certain thing in a certain way, the thing must be done in that way and not contrary to it at all. Other methods or mode of performance are impliedly and necessarily forbidden. The aforesaid settled legal proposition is based on a legal maxim "Expressio unius est exclusio alterius", meaning thereby that if a statute provides for a thing to be done in a particular way, then it has to be done in that manner and in no other manner and following any other course is not permissible. D E

In *State of Uttar Pradesh v. Singhara Singh & Ors.*, AIR 1964 SC 358, this court held as under: F

"8. The rule adopted in *Taylor v. Taylor* (1876) 1 Ch D 426 is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this G

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A *were not so, the statutory provision might as well not have been enacted."*

(See also: *Accountant General, State of Madhya Pradesh v. S.K. Dubey & Anr.*, (2012) 4 SCC 578)

B 30. We have examined the scheme of the statutory provisions in this regard. The Karnataka Civil Services (General Recruitment) Rules, 1977 authorise the State Government to appoint a retired government servant on contractual basis after meeting certain formalities, for a specific period as may be necessary. So far as judicial officers are concerned, their services are governed by the Karnataka Judicial Services (Recruitment) Rules, 1983 and Rule 3(2) thereof provides the application of the rules framed under any law or proviso under Article 309 of the Constitution to judicial officers, though subject to the provisions of Articles 233, 234 and 235 of the Constitution. The Rules of 1983 stand repealed by the Karnataka Judicial Service (Recruitment) Rules 2004 (hereinafter referred to as the 'Rules 2004') and Rule 11(2) thereof reads as under:

E "11(2). All rules regulating the conditions of service of the members of the State Civil Services made from time to time under any law or the proviso to Article 309 of the Constitution of India shall, subject to Articles 233, 234 and 235 be applicable to the Civil Judges (Junior Division), Civil Judges (Senior Division) and the District Judges recruited and appointed under these rules."

G Thus, it is evident that the State Government is competent to appoint the learned Special Judge on contractual basis after his retirement for the period required to conclude the present trial, though with the consultation of the High Court as required under Article 235 of the Constitution. Further, in our humble opinion, such a course must be adopted in the manner prescribed under the Rules 2004 and in view thereof, the matter

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requires to be considered by the State Government with the
consultation of the High Court.

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31. Therefore, in view of the aforestated facts, we refer the
matter to the High Court of Karnataka to decide on the
administrative side as to whether, in order to conclude the trial
expeditiously as guaranteed under Article 21 of the Constitution
requires the extension of the services of the learned Special
Judge. Considering the urgency of the matter, we request the
High Court of Karnataka to take a decision in this regard as
early as possible.

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32. In view of the above, we are of the considered opinion
that the order of removal of Shri G. Bhavani Singh-respondent
no.4 is a product of mala fides and the impugned order is not
sustainable in the eyes of law as such the same is hereby
quashed.

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33. With the aforesaid observations/directions, the writ
petitions stand disposed of.

Bibhuti Bhushan Bose

Writ petitions disposed of.