

## ROLE OF PUBLIC PROSECUTOR IN CRIMINAL INVESTIGATION

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Public Prosecutors are like a bridge between public and justice. They are safeguards of public justice especially in administration of justice. When a crime is committed by a person, the State being Protector of public interest and fundamental rights investigate the offence through the police and approach the Court of law against the accused through Public Prosecutor. In the recent days the role of a Public Prosecutor in criminal justice system became worthwhile.

“Public Prosecutors are really ministers of justice. Whose job is none other than assisting the State in the administration of justice”<sup>1</sup>

“Public Prosecutor dons essentially role of establisher of truth by adopting absolutely fair means and a clinically transparent procedure. If required to do so he has to bring out quite openly and frankly that material which might go to establish innocence of accused. In that respect, Court regards him as an officer of Court as main purpose of Court’s functioning is riveted around exposing truth of the matter”<sup>2</sup>

The appointment, powers and functions of a Public Prosecutor has been explained in Cr.P.C., in Sections 24, 25, 25A, 225, 301, 302, 321 respectively. The provisions of Sections 225, 301 and 302 of the Code are in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution of India.

Let us discuss about the relation between police and prosecuting officer in criminal

administration. The police being an investigating officer investigates the offence alleged to be committed and after his investigation, if he satisfies that there is a *prima facie* evidence he files charge-sheet along discover and arresting the suspected accused if he does not satisfies about the commission of offence he may file a refer report. On filing of the charge-sheet prosecutor will come into the picture. He projects the case by oral and documentary evidence to the Court for determining the guilt of the accused.

Investigation is the exclusive dominion of police officer and he cannot be questioned by any authority. “In India as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities”<sup>3</sup>

“In the criminal justice system the investigation of an offence is the domain of the police. The power to investigate into the cognizable offence by the police officers is ordinarily not impinged by any fetters. However, such power has to be exercised consistent with the statutory provisions and for legitimate purpose”<sup>4</sup>.

Relationship between Investigating Officer and Public Prosecutor

Strictly to speak there should be not be any expressive relation between police and prosecutor. The independence of the prosecutor’s function stands at the heart of

1. *Babu v. State of Kerala*, (1984) Cr. LJ 499 (Ker) at 502

2. *Tharala Veerabhadran and others v. Government of A.P. and others*, ALD (Cr) 2-11(1) P.90 APHC

3. *H.N. Risbud and Indersingh v. State of Delhi*, (1955) 1 SCR 115

4. Para 29 of *Manohar Lal Sharma v. Principal Secretary and others*, 2013 STPL (Web) 1017 (SC)

the rule of law. Prosecutors are expected to behave impartially.

“the purpose of a criminal trial is not to support at all cost a theory, but to investigate the offence and to determine the guilt or innocence of the accused and the duty of the prosecutor is to repress not to the police, but the State and his duty should be discharged by him fairly and fearlessly and with a full sense of responsibility that attaches to his position”<sup>5</sup>

“Public Prosecutor. Does not represent any one party or take a particular side of litigation Court regards him as an officer of Court”<sup>6</sup>

The investigation and prosecution process aim to achieve the same outcome that of efficient, fair and robust prosecutions to deliver justice for victim, witnesses and the public. To achieve this outcome it is essential that the respective functions are seen as interdependent. The principle of independent functions. Carried out to achieve interdependent outcomes is agreed by both police and prosecuting service.

Though prosecutors have no power to initiate and conduct investigation, the police seeks legal advice from prosecutors during investigation. The police respects and complies with the legal advice given by prosecutors. However prosecutors have no legal authority to direct or supervise the police.

“it is open to the police to get the best legal opinion but it is not obligatory for them to take the opinion of the PP for filing of charge-sheet”<sup>7</sup>

The relation between the police and prosecution can be explained in three stages pre-trial, during trial and after trial. In pre-trial, the investigating officer may consult

Public Prosecutor in respect of invoking required section of law and as well as bail opposed by way of representing the State further the investigating officer may approach the prosecutor to file miscellaneous petitions *viz.*, police custody, cancellation of bail, *etc.*, in the Court. During the trial the investigating officer shall assist the prosecutor in producing sufficient evidence to prove the case and post trial stage the investigating officer obtains the opinion of Public Prosecutor in order to decide whether the case acquitted is fit to prefer an appeal and also appeal for adequate punishment.

*Role of Prosecutor in Investigation* : It is to be remembered that there is no express provision to empower the prosecutor to involve in investigation. Section 25 of the Code of Criminal Procedure says as follows

“Provided that a police officer shall not be so appointed—(a) if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted;.....”

“no investigating agency can be compelled to seek opinion of a Public Prosecutor under order of Court”<sup>8</sup>

“the Public Prosecutor is not involved in investigation”<sup>9</sup>. At any rate no investigating agency can be compelled to seek opinion of a Public Prosecutor under the orders of Court. The IO cannot be directed to consult the PP and submit a charge-sheet in tune with the opinion of PP. Section 173(3) casts. An obligation for completing the investigation without unnecessary delay and sub-section (2) of Section 173 enjoins on the Officer in-charge of police station to forward to the Magistrate a report in the form prescribed by the State Government on completion of such investigation. The aforesaid power of the Officer in-charge of police station is

5. *Thakur v. State of M.H.*, (1994) 4 SCC 602

6. ALD (CrI) 2011 P.No.90(1)

7. (2004) 4 SCC 461

8. *Sarala v. Velu*, (2004) 4 SCC 459

9. *P.P. Abdulla v. Competent Authority*, AIR 2007 SC 1057

subjected only to supervision of the superior police officer in rank as envisaged in Section 36 of the Code. There is no stage during which the IO is legally obliged to take the opinion of P.P. or any authority<sup>10</sup>.

In a recent judgment delivered by the A.P. High Court in *Bethalam Subbarao v. Superintendent of Police (Urban) Guntur*, (WP No.39478/2013 decided on 5.3.2014) it was held by the Lordships @ as several such cases of legal opinions being sought from and given by the Public Prosecutors have come to the notice of this Court and as the Public Prosecutors appointed by State Government under Section 24(3) and (8) CrPC are subordinates to D.O.P in terms of Section 25-A(6) CrPC, the DGP shall forthwith issue instructions to the DOP to make the Public Prosecutor aware of the law declared by SC and this Court in the afore said judgment; and they should refrain from giving their legal opinion on whether or not the evidence collected by the IO, during the course of investigation necessitates a charge-sheet being filed under Section 173(2) CrPC”.

However it is opt to refer Order 479-5 of A.P. Police Manual Part-I (volume-11) which says “after completion of the investigation the SHO shall forward the file along with Form 67 to the APP for his opinion whether the material is sufficient to charge the case and also discuss with the

APP in person”. The apex Court, held in recent judgment in *State of Gujarat v. Kishan Bhai etc.*, 2014 STPL (web) 15 SC, in Para 19 “on the completion of the investigation in a criminal case, the prosecuting agency should apply its independent mind and require all shortcomings to be rectified, if necessary by requiring further investigation”

Apart from the rulings mentioned supra, the Public Prosecutor invariably plays a vital role in criminal administration and the same has been appreciated by the Courts in various judgments like filing Section 311 CrPC petitions for recalling, adding witness, Section 216 CrPC for adding or altering charges in charge-sheet, Section 319 for adding of the accused person during the course of trial nevertheless these are the powers and duties of the investigating officer enunciated under Section 156 CrPC. The Assistant Public Prosecutor if the situation warrants file a memo under Sections 242(3) and 244 CrPC in order to produce further evidence which the investigating officer fails to collect.

The Public Prosecutor is being minister of justice he provides sufficient legal equipment to police and guides them to investigation by way of giving valuable opinions and represents the dossier before the Court of ultimately strives for justice. Public Prosecutor though confined to trial as according to laws and precedents but in practical and logical he plays a key role both in investigation and trial.

## DEVELOPMENT OF BANKING INSTITUTIONS AND FINANCIAL INSTITUTIONS IN INDIA AND THE PRESENT STATUTORY LAWS GOVERNING BANKING INSTITUTIONS – A BRIEF STUDY

By

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1. Today Banks, whether Nationalised or Private are in great competition and the common sight even in a remote village is a

bank. This expansion of banks began from the middle of the 20th Century. The banks are felt necessary by every one whether a

<sup>10</sup>. *R. Sarala v. T.S. Velu* and in *Satyanarayana v. Government of A.P.* GAD, 1997 (3) ALD 784 (DB)