

The Role of Public prosecutor in Administration of Justice

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Abstract: Over the years, courts in India have consistently held that offences ought to be dealt with sternly and severely as undue sympathy to impose inadequate sentence and do more harm to the system and undermine public confidence in the efficacy of law.¹ The conviction rate is largely affected by the quality of investigation, Insufficiency of evidence due to poor investigation and the standard of proof prescribed by law to send the case to trial. Poor prosecution due to a total lack of coordination between the investigator and prosecutor. The propensity of offenders to plead guilty also has a significant bearing on the conviction rate. This is totally out of row.

Keywords: Public prosecutor, Justice, Administration

1. Introduction

The level of application of forensic science in crime investigation is some-what low in the country, with only 5-6% of the registered crime cases being referred to the FSLs and Finger Print Bureau put together Witness are turning hostile due to threat from other side and at times the family themselves forces the victim not to give evidence, especially when the accused is a family member, near relative or an influential person in the community. Also Judges do not deliver Judgments for years. As a result the Judge may forget important aspects thereby contributing to failure of justice. Also the Judgments are not promptly signed after they are typed and read causing great hardship to the parties. The main objective of the criminal trial is to determine whether an accused person has violated the penal law and where found guilty, to prescribe the appropriate sanction. Prosecution is an executive function of the state and is usually discharged through the institution of the prosecutor. The burden of proof rests on the prosecution as per the prescribed standard of proof. The prosecutor faces several problems in proving the guilt of the accused person. Some of these problems fall beyond the scope of his duties and responsibilities. The legal framework, the law enforcement infrastructure and the quality of the personnel operating within the legal system, amongst other factors, considerably affect the conviction rate.¹

2. The Public Prosecutor

Section 2 (U) of the code of Criminal Procedure provides some initial idea about that who is a public prosecutor. The section provides that "Public Prosecutor" means any person appointed under section 24, and includes any person acting under the directions of a Public Prosecutor; as per section 24 the central or the state government or the District magistrate can appoint

as many Public Prosecutor, Assistant Public Prosecutor or Special Prosecutor in their respective states and districts. The section further provides that A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub- section (1) or sub- section (2) or sub- section (3) or sub- section (6), only if he has been in practice as an advocate for not less than seven years.

3. The Duty of Public Prosecutor

The function of the public prosecutor relates to a public purpose entrusting him with the responsibility of acting only in the interest of administration of justice. The duty of public prosecutor is to present the State in various criminal/civil cases in courts and to tender legal advice on various departmental matters while posted in departments. However, 'Public Prosecutor' is defined in some countries as a "public authority who, on behalf of society and in the public interest, ensures the application of the law where the breach of the law carries a criminal sanction and who takes into account both the rights of the individual and the necessary effectiveness of the criminal justice system".² The 'independence' of the prosecutor's function stands at the heart of the rule of law. Prosecutors are expected to behave impartially. Prosecutors are gatekeepers to the criminal justice process as stated by Avory J in R v. Banks 1916 (2) KB 621. The learned Judge stated that the prosecutor, "throughout a case ought not to struggle for the verdict against the prisoner but ought to bear themselves rather in the character of minister of justice assisting the administration of justice"

4. Role of Public Prosecutor during Trial

The 1st foremost important factor for the success of the prosecution is proper coordination between the prosecutor and the Investigating Officer. The papers before filing in Courts

¹ Kyoji Ishikawa, "Issues Concerning Prosecution in relation to Conviction, Speedy Trial and Sentencing"
(107th ITC, UNAFEI, 1997, Japan)

² The Law Commission of India , 197th Report on Public Prosecutor's appointments, 2006

would be scrutinized by the Prosecutor, and advice given wherever any deficiencies came to be noticed. Only after the rectification of the same, would the papers filed in Court. The Prosecutor would keep a close watch on the proceedings in the case, inform the jurisdictional police, and get the witnesses on dates of trial, refresh the memory of witnesses where necessary with reference to their police statements, and examine the witnesses, as far as possible at a stretch.³ But now a days it is not practiced as stated. Moreover the ingredients of the offence are not clearly brought out in the charge sheet or in the supporting documents, due to which the cases results in acquittals. Also at times the IO is indifferent to the court proceedings and has to be summoned to court to give evidence. When the officials come to depose, they are not prepared with the facts of the case and hence fumble, making mistakes which prove detrimental to the case. Trainee doctors in public hospitals, who are generally on duty at night when cases are brought in, sign the medical reports. But when the case comes up for trial, they may have completed their internship and might have returned to their native place. Tracking them becomes difficult and proving the medical report without their help is a major problem in court, despite the medical documents supporting the prosecution version. She added that doctors feel intimidated during cross examinations and there is a general fear of courts in the minds of most doctors. Only a few medical officers are well versed with the process of cross examination. At times the family forces the victim not to give evidence, especially when the accused is a family member, near relative or an influential person in the community.

5. Poor Prosecution on the part of Public Prosecutor

So far as the system of prosecution is concerned, it is often seen that best legal talent is not availed of for placing its case before the court. The accused is normally represented by a very competent lawyer of his choice. There is a mismatch in that; an equally competent lawyer is not there to represent the prosecution. The burden of proof being very heavy on the prosecution, it is all the more necessary for the prosecution to be represented by a very able and competent lawyer. Lack of co-ordination between the investigation and the prosecution is another problem. This makes things worse. The investigation of a criminal case, however good and painstaking it may be, will be rendered fruitless, if the prosecution machinery is indifferent or inefficient. One of the well-known causes for the failure of a large number of prosecutions is the poor performance of the prosecution. In practice, the accused on whom the burden is little he is not to prove his innocence engages a very competent lawyer, while, the prosecution, on whom the burden is heavy to prove the case beyond reasonable doubt, is very often represented by persons of poor

competence, and the natural outcome is that the defence succeeds in creating the reasonable doubt on the mind of the court. When the accused appears or is brought before the court in pursuance of a commitment of the case. The prosecutor open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused. Thus the prosecutor plays a key role in the criminal justice system. Because he or she decides who will be charged, what charge will be filed, who will be offered a plea bargain, and the type of bargain that will be offered. The prosecutor also may recommend the offender's sentence. In *Babu vs. State of Kerala*,⁴ the Court observed that "Public Prosecutors are really Ministers of justice whose job is none other than assisting the state in the administration of Justice. They are not representative of any party. Their job is to assist the court by placing before the court all relevant aspects of the case. They are not there to see the culprits escape conviction." In *Balvant Singh vs. State of Bihar*⁵, the Hon'ble Supreme Court has pointed out that it is the statutory responsibility of the public prosecutor alone to apply his mind and decide about the withdrawal of prosecution and his power is non – negotiable and cannot be bartered away in favour of those who may be above him on administrative side. In *Subhash Chander vs. State*⁶, the Supreme Court stated that it is the public prosecutor alone and not any other executive authority that decides withdrawal of prosecution. In doing so, he acts as a limb of the judicial process and not as an extension of the executive. The fact that the "prosecutor controls the doors to the courthouse" may be particularly important in cases in which the credibility of the victim is a potentially important issue, such as sexual assault cases.

6. Withdrawal from Prosecution

Section 321 of the Code of Criminal Procedure provides for the withdrawal of public Prosecutor from Prosecution it says that the Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and, upon such withdrawal. if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences; if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences: Provided that where such offence was against any law relating to a matter to which the executive power of the Union extends, or was investigated by the Delhi Special Police Establishment under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or involved the misappropriation or destruction of, or damage to, any property

³ Justice V.S. Malimath Committee Report on, "Reforms of Criminal Justice System", 125 Vol - 1, March 2003, New Delhi

⁴ 1984 Cr LJ (Ker H.C)

⁵ AIR 1977 SC 2265

⁶ AIR 1980 SC 423

belonging to the Central Government, or was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty, and the Prosecutor in charge of the case has not been appointed by the Central Government, he shall not, unless he has been permitted by the Central Government to do so, move the Court for its consent to withdraw from the prosecution and the Court shall, before according consent, direct the Prosecutor to produce before it the permission granted by the Central Government to withdraw from the prosecution. the Supreme Court has pointed out in *Balvant Singh v. State of Bihar*⁷ that it is the statutory responsibility of the public prosecutor alone to apply his mind and decide about withdrawal of prosecution and this power is non-negotiable and cannot be bartered away in favour of those who may be above him on the administrative side. In *Subhash Chander v. State*⁸ the Supreme Court stated that it is the public prosecutor alone and not any other executive authority that decides withdrawal of prosecution. Consent will be given by the Public Prosecutor only if public justice in the larger sense is promoted rather than subverted by such withdrawal. In doing so, he acts as a limb of the judicial process, and not as an extension of the executive. He has to decide about withdrawal by himself, even where displeasure may affect his continuance in office. None can compel him to withdraw a case. The public prosecutor is an officer of the Court and is responsible to the Court.

7. Conclusion

The 'independence' of the prosecutor's function stands at the heart of the rule of law. Prosecutors are expected to behave

ⁱ Justice J.S Verma, "Report of committee on Amendment in Criminal Law 2013", New Delhi 2013

impartially. The Prosecutor has a duty to the State, to the accused and to the Court. The Prosecutor is at all times a minister of justice, though seldom so described. It is not the duty of the prosecuting counsel to secure a conviction, nor should any prosecutor even feel pride or satisfaction in the mere fact of success. Still less should he boast of the percentage of convictions secured over a period. The duty of the prosecutor, as I see it, is to present to the tribunal a precisely formulated case for the Crown against the accused, and to call evidence in support of it. If a defence is raised incompatible with his case, he will cross-examine dispassionately and with perfect fairness, the evidence so called, and then address the tribunal in reply, if he has the right, to suggest that his case is proved. It is not rebuff to his prestige if he fails to convince the tribunal of the prisoner's guilt. His attitude should be so objective that he is, so far as humanly possible, indifferent to the result. It may be argued that it is for the tribunal alone, whether magistrate or jury, to decide guilt or innocence.⁹ It is now well settled that Prosecutors are independent of the police and the Courts. While the police, the Courts and the prosecutors have responsibilities to each other, each also has legal duties that separate them from others. The prosecutor does not direct police investigations, nor does he advise the police. Public Prosecutors are part of the judicial process and are considered to be officers of the Court. The Government should ensure that public prosecutors are independent of the executive, and are able to perform their professional duties and responsibilities without interference or unjustified exposure to civil, penal or other liability.

⁷ AIR 1977 SC 2265

⁸ AIR 1980 SC 423

⁹ Christmas Humphreys (1955 Criminal Law Review 739 (740-741))