

an unnecessary strain on the time and conscience of the Court. Whenever there is a matter involving fundamental right in which allegations of *mala fide* are made, it may be that the Court may find it useful to give an indication in making a summary order how its mind has been affected but to insist that in every case where a person chooses to invoke the jurisdiction of this Court a speaking order should be delivered is a proposition which is hardly tenable and finds no shred of support from authority. It has been suggested by Mr. Gujral, that it would be a sufficient compliance if the order merely mentions that the Court does not find any substance on merits before dismissing the application, but in our view this is no more than a device and does not commend itself to us because it would amount to passing a virtual order of dismissal with the addition of a few words to give it the cloak of a speaking order. It is a matter in each case to determine for the Court which chooses to pass an order of dismissal to advert to the reasons which actuated it in so doing or content itself by simply dismissing it.

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We, would, therefore, answer the question posed in the beginning of this order in the negative and dismiss this petition with costs. In this view of the matter, we do not consider that it is within the province of this Court to embark afresh on the merits of the petition which has already been dismissed by a Bench of this Court.

GURDEV SINGH, J.—I agree.

B.R.T.

REVISIONAL CRIMINAL

Before S. K. Kapur, J.

ROOP K. SHOREY,—*Petitioner.*

*versus*

THE STATE,—*Respondent.*

Criminal Revision No. 134-D of 1964.

*Code of Criminal Procedure (Act V of 1898)—Ss. 493 and 495—Ambit and scope of—Private counsel of complainant—Whether can examine or cross-examine witnesses and address arguments—Permission of the Court—Whether necessary—Interpretation of Statutes—Rule as to, stated.*

1965

May, 28th

*Held*, that so long as the Public Prosecutor does not abdicate his functions and retains with himself control over the proceedings, a private counsel can examine or cross-examine the witnesses or even address arguments. Comparison of sections 493 and 495, Criminal Procedure Code, shows that it is only when a private counsel is entrusted with the independent charge of the case that permission is necessary under section 495, Criminal Procedure Code. So long as he acts under the supervision, guidance or control of the Public Prosecutor, he can examine and cross-examine the witnesses. The dichotomy in section 493, Criminal Procedure Code, is between "conducting the prosecution" and "acting under the directions of the Public Prosecutor." "Conducting the prosecution", therefore, must mean taking charge of the entire proceedings free from any guidance and control by any one else. The same meaning must be given to the words "prosecution to be conducted" in section 495, Criminal Procedure Code. It follows, therefore, that if a private counsel is to be given a complete charge of the prosecution case so that he can conduct the case independently of the Public Prosecutor, a permission is necessary. So long as a private counsel acts under the guidance and control of the Public Prosecutor, he is entitled to so act under section 493, Criminal Procedure Code.

*Held*, further that so long as the Public Prosecutor conducts the prosecution in the sense that he determines all important questions of policy involved in the course of the trial and the attitude to be adopted by the prosecution and keeps control and guidance with himself, section 493, Criminal Procedure Code, is not violated. The whole object of sections 493 and 495 is that no private party should, when a case has been taken over by the State, be permitted to wreak his personal vengeance which may inevitably result in case the charge of the prosecution is handed over to a private party. The salutary provisions are based on the well-accepted principle that the Public Prosecutors must work as ministers of justice assisting the State in the administration of justice and not as representatives of a party. If Public Prosecutors are permitted to efface themselves and allow the prosecution to be conducted by a private party, it may be nothing short of legalized means authorising a private party to wreak his personal vengeance. Public Prosecutors are expected to act in a scrupulously fair manner and present the case with detachment and without anxiety to secure a conviction. If this principle is allowed to be departed, it may result in a serious peril to the rule of law. The Court trying the case must scrupulously guard the interest of the case and must not permit a Public Prosecutor to surrender his functions completely in favour of a private counsel. The word "act" in section 493, Criminal Procedure Code, is not used in its technical sense in contra-distinction to "appear and plead". In the context this expression must mean and include the power to examine and cross-examine witnesses and address the Courts.

*Held*, that the language of a statute constitutes the depository or reservoir of the legislative intent, and in order to ascertain or discover that intent, the statute must be construed as a whole just as it is necessary to consider a sentence in its entirety in order to grasp its true meaning. Meanings of certain words used in a section may be construed by attending to such other provisions of the statute as may tend to throw light upon them. This is a principle based upon human experience with man's modes of expression and the inevitable limitations of language.

*Petition for revision under sections 435/439 Cr. P.C. of the Order of Shri P. P. R. Sawhney, District & Sessions Judge, Delhi, dated the 24th December, 1964, affirming that of Shri V. P. Dhir, S.D.M., Delhi, dated the 24th May, 1963.*

BALRAJ TRIKHA, ADVOCATE, for the Petitioner.

D. R. SETHI, ADVOCATES, FOR STANDING COUNCIL AND S. N. ANAND, ADVOCATE, for the Complainant.

#### ORDER

KAPUR, J.—This criminal revision is directed against the order of the learned Sessions Judge, Delhi, dated the 24th December, 1963, and raises the question of construction of sections 493 and 495, Criminal Procedure Code. The first information report was lodged against the petitioner Roop K. Shorey alleging that he had committed an offence under section 420, Indian Penal Code. Charge was framed in pursuance of the said first information report and the examination of the prosecution witnesses started on 2nd March, 1963, with the examination of Ram Parshad complainant. His cross-examination commenced on 5th March, 1963, and continued on 6th March, 1963. Mr. R. L. Anand, Advocate, appeared on these days on behalf of Ram Parshad, complainant. It has been alleged by the petitioner that instead of the Public Prosecutor, Mr. Anand conducted the examination-in-chief of the first prosecution witness and put all types of leading questions to him. On an objection on behalf of the petitioner that Mr. Anand had no authority to appear on behalf of the complainant, he filed his power of attorney on 6th March, 1963. It is further alleged that even when Ram Parshad was being cross-examined Mr. Anand took active part in conducting the prosecution and the Public Prosecutor appointed for the Court merely remained as a silent spectator.

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On 6th March, 1963, an application was made on behalf of the petitioner and it is necessary to refer to some of the allegations made therein. It was, *inter alia*, alleged in the application that (a) there was a regular Public Prosecutor appointed for the Court who was incharge of prosecution but still it was Mr. Anand who was acting and pleading on behalf of the prosecution independently; (b) there was no power or authority from the Public Prosecutor in favour of Mr. Anand entitling him to conduct the prosecution; (c) Mr. Anand could not conduct the prosecution without the express permission of the Court granted to him; (d) the Public Prosecutor was not taking any active interest in the case and was merely a silent spectator; (e) constant interference by Mr. Anand was causing great prejudice to the defence; and (f) in view of the provisions of section 493, Criminal Procedure Code, Mr. Anand was not competent to conduct the prosecution. A reply was filed on behalf of the complainant on 16th March, 1963, and it was *inter alia* stated therein that an application was made to Shri Baldev Raj, Magistrate, First Class, for grant of permission to Shri Anand to conduct the prosecution and Shri Baldev Raj announced an order that he had granted permission but the complainant was not aware that there was no such order in writing. It was not necessary that permission under section 495 should have been granted in writing. The objections raised by the petitioner were belated and, therefore, could not be entertained. This reply has been signed by Shri I. M. Lall, Advocate, and submitted in reply to the written arguments filed in the Court on behalf of the petitioner. There is another reply which is dated 15th March, 1963, signed by Shri S. N. Anand, Advocate, on which reliance has been placed by both the sides. This reply is not available on the record and a copy thereof has been supplied by Shri S. N. Anand, the learned counsel for the respondent. It is *inter alia* stated in the said reply that (a) Shri Ram Lal Anand had been handling the proceedings for the last over five years. On 15th February, 1958, the complainant by an application sought the permission of the Court to have this case conducted by a counsel of this choice. He mentioned the name of Shri Anand and prayed for adjournment of the case as Shri Anand needed copies of the material under section 173, Criminal Procedure Code, and the case was actually adjourned. Again on 17th February, 1958, the case was adjourned at the request of Shri Anand

because he was busy in another case. The petitioner filed an application under section 561-A, Criminal Procedure Code for quashing the proceedings pending in the trial Court and this application was also opposed by Shri Anand. In the circumstances the permission should be taken to have been granted to Mr. Anand to conduct the prosecution; (b) no order or permission could be shown to the Court because the record for the year 1958 was not available on the judicial file of the trial Court, but there was an irrebuttable presumption of law about the official acts having been regularly done; and (c) the Court Inspector was always present when the case was taken up but he did not take any active part in the proceedings because Shri Anand continued to be incharge of the prosecution case.

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Mr. Balraj Trikha, the learned counsel for the petitioner, has very strongly relied on paragraphs 3 and 5 of the said reply which, according to the learned counsel, is an admission of the fact that Shri R. L. Anand was conducting the prosecution. The learned trial Magistrate, however, dismissed the application of the petitioner. According to him the pivotal point in the case was whether or not permission had been granted to Mr. Anand for conducting the case on behalf of the prosecution. That, as I shall discuss later, was in the circumstances, not the correct approach to the problem but the matter proceeded mainly on these lines both before the trial Court and the learned Sessions Judge. Aggrieved by the order of the trial Magistrate the petitioner filed revision before the Sessions Judge, Delhi, which was dismissed by his order, dated 24th December, 1964. Before the learned Sessions Judge it was *inter alia* contended that permission had been granted by Shri Baldev Raj, Magistrate, who was initially trying the case. In view of this assertion on the part of the complainant, the learned Sessions Judge by his order, dated 3rd August, 1963, directed that statement of Shri Baldev Raj, Magistrate, be recorded. The said statement was accordingly recorded by Shri V. P. Dhir, Magistrate. Shri Baldev Raj stated that he had not given any permission in writing or verbally to Shri Ram Lal Anand to appear for the prosecution. He also stated that he had given no permission to the complainant to engage Shri R. L. Anand, as a counsel for the prosecution. I will, therefore, assume that no permission had been given to Mr. Anand

Roop K. Shorey as alleged in the reply. The learned Sessions Judge also considered the question of permission as crucial in the case. He said, "the crucial point that required determination in this case is whether any permission was accorded to Shri Ram Lal Anand for conducting the case on behalf of the prosecution by Shri Baldev Raj, and if not, whether the conducting of the case by Shri Ram Lal Anand on behalf of the prosecution in the absence of any permission having been granted by the Court under section 495, Criminal Procedure Code, would be an illegality or irregularity curable under section 537, Criminal Procedure Code." From the various circumstances set out in the order of the learned Sessions Judge he came to the conclusion that no prejudice had been caused to the accused and the proceeding could not be held to have been vitiated on the ground that the prosecution was conducted by Shri Anand. He accordingly dismissed the revision petition with an observation that it will be open to the learned Magistrate to exercise his discretion whether or not to allow Shri Ram Lal Anand, Advocate, to continue to conduct the prosecution, taking into consideration the provisions of section 495, Criminal Procedure Code.

The learned counsel for the petitioner has raised the following contentions (a) having regard to the provisions of section 495, Criminal Procedure Code, Mr. Anand could not appear for a private party, the complainant, without the express permission in writing by the Magistrate trying the case; (b) Mr. Anand filed his power of attorney on 6th March, and all proceedings taken before that date stand vitiated because he had no written authority, on behalf of the complainant to appear in Court; (c) non-compliance with the provisions of sections 493 and 495 constitutes an illegality which is not curable under section 537, Criminal Procedure Code; and (d) even if non-compliance with the aforesaid provision be an irregularity a serious prejudice has been caused to the petitioner particularly because of the interference and the leading nature of the questions by Mr. Anand and the trial is, therefore, vitiated. According to the learned counsel there would be non-compliance with section 493, Criminal Procedure Code, if a private counsel conducted the proceedings and the Public Prosecutor witnessed them as a silent spectator.

Mr. S. N. Anand, the learned counsel for the respondent, on the other hand submits that (a) complainant's

counsel appearing in the case need not have a power of attorney; (b) Mr. Anand had been appearing on behalf of the complainant for a period of over five years and the petitioner could not be allowed to raise the objection at such a late stage; (c) non-compliance with sections 493 and 495. Criminal Procedure Code, is a mere irregularity curable under section 537; (d) so long as control over the proceedings remains with the Public Prosecutor, section 493, Criminal Procedure Code, is fully complied with. Since the Public Prosecutor was admittedly present in Court attending to the proceedings, there was no irregularity or illegality committed and (e) in view of the definition of the word 'Public Prosecutor' in section 4(t) of the Criminal Procedure Code, Mr. Anand was also a Public Prosecutor within the meaning of section 493 and, therefore, he was entitled to conduct the prosecution. I may straightway say that I do not agree with Mr. Anand that the objections has been raised at a late stage. The examination of the witnesses started on 2nd March, 1963, and it was only thereafter that the petitioner could raise the objection which he did by his application, dated 6th March, 1963. Regarding the contention that Mr. R. L. Anand appeared without objection right up to the High Court in proceedings for quashing of the charge, I am of the opinion that that would not disentitle the petitioner to raise the objection after the examination of the witnesses commenced. It is only after the commencement of evidence that the petitioner could say that Mr. Anand had taken the conduct of the proceedings in his own hands and the Public Prosecutor had completely effaced himself and surrendered his functions. Regarding the arguments of Mr. Trikha that non-compliance constitutes an illegality, I need not decide that question because, in my view, there has been no non-compliance with sections 493 and 495 in this case.

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I now proceed to consider the ambit and scope of the said two provisions. It is well settled that the language of a statute constitutes the depository or reservoir of the legislative intent, and in order to ascertain or discover that intent, the statute must be construed as a whole just as it is necessary to consider a sentence in its entirety in order to grasp its true meaning. Meanings of certain words used in a section may be construed by attending to such other provisions of the statute as may tend to throw light upon them. This is a principle based upon human

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experience with man's modes of expression and the inevitable limitations of language. It would, therefore, be legitimate to construe the meaning of the words in section 493 in the light of the provisions of section 495 and *vice versa*. Applying these principles I am of the opinion that so long as the Public Prosecutor does not abdicate his functions and retains with himself control over the proceedings a private counsel can examine or cross-examine the witnesses or even address arguments. Comparison of sections 493 and 495, Criminal Procedure Code, shows that it is only when a private counsel is entrusted with an independent charge of the case that permission is necessary under section 495, Criminal Procedure Code. So long as he acts under the supervision, guidance or control of the Public Prosecutor, he can examine and cross-examine the witnesses. The dichotomy in section 493, Criminal Procedure Code, is between "conducting the prosecution" and "acting under the directions of the Public Prosecutor." "Conducting the prosecution", therefore, must mean taking charge of the entire proceedings free from any guidance and control by any one else. In my view the same meaning must be given to the words "prosecution to be conducted" in section 495, Criminal Procedure Code. It follows, therefore, that if a private counsel is to be given a complete charge of the prosecution case so that he can conduct the case independently of the Public Prosecutor, a permission is necessary. So long as a private counsel acts under the guidance and control of the Public Prosecutor, he is entitled to so act under section 493, Criminal Procedure Code. In *Medichetty Ramakistiah and others v. The State of Andhra Pradesh* (1), while dealing with section 270, Criminal Procedure Code, it was held that the mere fact that a pleader, privately instructed, has acted for the prosecution in a Sessions case does not involve the violation of section 270 if the conduct of the prosecution could be said to have been in the hands of the Public Prosecutor and that "act" in section 493 is not to be understood in the technical sense as meaning something distinct and different from the word "plead". It does not mean something other than examining or cross-examining witnesses or addressing Courts. It was further held that—

"Where the circumstances indicated that the Public Prosecutor had entirely effaced himself and

(1) A.I.R. 1959 And. Prad. 659.



given up his charge of the case to the counsel appearing for the private complainant leaving the entire conduct of the case to him, there was an irregularity in the trial which prejudiced the accused.”

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Again, in re: *Bhupalli Malliah and others* (2) Krishna Rao, J., held that—

“The word “to conduct” means “to lead, guide, manage” and section 493 merely requires that the Public Prosecutor should guide the prosecution and direct the private party’s advocate.”

In my opinion so long as the Public Prosecutor conducts the prosecution in the sense that he determines all important questions of policy involved in the course of the trial and the attitude to be adopted by the prosecution and keeps control and guidance with himself, section 493, Criminal Procedure Code, is not violated. The whole object of sections 493 and 495 is that no private party should, when a case has been taken over by the State, be permitted to wreak his personal vengeance which may inevitably result in case the charge of the prosecution is handed over to a private party. The salutary provisions are based on the well-accepted principle that the Public Prosecutors must work as ministers of justice assisting the State in the administration of justice and not as representatives of a party. If Public Prosecutors are permitted to efface themselves and allow the prosecution to be conducted by a private party it may be nothing short of legalized means authorising a private party to wreak his personal vengeance. Public Prosecutors are expected to act in a scrupulously fair manner and present the case with detachment and without anxiety to secure a conviction. If this principle is allowed to be departed, it may result in a serious peril to the rule of law. The Legislature, was therefore, conscious of this salutary rule of jurisprudence and it was in this view that it chose to enact sections 493 and 495, Criminal Procedure Code, which in effect recognise the principle aforesaid. The Court trying the case must scrupulously guard the interest of the case and must not permit a Public Prosecutor to surrender his functions completely in favour of a private counsel. But as I have said earlier so long as he keeps

(2) A.I.R. 1959 And. Prad. 477.

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the control with him, a private counsel can act in the case. I am further of the opinion that the word "act" in section 493, Criminal Procedure Code, is not used in its technical sense in contradiction to "appear and plead". In the context this expression must mean and include the power to examine and cross-examine witnesses and address the Courts. The examination of the witnesses started in this case on 2nd March, 1963. The Public Prosecutor was present in Court throughout the period when Mr. Anand was examining the witnesses. When the application was filed on 6th March, 1963, objecting to the appearance of Mr. Anand there was no occasion to come to the conclusion that the Public Prosecutor who had been present throughout had effaced himself. May be an occasion had not arisen when the Public Prosecutor thought that his interference was called for. The petitioner has, in my opinion, failed to show that the Public Prosecutor had effaced himself and completely surrendered his functions to the private counsel. Since Mr. Anand was not conducting the prosecution within the meaning of section 495, Criminal Procedure Code, no permission of the Magistrate was necessary. Regarding the absence of written authority in favour of Mr. Anand till 6th March, 1963, the petitioner cannot make a grievance of the same. That is a matter between the client and the counsel, so far as the complainant's counsel is concerned.

In the circumstances this petition must fail and is dismissed. The parties will appear before the trial Court on the 30th June, 1965. I do hope that the trial Court will bear in mind the principles of sections 493 and 495, Criminal Procedure Code, as discussed herein-above and see that the said provisions are scrupulously observed. Since the matter has been considerably delayed, the learned Magistrate will try to finish the case as early as possible.

B.R.T.

CIVIL MISCELLANEOUS

*Before A. N. Grover and S. K. Kapur, JJ.*

RAJ KUMAR,—*Petitioner.*

*versus*

UNION OF INDIA, AND ANOTHER,—*Respondents.*

Civil Writ 170-D of 1965.

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*Constitution of India (1950)—Art. 310—Resignation tendered by civil servant—Whether must be accepted—Acceptance of resignation—Whether must be communicated to the tenderer—Civil servant—Whether can withdraw his resignation.*