



GOVERNMENT OF KERALA

**Home (C) Department**

No. 264/C4/2017/Home

Thiruvananthapuram, dated: 18/09/2017

**C I R C U L A R**

Sub:- Home Department - Appointment of Special Public Prosecutors - Guidelines and Procedures - Modified - Reg.

- Ref:-
- 1 Government Circular No. 61153/C2/1991/Home dated 25.03.1992
  - 2 Circular No.95313/C4/14/Home dated 29/11/2014

Government had issued guidelines as per Circulars cited for appointment of Special Public Prosecutor under Section 24(8) of the Code of Criminal Procedure,1973 ('Cr. PC' for short). Now Government consider it necessary to revise the guidelines with certain modification and the following directions are issued.

As per the above said section, the Central Government or the State Government may appoint, for the purpose of any case or class of cases, a person who has been in practice as an Advocate for not less than ten years, as a Special Public Prosecutor. A large number of petitions are being received by the Government with requests to appoint Special Public Prosecutors in various criminal cases pending trial before various criminal courts in the State. In almost all petitions, the petitioners suggest the names of Advocates to be appointed. Special Public Prosecutors so appointed are eligible for regulation fee prescribed under Rule 32 of the Kerala Government Law Officers (Appointment and Conditions of Service) and Conduct of Cases Rules,1978. Note (C) to Rule 32 provides that the Government may, in special circumstances, sanction the payment of fees at a higher rate or a consolidated fee to the Special Public Prosecutor. The heavy financial burden shouldered by the Government in this behalf is over and above the huge expenditure incurred by the Government by way of salary and expenses to the duly appointed Public Prosecutors, Additional Public Prosecutors and Assistant Public Prosecutors in all the Districts of the State.

2) The nature of crime committed during the years has totally changed. Existing guidelines are totally inadequate for the appointment of Special Public Prosecutors. Considering the multitude of ever increasing applications received by the Government for appointment of Special Public Prosecutors, a meticulous scrutiny of each and every application is highly necessary, and also considering the heavy financial commitment involved in the appointment and the legislative intervention by way of incorporation of the proviso to Section 24(8) of Cr. P.C. with effect from 31.12.2009, it has become necessary to formulate revised guidelines for the appointment of Special Public Prosecutors.

3) The revised guidelines formulated are as follows:-

a) The appointment of Special Public Prosecutors by the Government under

*Section 24(8) of Cr.P.C. shall be made by the Government either suo motu or on the basis of application by any aggrieved person only when public interest demands it and not to vindicate the grievances of private persons. However, such appointment shall be made only on being satisfied that the case cannot be adequately handled by any of the duly appointed Public Prosecutors, who are receiving salary out of Government funds and on being further satisfied that the case is highly sensational and generates extensive public interest of such magnitude as to necessitate the appointment of a more competent Advocate of good standing as a Special Public Prosecutor.*

b) The following among other categories of cases, shall ordinarily be considered for the appointment of a Special Public Prosecutor:-

- i) Cases such as heinous murder or kidnapping or rape particularly of minor and which are gruesome in character shocking the collective conscience of the community at large.
- ii) Offences against property having wide ramifications such as money chain dealings, cheating cases/ land grab cases, land mafia cases or other white collar crimes involving fabrication of records, documents etc, apartment frauds, investment fraud etc.
- iii) Cases involving police atrocities, custodial death, etc where the prime accused are police personnel.
- iv) Offences affecting human body in which hired assassins had been engaged.
- v) Crimes having Inter- State ramifications.
- vi) Crimes of major magnitude involving terrorism.

- vii) Cases investigated by Special Investigation Team constituted by Government under Sec. 21(2)(b) of the Kerala Police Act, 2011, and committed in an extremely brutal and dastardly manner due to political or communal vengeance so as to arouse intense indignation of the Community.
- viii) Cases which require specialised knowledge, such as cyber crimes, intellectual property rights.
- c) The appointment of Special Public Prosecutor shall be made only after consulting the District Police Chief concerned and only on the basis of the specific legal advice of the Director General of Prosecution regarding the scope for the absolute necessity of appointing a Special Public Prosecutor for effectively conducting the prosecution in the case under consideration. The District Police Chief shall obtain the willingness of the Advocate who is willing to conduct the case and report whether he is qualified to be appointed as Special Public Prosecutor under section 24(8) of Cr.P.C and has no vested interest and also with a declaration from the Advocate to the effect that she/he has no conflicting interest in the conduct of the case concerned and also whether she/he is willing to take up the assignment accepting regulation fee prescribed in the Kerala Government Law Officers (Appointment and Conditions of Service) and Conduct of Cases Rules, 1978. The willingness/consent of the advocate shall be in the prescribed format appended herewith.
- d) Petitions seeking appointment of Special Public Prosecutor may be rejected if the case under consideration does not come under any of the above categories. The petitioner in such petition shall be free to move the trial court concerned for engaging an Advocate to assist the prosecution as provided under the proviso to Section 24(8) Cr. P.C. In cases where the appointment of Special Public Prosecutor is ordered by the Government on the basis of a petition by an aggrieved person, the Government may or may not appoint the Advocate whose name is suggested by the aggrieved person. If the Government are not satisfied with the name suggested by the petitioner, the Government may in its discretion appoint another suitable or competent lawyer, as the Special Public Prosecutor. The Government may if considered necessary obtain specific legal advice from the Director General of Prosecution regarding the necessity of appointing a Special Public Prosecutor for effectively conducting the prosecution in the case under consideration.

e) In cases where the Government to appoint a Special Public Prosecutor to conduct the prosecution case, the Advocate so appointed shall be paid the Regulation fee as provided under Rule 32 of the Kerala Government Law officers (Appointment and Conditions of Service) and Conduct of Cases Rules, 1978.

f) If the Special Public Prosecutor makes a request for the appointment of a junior counsel at the expense of the Government the same will not be entertained when the appointment is made under Section 24(8) Cr. P.C.

4) The Government, if found necessary and in exceptional cases with the concurrence of the State Public Prosecutor may appoint a Special Public Prosecutor in the High Court of Kerala for the purpose of conducting any Appeal/Criminal Revision Petition or other criminal proceedings of the nature referred to in para 3 supra.

5) These instructions are issued in supersession of all existing instructions/orders on this matters and are subject to the provisions in the Cr.P.C, the Kerala Government Law Officers (Appointment and Conditions of Service) and Conduct of Cases Rules, 1978 and the judicial pronouncement in this regard and shall be scrupulously adhered to.


6) The Home (C) Department and the office of Director General of Prosecution will maintain a complete record of all Special Public Prosecutors engaged which will be reviewed by a Committee consisting of Home Secretary, State Police Chief and Director General of Prosecution every six months.

**V. VILASACHANDRAN NAIR**  
Additional Secretary to Government

To

The Director General of Prosecution, Ernakulam  
The State Police Chief, Thiruvananthapuram  
The Advocate General, Ernakulam  
All District Collectors  
All District Police Chief  
The Law Department  
I&PRD, Web & New media (for uploading in the Government website)  
SF/OC

Forwarded/By Order

  
Section Officer

**CONSENT**

I ..... (Name and address of the Advocate) bearing enrollment number ..... hereby express my consent to be appointed as Special Public Prosecutor in case No. .... (Details of the case) as per the conditions stipulated in Rule 32 of Kerala Government Law Officers (Appointment and conditions of Service) and conduct of cases Rules 1978 and having no conflicting interest in the conduct of the case'