

Reserved on : 12.08.2026
Pronounced on : 28.08.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 159 OF 2026

BETWEEN:

1. SHIVAKUMAR N.,
S/O LATE S.K.NAGARAJ,
AGED ABOUT 55 YEARS
RESIDING AT DOOR NO. 12/1,
4TH CROSS, NEAR NISARGA SCHOOL,
S.R.LAYOUT, BONE MILL,
SIDEDAHALLI, NAGASANDRA POST
BENGALURU NORTH - 560 073.
2. SMT. SUDHA SHIVAKUMAR
W/O SHIVAKUMAR N.,
AGED ABOUT 50 YEARS
RESIDING AT DOOR NO.12/1,
4TH CROSS, NEAR NISARGA SCHOOL
S.R.LAYOUT, NEAR BONE MILL
SIDEDHAHALLI, NAGASANDRA POST
BENGALURU NORTH - 560 073.

Digitally
signed by
CHETAN B C
Location:
High Court
of Karnataka

...PETITIONERS

(BY SRI MANJUNATH M., ADVOCATE FOR
SRI SHIVAJI H. MANE, ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY ASHOKAPURAM POLICE STATION
KRISHNARAJA SUB-DIVISION
MYSURU CITY
REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
AMBEDKAR VEEDHI
BENGALURU - 560 001.
2. MR.M.S.PRABHAKAR
S/O LATE T.SHRIKANTIAH
AGED ABOUT 66 YEARS
RESIDING AT HOUSE NO.1634
6TH MAIN, 5TH CROSS
VIJAYANAGARA 2ND STAGE
MYSURU - 570 017.

IMPLEADED VIDE COURT ORDER DATED 20.02.2026

...RESPONDENTS

(BY SMT.WAHEEDA M.M. , HCGP FOR R-1;
SRI M.S.PRABHAKAR, PARTY-IN-PERSON FOR R-2)

THIS CRL.P IS FILED U/S.482 (FILED U/S.528 BNSS) OF CR.P.C PRAYING TO QUASH THE IMPUGNED ORDER DATED 04.09.2025 (ANNEXURE A) PASSED IN C.C.NO.8505/2021 BY V ADDL. CIVIL JUDGE AND JMFC, MYSURU WHEREBY M.S.PRABHAKAR WAS PERMITTED U/S.302(2) CR.P.C. TO ENGAGE A PRIVATE COUNSEL AS SPECIAL PUBLIC PROSECUTOR AND CONDUCT PROSECUTION INDEPENDENTLY AND DIRECT THAT THE

PROSECUTION SHALL BE CONDUCTED ONLY BY THE STATE THROUGH THE PUBLIC PROSECUTOR, IN ACCORDANCE WITH LAW.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 12.08.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **HON'BLE MR. JUSTICE M.NAGAPRASANNA**

CAV ORDER

Petitioners/accused Nos.1 and 2 are before the Court calling in question an order dated 04-09-2025 passed by the V Additional Civil Judge and JMFC, Mysuru in C.C.No.8505 of 2021, whereby, an application filed by the 2nd respondent under Section 339 of the BNSS / Section 302(2) of the Cr.P.C., the earlier regime, permitting one M.S.Prabhakar, the husband of the deceased complainant, who is a completely unrelated party, to engage a private counsel as his prosecutor.

2. Heard Sri Manjunath M., learned counsel appearing for the petitioners, Smt. Waheeda M.M., learned High Court Government Pleader appearing for respondent No.1 and Sri M.S. Prabhakar, respondent No.2 - party-in-person.

3. Facts, in brief, germane are as follows:

3.1. It is the averment in the petition that one late S.K. Nagaraj executes a Will bequeathing a residential property bearing No.239 (New No.22), CH-31, 4th Main, Jayanagar, Mysore, in favour of his son - petitioner No.1, in the year 1995. The said S.K.Nagaraj is said to have died at Apollo BGS Hospital, Mysuru, in the year 2019. After the demise of S.K. Nagaraj, the 1st petitioner claiming to be sole legal heir attempts to enter into the possession of the property and attempts to secure all statutory records in his favour. A representation is made by the 1st petitioner seeking details relating to the death of S.K. Nagaraj and then seeks the help of respondent No.1 - police to register a crime against one Rekha Prabhakar, the de-facto complainant in the subject petition. It is the allegation that Rekha Prabhakar and her men are said to have caused problems to the petitioners claiming the property to be hers under a particular Will dated 24-04-2019. The grievance ends up in the registration of a crime by the de-facto complainant in Crime No.5 of 2020 for the offences punishable under Sections 454, 457, 380, 448 and 34 of the IPC. The Police conduct investigation and

file a charge sheet in C.C. No.8505 of 2021 for the offences punishable under Sections 380, 114 and 34 of the IPC.

3.2. The petitioners file a criminal petition in Crl.P.No.4020/2022 challenging the order of taking cognizance by the concerned Court, which was stayed at the hands of this Court on 10-08-2023. It later comes to be dismissed on 07-04-2025 with liberty to seek their discharge from the array of accused before the concerned Court. The issue in the *lis* does not relate to the merit of the matter. On 02-08-2025, the 2nd respondent/M.S. Prabhakar, husband of the de-facto complainant impleads himself as a legal heir of the de-facto complainant, who had by then died and files an application before the concerned Court under Section 339 of the BNSS / Section 302 (2) of the Cr.P.C., the earlier regime, seeking permission to engage a private counsel as his prosecutor. This comes to be allowed by the concerned Court on 04-09-2025, which action is called in question in the subject petition.

4. The learned counsel appearing for the petitioners would vehemently contend that the impugned order suffers from non-application of mind. The impugned order would transform

State controlled criminal proceedings into a privately driven adversarial exercise, thereby eroding the foundational principles of criminal jurisprudence. The petitioners would be deprived of their right to fair trial under Article 21 of the Constitution of India. The concerned Court travelled beyond its powers in permitting engagement of a private counsel, which authority is of the State under Section 24 of the Cr.P.C. The de-facto complainant is not the victim as defined under Section 2(1)(y) of the BNSS / Section 2(wa) of the Cr.P.C. Merely, by virtue of being the spouse of the deceased de-facto complainant, the 2nd respondent cannot get a right to control the prosecution. He would seek quashment of the proceedings.

5. *Per contra*, the 2nd respondent who appears in person takes this Court through the lapses on the part of the Police and would submit that no allegations are projected by the Public Prosecutor who was prosecuting the case. He would submit that the right to property of the complainant is taken away by the deceitful acts of the petitioners. Therefore, the order of the concerned Court is valid

and would seek to place reliance upon several judgments of the Apex Court or this Court to buttress his submissions.

6. I have given my anxious consideration to the submissions made by the respective learned counsel, and respondent No.2/party-in-person and have perused the material on record.

7. The afore-narrated facts are a matter of record, which would not require reiteration. What drives the accused to this Court is the order of the concerned Court dated 04-09-2025, which allows the application under Section 339 of the BNSS / Section 302(2) of the Cr.P.C. The order dated 04-09-2025, reads as follows:

"A1 & A2 are present and A3 to 5 are absent. EP filed & allowed.

L/APP present and submitted no objection to the application filed under Section 302(2) of CrPC.

Heard both sides and perused the materials.

To advance the cause of justice, application filed by the counsel for victim under Section 302(2) of CrPC is hereby allowed and accordingly, the husband of victim is permitted to engage counsel of his own choice as special public prosecutors to prosecute the case independently.

L/c for Acd filed application under Section 227/239 of CrPC seeking discharge of A1 to 5 from the case.

For objection to application. Call on 29-09-2025."

The application is filed by the 2nd respondent - party-in-person, seeking engagement of a separate counsel on his behalf, of his choice. The application reads as follows:

"Application U/s 302(2) of Cr.P.C /r.w.339 BNSS

I, as a Victim, M. S. Prabhakar - husband of the victim - Rekha Prabhakar, it is submitted as follows :

2). According to the definition of the victim denoted U/s 2(wa) of the code of Criminal Procedure. & also as per the corresponding provision of BNSS Act, the applicant - here-in also defined as ' Victims' - in its wide and inclusive definition.

3). During the life time of Smt. Rekha Prabhakar, an application was moved before the Hon'ble court, invoking the provisions of section 302(2) Cr. P. C., seeking permission of this Hon'ble Court for appropriate order for availing the services of an Advocate of their choice. But Smt. Rekha Prabhakar who was my wife is no more , having passed away, (her death certificate annexed along with this application) and the above said application by her will not survive, Hence this application.

4). I being the husband of the deceased - Smt. Rekha Prabhakar, am requesting this Hon'ble Court for suitable Orders for providing service of the Advocate my choice as per law, with Sri. H. D. Anand Kumar, B. Com. LLB, Advocate & Sri Ajith Kumar Hamigi B. Com LLB, Advocate, Door No. 31, 1st Cross, 18th main, Saraswati puram, Mysore -9

5). It is to be noted that the Investigating Officer, filed charge sheet against the accused person punishable U/s 380, 114 & 34 of I.P.C., the entire charge sheet may be read as part & parcel of this application for the purpose of appreciation.

6). In support of my application, I'm also filing the LANDMARK JUDGEMENT of SCI of India in

- i. Dhariwal industries. VS Kishore Wadhwani & Others,
- ii. Asian Paints Ltd Vs Ram Babu & Anr, and State of Rajasthan.
- iii. And for the Right of the victims' ratio laid down by the SC of India in Jagajith Singh VS Ashish Mishra @ Mono & anr. in SLP, Cr. No 2640/2022, reported in 2022 Live Law SC.
- iv. Collection of citations (5) with regard to Section 302(2) & 302(1) of Cr. P. C

7). It is Pertinent to note that, in this case, the I. O. made perfunctory investigation & has left out many of the important facts & evidences to be produced before this Hon'ble Court. Hence I'm filing separate application seeking further investigation, as empowered U/s 173(8) of the Cr. P. C.

8). It is most respectfully Prayed before this Hon'ble court, that as per the ratio laid down in the aforesaid decision, **Victim has to be given the right of participation in the prosecution proceedings Independently As well with the support of the Legal Experts. Hence Victim may be permitted to be ordered to prosecute the matter by engaging the Above Referred Advocates, in the interest of justice.**

9). Copy of this SC judgement is annexed herewith.

I will request the concerned Advocates, as consented by them, after the Direction of this Hon'ble court.

Prayer: It is most respectfully prayed that this Hon'ble court may be pleased to permit the victim applicant as legal representative of the informant complainant to engage advocate of their choice - Sri H.D.Anand Kumar and Sri Ajith Kumar Hemigi as Special Public Prosecutors to prosecute the above case Independently as per the provisions."

(Emphasis added at each instance)

The application is filed under Section 339 of the BNSS / Section 302(2) of the Cr.P.C. The complainant/respondent No.2 herein is in the shoes of the victim is an undeniable fact. The purport of Sections 301 and 302 of the Cr.P.C is required to be noticed. The statutory successor of the said provisions is Sections 338 and 339 of the BNSS. They read as follows:

"338. Appearance by Public Prosecutors.—(1) The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.

(2) If in any such case any private person instructs his advocate to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the advocate so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case.

339. Permission to conduct prosecution.—(1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of inspector; but no person, other than the Advocate-General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission:

Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

(2) Any person conducting the prosecution may do so personally or by an advocate.”

The application is preferred under Section 339(2) of BNSS / Section 302(2) of Cr.P.C. It renders a right to any person conducting the prosecution may do so personally or by an advocate. The circumstances under which it can be permitted requires no deeper delving except noticing the law laid down by the Apex Court and other High Courts. Section 338 of the BNSS, which is Section 301 Cr.P.C., deals with the power of assistance to be rendered by a victim to the prosecutor. Section 302 of the Cr.P.C., which is replaced by Section 339 of the BNSS, operates on a different footing.

8. In furtherance of the aforesaid submissions, two issues arise for consideration. The first issue would be, whether respondent No.2 - party in-person would fit in the definition of a victim under Section 2(1)(y) of the BNSS / Section 2(wa) of the Cr.P.C., as he has now stepped into the shoes of the de-facto complainant on her death, being the spouse. The issue need not detain this Court for long or delve deep into the matter. The Apex

Court in the case of **KHEM SINGH (D) THROUGH LRs v. STATE OF UTTARANCHAL**¹, has held as follows:

" "

7.4. On a reading of the definition of 'victim', it is clear that the said expression is initially exhaustive and thereafter inclusive. **The expression 'victim' means a person who has suffered any loss or injury. The loss or injury could be either physical, mental, a financial loss or injury. The expression 'injury' could also be construed as a legal injury in a wider sense and not just a physical or a mental injury.** The loss or injury must be caused by reason of an act or omission for which the accused person has been charged. Thus, it can be both by a positive act or negatively by an omission which is at the instance of the accused and for which such accused has been charged. **Further, the expression 'victim' also includes his/her guardian or legal heir in the case of demise of the victim.**

7.5. Thus, the expression 'victim' has been couched in a broad manner so as to include a person who has suffered any loss or injury. The expressions 'loss' or 'injury' themselves are of a very broad import which expressions also enlarge the scope of the expression 'victim'. **Further, the expression 'victim' includes not only the person who has suffered any loss or injury caused by reason of any act or omission for which the accused person has been charged but also includes his or her guardian or legal heir which means that the definition of victim is inclusive in nature.**

7.6. Having regard to the insertion of the proviso to Section 372 CrPC, we find that in the case of a victim who seeks to file an appeal, he or she could proceed under the proviso to Section 372 CrPC in the circumstances mentioned therein and need not prefer an appeal by invoking Section 378(4) CrPC which is in respect of appeals to be filed by a complainant. It may be that the complainant is a victim in

¹ 2025 SCC OnLine SC 1778

certain cases and therefore, the victim has the right to file an appeal under the proviso to Section 372 CrPC and need not proceed under Section 378(4) CrPC. However, if the complainant is not a victim and intends to file an appeal, in such a case a complainant would have to proceed under Section 378 CrPC which circumscribes the right to file an appeal by virtue of the conditions which are stipulated under the said Section.

7.6.1. The word 'victim' is derived from the latin word "victima" and originally contained the concept of sacrifice. In more contemporary times, the term 'victim' has been expanded to imply a victim of war, an accident, a scam, etc. As a scientific concept, according to Criminologist B. Mendelsohn (1976), a victim may be viewed as containing four fundamental criteria which are as follows:

- The **nature of the determinant** that causes the suffering. The suffering may be physical, psychological, or both, depending on the type of injurious act.
- The **social character of the suffering**. This suffering originates in the victim's and others' reaction to the event.
- The **nature of the social factor**. The social implications of the injurious act can have a greater impact, sometimes, than the physical or psychological impact.
- The **origin of the inferiority complex**. This term, suggested by Mendelsohn, manifests itself as a feeling of submission that may be followed by a feeling of revolt. The victim generally attributes his injury to the culpability of another person.

Victimology thus is a social-structural way of viewing crime, the law, the criminal and the victim. Insofar as the injury is concerned, apart from there being short time and long time physical injuries, there could also be economic or financial loss which are also injuries within the meaning and definition of victim under clause

(wa) of Section 2 CrPC. We could also place reliance on *Dr. Vimla v. State (NCT of Delhi)*, AIR 1963 SC 1572, wherein the expression "injury" has been explained to mean something other than economic loss i.e., deprivation of property, whether movable or immovable, or of money, and to include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss."

8.1. A little earlier to the aforesaid judgment, this Court in the case of **SCANIA COMMERCIAL VEHICLES INDIA PRIVATE LIMITED v. STATE OF KARNATAKA**², considering this very issue has held as follows:

" "

Issues No. 2 & 3:

(2) Whether locus is alien to criminal jurisprudence?

(3) Whether the word 'victim' under Section 2(wa) of the Cr.P.C, needs to be given wide and liberal interpretation?

13. Whether the word 'Victim' would cover legal heir of the complainant in the case at hand? To consider this issue several provisions of the Cr.P.C. are required to be noticed. Section 2(wa) defines a 'victim' and reads as follows:

"2. Definitions. -In this Code, unless the context otherwise requires,—

... ..

² 2022 SCC OnLine Kar 1590

(wa) "victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir;"

14. A victim would mean a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression 'Victim' includes his or her guardian or legal heir. Section 2(b) defines 'charge' and reads as follows:—

"(b) "charge" includes any head of charge when the charge contains more heads than one."

15. A Division Bench of the Allahabad High Court in a judgment reported in *SUNEEL KUMAR SINGH v. STATE OF U.P.*³ has held as follows:

"44. In view of the aforesaid definition the 'end' for which a plan or project is carried out is called prosecution. In respect of proviso to Section 24(8) Cr.P.C. prosecution in respect of an offence begins with putting the law into motion by any individual or sufferer of crime. The 'end' in a prosecution within the meaning of proviso to sub-section 8 of section 24 Cr.P.C. would be adjudication of guilt of an offender who is charged with commission of an offence in accordance with procedure established by law in a court constituted under this code. So the prosecution starts with giving information of commission of crime and continued during investigation or inquiry, trial of offender and if any appeal is filed finally ends by an order passed in appeal. This whole process is the part of fair trial inbuilt in Article 21 of our Constitution. The word prosecution is also used in different sense in different situation. When word 'prosecution' is used in defining the parties to criminal case it is used for the party who is siding the victim. When it is used in respect of an accused means pending proceeding to ascertain the guilt of the accused. **When an offence is committed it certainly committed against the society but the sufferer is called victim. Victim has direct nexus with the damage caused to**

him but society may have a remote effect. The legislature for the first time insert provision for protection of the right of victim in the Criminal Procedure Code and specially keeping in view being the worst sufferer of crime. Thus, the victim should not be kept aloof from the judicial process in which the wrongdoers is undergoing the process of ascertainment of his guilt for wrong committed by him. In this judicial process, by means of amendment made by Act No. 5 of 2008, the status of the victim has been improved from a silent expectator of proceeding before the court to a participant of the proceeding. Therefore the word used in the proviso added to Section 24(8) Cr.P.C. is to 'assist the prosecution' and not to assist the 'public prosecutor'. Therefore there is basic difference in between proviso to Section 24(8) and Section 301 Cr.P.C. It is true that section 301 Cr.P.C has not been amended by Act No. 5 of 2008 but if the principals of harmonies construction is applied while interpreting the different provision of same statute like proviso to section 24(8) and Section 301 Cr.P.C, the letter and spirit inducted in proviso added to sub-Section 8 of Section 24 of the Cr.P.C. cannot be diluted by saying that no amendment has been incorporated in Section 301 Cr.P.C."

(Emphasis supplied)

16. Earlier to the judgment of the High Court of Allahabad, a learned single Judge of the High Court of Madras in the case of **SATHYAVANI PONRANI v. SAMUEL RAJ**⁴ has held as follows.

"1. The one and only issue which is of considerable public importance that arises in this case is as to whether a victim is entitled to be heard and take part in a Criminal proceeding or not

... ..

4. Viscount Simon in *Stirland v. Director of Public Prosecutor*, (1944) 2 All ER 13 has held as follows:

"A Judge does not preside over a Criminal trial merer/to see that no innocent man is punished. A Judge

also presides to see that a guilt/man does not escape. ... Both are public duties..."

... ..

8. *Keeping the above said principles couloled with the message conveyed by the Constitution under Articles 14, 21, 38 and 39A of the Constitution of India in view, this Court will have to examine the issue that has arisen for consideration.*

40. *It is a well settled principle of law that in order to interpret the provision in a given case, the statements and objects can also be looked into. In K.P. Varghese v. ITO, (1981) 4 SCC 173, the Hon'ble Apex Court has observed as follows:*

"36. *In K.P. Varghese v. ITO, (1981) 4 SCC 173 this Court while rejecting the argument of the Revenue that Rule of Strict Construction should be applied for interpreting Section 52(2), referred to the Statement of Objects and Reasons contained in the Bill presented before Parliament, speech made by the Finance Minister and observed : (SCC p. 184, para 8)*

"8. *...Now it is true that the speeches made by the Members of the Legislature on the floor of the House when a Bill for enacting a statutory provision is being debated are inadmissible for the purpose of interpreting the statutory provision but the speech made by the Mover of the Bill explaining the reason for the introduction of the Bill can certainly be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation is enacted. This is in accord with the recent trend in juristic thought not only in western countries but also in India that interpretation of a statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible."*

... ..

56. *A reading of the above said judgment would clearly show that in a given case even a third party could be permitted to file appropriate Application to cancel the bail. Therefore, the definition of victim would mean a person who represents the victim like a natural guardian or other guardian or a guardian of a person of unsound mind or even a third party, when the victim is so poor, illiterate and dependent to the*

extent of requiring support from others and not able to prosecute on his own.

... ..
62. The Hon'ble Apex Court in Gangadhar Janardan Mhatre v. State of Maharashtra, (2004) 7 SCC 768 has observed that on the basis of the police report the informant is entitled to get a notice from the Magistrate, Therefore when the informant is made to be heard at the stage of investigation then it cannot be said after the complaint has been taken on file the said informant cannot be allowed to take part in the prosecution.

... ..
65. The Public Prosecutor conducts the prosecution whereas a victim ventilates his grievance. A Public Prosecutor conducts the case with a sense of detachment whereas the victim is attached to the case. A decision made in a case does not impact a Public Prosecutor which is not the case with the victim who is the affected party.

Free and Fair Investigation and Trial and Article 14, 21 and 39 of the Constitution of India:

66. Free and Fair Investigation and Trial is enshrined in Article 14, 21 and 39-A of the Constitution of India. It is the duty of the state to ensure that every citizen of the country should have the free and fair investigation and trial. The Preamble and the Constitution are compulsive and not facultative, in that free access to the form of justice is integral to the core right to equality, regarded as a basic feature of our Constitution. Therefore such a right is a constitutional right as well as a fundamental right Such a right cannot be confined only to the accused but also to the victim depending upon the facts of the case. Therefore such a right is not only a constitutional right but also a human right Any procedure which comes in a way of a party in getting a fair trial would in violation of Article 14 of the Constitution.

67. The Hon'ble Apex Court in Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158 has observed as follows:

"36. The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the Courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all-comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a Criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial."

... ..

71. On a consideration of the above said principles and after analysing the provisions vis-a-vis the various judgments, the following conclusions are arrived at:

- i. Section 301, Cr.P.C. is not a bar for entertaining an Application to intervene in an Application filed under Section 437 or 438, Cr.P.C.**
- ii. Section 301 and Proviso under Section 24(8) are mutually complimentary and not conflicting with each other and therefore, there is no bar for engaging a lawyer to assist the prosecution.**

- iii. The discretion of the Court in invoking Proviso under Section 24(8) is a judicial discretion.*
- iv. The judicial discretion of the Court will have to be exercised keeping in mind the objects and reasons for the introduction of Proviso to Section 24(8) which is to provide an adequate opportunity to the victim to take part in the Criminal proceeding.*
- v. Engaging a lawyer in accordance with Proviso under Section 24(8) would mean permitting him to argue along with the Public Prosecutor and also in a given case even to examine a witness, of-course with the permission of the Court.*
- vi. The Court shall not allow any plea contrary to the case of the prosecution at the instance of the victim while assisting the prosecution.*
- vii. The Court can reject a request for engaging a lawyer by the victim if it is of the opinion that it lacks bona fides.*
- viii. While considering the Application, the Court has to keep in mind, the nature of the offence, the injuries suffered by the victim, the position of the victim as well as the accused and the circumstances under which the offence has been committed.*
- ix. The word 'victim' would also include a legitimate and genuine person representing a victim.*
- x. When an Application is filed by any other person other than the guardian seeking to represent the victim, the Court has to consider the bona fides, legitimacy and genuineness of the representative capacity while deciding such an application.*
- xi. In a given case the Trial Court can also call upon a victim to engage a lawyer if in its opinion the same is required for the proper conduct of the case.*
- xii. In a given case the Court can on its own appoint a lawyer if it is of the opinion the same is required for the proper conduct of case,*

- xiii. When an Application is made seeking permission under Proviso to Section 24(8) the same cannot be rejected without even numbering the same but should be considered on merits.*
- xiv. An order rejecting an Application seeking permission to assist the prosecution must be supported by reasons."*

(Emphasis supplied)

17. Aforesaid judgments of Allahabad High Court and Madras High Court would lead to an unmistakable inference that a genuine victim is to be permitted to come on record and the definition of 'Victim' as found in Section 2(wa) of the Cr.P.C. cannot be rendered a restrictive meaning and has to be liberally construed. The Madras High Court in elaboration considered the entire spectrum of law with regard to the concept of 'Victim' and has held that victim would be necessary to be heard and has locus to step into the shoes of the informant.

18. The issue in the case at hand is, whether the legal heir of the 2nd respondent would be in the place of a victim. The complaint against the petitioners registered by the complainant initially was that due to acts of petitioners, proprietorship concern or SRS Travels had suffered huge losses. The legal representative who claims to be the only legal heir of the complainant and the losses suffered is transferred to the legal heir as well. Even on a restrictive meaning of the word 'Victim', in the peculiar facts of this case, the legal heir of the complainant, has to be permitted to come on record, as the matter is still at the stage of investigation and the police have not yet filed the charge sheet.

19. The contention of the learned senior counsel appearing for the petitioners is that the cause is dead with the death of the complainant is unacceptable in the peculiar facts of this case, as the cause continues and the legal heir who has stepped into the shoes of the complainant is entitled to agitate the cause brought up

by the complainant. Therefore, I deem it appropriate to answer the main issue that has arisen in favour of the legal heir of the complainant by allowing the application and permitting her to come on record in place of the complainant as the legal heir and she has undoubtedly locus to continue the case, on the alienation that is initiated by her father particularly in the light of the offences being under Sections 406, 420 and 120B of the IPC owing to peculiar facts of the case."

Therefore, the 2nd respondent is in the shoes of the victim. He is the victim now after the death of the de-facto complainant and is entitled to participate in the proceedings.

9. The second issue would be, whether on the application filed under Section 339 of the BNSS / Section 302(2) of the Cr.P.C., the order so passed by the concerned Court would warrant interference. It is, therefore, necessary to notice the interpretation of Section 339 of the BNSS, which was Section 302 of the Cr.P.C. The definition of Section 302 of the Cr.P.C. has a wider amplitude compared to Section 301 of the Cr.P.C., which is considered by the Apex Court in several judgments.

9.1. The Apex Court in the case of **SHIV KUMAR v. HUKAM**

CHAND³, has held as follows:

" "

8. It must be noted that the latter provision is intended only for Magistrate Courts. It enables the Magistrate to permit any person to conduct the prosecution. The only rider is that Magistrate cannot give such permission to a police officer below the rank of Inspector. Such person need not necessarily be a Public Prosecutor.

9. In the Magistrate's Court anybody (except a police officer below the rank of Inspector) can conduct prosecution, if the Magistrate permits him to do so. Once the permission is granted the person concerned can appoint any counsel to conduct the prosecution on his behalf in the Magistrate's Court.

....

12. In the backdrop of the above provisions we have to understand the purport of Section 301 of the Code. Unlike its succeeding provision in the Code, the application of which is confined to Magistrate Courts, this particular section is applicable to all the courts of criminal jurisdiction. This distinction can be discerned from employment of the words "any court" in Section 301. In view of the provision made in the succeeding section as for Magistrate Courts the insistence contained in Section 301(2) must be understood as applicable to all other courts without any exception. The first sub-section empowers the Public Prosecutor to plead in the court without any written authority, provided he is in charge of the case. The second sub-section, which is sought to be invoked by the appellant, imposes the curb on a counsel engaged by any private party. It limits his role to act in the court during such prosecution "under the directions of the Public Prosecutor". The only other liberty which he

³ (1999) 7 SCC 467

can possibly exercise is to submit written arguments after the closure of evidence in the trial, but that too can be done only if the court permits him to do so."

9.2. The Apex Court in the case of **J.K. INTERNATIONAL v. STATE (GOVT. OF NCT OF DELHI)**⁴ holds as follows:

" "

11. In view of such a scheme as delineated above how can it be said that the aggrieved private person must keep himself outside the corridors of the court when the case involving his grievance regarding the offence alleged to have been committed by the persons arrayed as accused is tried or considered by the court. **In this context it is appropriate to mention that when the trial is before a Magistrate's Court the scope of any other private person intending to participate in the conduct of the prosecution is still wider. This can be noticed from Section 302 of the Code which reads thus:**

"302. (1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of Inspector; but no person, other than the Advocate General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission:

Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

(2) Any person conducting the prosecution may do so personally or by a pleader."

⁴ (2001) 3 SCC 462

12. The private person who is permitted to conduct prosecution in the Magistrate's Court can engage a counsel to do the needful in the court in his behalf. It further amplifies the position that if a private person is aggrieved by the offence committed against him or against anyone in whom he is interested he can approach the Magistrate and seek permission to conduct the prosecution by himself. It is open to the court to consider his request. If the court thinks that the cause of justice would be served better by granting such permission the court would generally grant such permission. Of course, this wider amplitude is limited to Magistrates' Courts, as the right of such private individual to participate in the conduct of prosecution in the Sessions Court is very much restricted and is made subject to the control of the Public Prosecutor. The limited role which a private person can be permitted to play for prosecution in the Sessions Court has been adverted to above. All these would show that an aggrieved private person is not altogether to be eclipsed from the scenario when the criminal court takes cognizance of the offences based on the report submitted by the police. The reality cannot be overlooked that the genesis in almost all such cases is the grievance of one or more individual that they were wronged by the accused by committing offences against them."

9.3. Following the afore-quoted judgments in **SHIV KUMAR** *supra* and **J.K. INTERNATIONAL** *supra*, the Apex Court in the case of **DHARIWAL INDUSTRIES LIMITED v. KISHORE WADHWANI**⁵, has held as follows:

" "

12. In **J.K. International** [**J.K. International v. State (Govt. of NCT of Delhi)**, (2001) 3 SCC 462: 2001 SCC (Cri)

⁵ (2016) 10 SCC 378

547], a three-Judge Bench was adverting in detail to Section 302 CrPC. In that context, it has been opined that (SCC pp. 466-67, para 12) the private person who is permitted to conduct prosecution in the Magistrate's Court can engage a counsel to do the needful in the court in his behalf. If a private person is aggrieved by the offence committed against him or against any one in whom he is interested he can approach the Magistrate and seek permission to conduct the prosecution by himself. **This Court further proceeded to state that it is open to the court to consider his request and if the court thinks that the cause of justice would be served better by granting such permission the court would generally grant such permission.** Clarifying further, it has been held that the said wider amplitude is limited to the Magistrate's Court, as the right of such private individual to participate in the conduct of prosecution in the Sessions Court is very much restricted and is made subject to the control of the Public Prosecutor.

13. Having carefully perused both the decisions, we do not perceive any kind of anomaly either in the analysis or ultimate conclusion arrived at by the Court. We may note with profit that in *Shiv Kumar [Shiv Kumar v. Hukam Chand, (1999) 7 SCC 467 : 1999 SCC (Cri) 1277]*, the Court was dealing with the ambit and sweep of Section 301 CrPC and in that context observed that Section 302 CrPC is intended only for the Magistrate's Court. In *J.K. International [J.K. International v. State (Govt. of NCT of Delhi), (2001) 3 SCC 462 : 2001 SCC (Cri) 547]* from the passage we have quoted hereinbefore it is evident that the Court has expressed the view that a private person can be permitted to conduct the prosecution in the Magistrate's Court and can engage a counsel to do the needful on his behalf. The further observation therein is that when permission is sought to conduct the prosecution by a private person, it is open to the court to consider his request. The Court has proceeded to state that the court has to form an opinion that cause of justice would be best subserved and it is better to grant such permission. And, it would generally grant such permission. Thus, there is no cleavage of opinion."

(Emphasis supplied at each instance)

Though the right of the 2nd respondent - party in-person in engaging the services of a counsel is found in terms of Section 339 of the BNSS / Section 302 of the Cr.P.C. and the judgments interpreting the same, the order of the concerned Court is what troubles this Court as it bears no reason or application of mind as to why the application under Section 339 of the BNSS / Section 302 of the Cr.P.C. must merit consideration. Therefore, on this short ground, the order is to be annulled and the matter is remitted back to the hands of the concerned Court.

10. For the aforesaid reasons, the following:

ORDER

- (i) The criminal petition is allowed in part.
- (ii) The matter is remitted back to the hands of the concerned Court to decide the application afresh and pass an order which depicts application of mind.
- (iii) The concerned Court shall answer the application filed by the 2nd respondent, within two weeks from the date of receipt of a copy of the subject order, bearing in mind the observations made in the course of the order.

- (iv) As a matter of form, the impugned order dated 04-09-2025 passed by the V Additional Civil Judge and JMFC, Mysuru passed on the application filed by the 2nd respondent, under Section 339 of the BNSS / Section 302(2) of the Cr.P.C., in C.C.No.8505 of 2021, stands quashed.

Ordered accordingly.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

NVJ
CT:MJ