

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 3677 OF 2014

Neeta Vinay Masurkar .. Petitioner

Versus

P. K. Shah & Anr. .. Respondents

Mr. R. V. Desai, Sr. Advocate i/b Anand D. Gugale, Advocate for the petitioner

Smt. Neeta V. Masurkar – Petitioner-in-person present.

Mr. Sanjog Parab i/b Parab & Asso., Advocate for the respondent No. 1.

Mr. Ajay Patil, APP for the respondent.

CORAM:-M.L. TAHALIYANI, J.

DATED : -22/01/2015

P.C.

Admit. Respondents waive service. By consent of the parties taken up for final hearing.

2 Heard the learned counsel for the petitioner, learned counsel for Respondent No. 1 and learned APP for the respondent State.

3 This writ petition impugns the order passed by the

learned Metropolitan Magistrate's 41st Court of Shindewadi, Dadar, Mumbai. The said Court exclusively is meant for the cases filed by the Municipal Corporation of Greater Bombay. Before I proceed further let it be mentioned here that the cases filed by the Municipal Corporation in the Court Room No. 41 and 42 of Shindewadi, Dadar, are conducted by the Law Officers of BMC, known as 'legal assistant'. It is also to be made clear that they are not public prosecutor or assistant public prosecutor within the meaning of Section 24 and 25 of Cr. P.C.

4 The petitioner, Smt. Neeta Masurkar is staying at Flat No. 2, Shriniketan Co-operative Housing Society Ltd., 14, Maharshi Karve Road, Marine Lines Crossroad No. 2, Mumbai. Respondent No. 1 is staying in flat No. 6 in the same building. Respondent No. 2 is Municipal Corporation of Greater Mumbai. Respondent No. 2 has initiated proceedings against respondent No. 1 for the offence punishable u/s 471 of

BMC Act, for violation of Section 347 of the Mumbai Municipal Corporation Act. The proceedings are initiated at the instance of the petitioner. It is alleged in the complaint filed by respondent No. 2 against respondent No. 1 that respondent No. 1 had been misusing the garage as godown and was storing furniture and other materials as stated in the complaint.

5 Respondent No. 1 has pleaded not guilty before the trial Magistrate and trial has now been concluded and it is at the stage of arguments. The petitioner at whose instance the proceedings were initiated against respondent No. 1 wanted to be heard in person before the learned trial Magistrate. The said prayer has been rejected by the learned trial Magistrate. The learned trial Magistrate, however, has given liberty to the petitioner to file written arguments.

6 The learned Senior Counsel Mr. R. V. Desai has been heard on behalf of the petitioner. It is submitted by Mr. Desai that

the permission could have been granted by the learned Magistrate to the petitioner u/s 302 of Cr. P.C. It was pointed out that the learned Magistrate has wrongly referred to Section 301 of Cr. P.C. It is his contention that u/s 302 of Cr. P.C., there is no bar which can prevent the Magistrate from allowing a private person to address the Court in addition to the arguments of the legal assistant of Municipal Corporation. To consider the arguments of learned Senior Advocate for the petitioner, it may be necessary to refer to the provisions of Section 302 of Cr. P.C. Section 302 of Cr. P.C. runs as under:

“302. 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 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.”

7 As such, it is clear from the provisions of Section 302 of Cr. P.C. that any person other than the police officer not below the rank of Inspector can be permitted by the Magistrate to conduct the prosecution. During the course of arguments, it was pointed out to the learned Senior Counsel that legal assistants appointed by the Corporation fall under the category of 'any person other than the police officer not below the rank of Inspector'. It was also pointed out to the learned Senior Counsel that they are neither public prosecutors nor assistant public prosecutors. Therefore, the permission to legal assistants to conduct the prosecution is covered by Section 302 of Cr. P. C.

8 The question that arises for determination is as to whether when one person is conducting the prosecution, is it possible or permissible or desirable to allow another private person to intervene or submit additional oral arguments in such a case. The learned counsel has relied upon certain observations made by the Hon'ble Supreme Court in the case of **Sandeep Kumar Bafna v. State of Maharashtra, Criminal Appeal No. 689 of 2014 (Arising out of SLP (Cri.) No. 1348 of 2014)**. My attention was drawn to

para 25 of the judgment, which runs as under:

“25 The upshot of this analysis is that no vested right is granted to a complainant or informant or aggrieved party to directly conduct a prosecution. So far as the Magistrate is concerned, comparative latitude is given to him but he must always bear in mind that while the prosecution must remain being robust and comprehensive and effective it should not abandon the need to be free, fair and diligent. So far as the Sessions Court is concerned, it is the Public Prosecutor who must at all times remain in control of the prosecution and a counsel of a private party can only assist the Public Prosecutor in discharging its responsibility. The complainant or informant or aggrieved party may, however, be heard at a crucial and critical juncture of the Trial so that his interest in the prosecution are not prejudiced or jeopardized. It seems to us that constant or even frequent interference in the prosecution should not be encouraged as it will have a deleterious impact on its impartiality. If the Magistrate or Sessions Judge harbours the opinion that the prosecution is likely to fail, prudence would prompt that the complainant or informant or aggrieved party be given an informal hearing”.

9 These observations to my mind are mainly applicable to the cases covered by Section 301 of Cr. P. C. where the State is represented by the public prosecutor or the assistant public prosecutor. Let us assume for the sake of argument that by analogy these observations also can be applicable to the cases covered by Section 302 of Cr. P. C. In that event also the complainant or informant or aggrieved party can be heard at a crucial or critical juncture of the trial so that the interest of the aggrieved party in the prosecution are not prejudiced or jeopardized. However, this depends upon the opinion formed by the Magistrate with regard to the competency of the prosecutor to present the case effectively. It is stated by the Hon'ble Supreme Court that, if the Magistrate or Sessions Judge harbours the opinion that the prosecution is likely to fail, prudence would prompt that the complainant or informant or aggrieved party be given an informal hearing. So the law laid down by the Hon'ble supreme Court is that the private party can be permitted to be heard informally only when the Judicial Officer hearing the case forms an opinion that prosecution was likely to fail.

10 In the present case the petitioner herself has been

examined at length and she has produced various documents during the course of her examination before the Magistrate. The petitioner has been granted permission to file written arguments. This Court had posed the question to the petitioner as well as her advocate as to how the oral arguments are going to advance the case of petitioner when she has been permitted to file written arguments. It was submitted that the legal assistant is not a qualified prosecutor and, therefore, he is not competent enough to present the case of Corporation effectively. To my mind remedy available to the petitioner is to file written arguments. It may be noted here that the learned Magistrate has also stated in the order that the petitioner is at liberty to file written arguments.

11 To my mind, written arguments are always a better option as compared to oral arguments. If the written arguments are submitted nothing can miss from the consideration by the Magistrate at the time of final judgment.

12 The Court also cannot ignore the tendency of complainant and aggrieved party to intervene in the matter where the public prosecutor or assistant public prosecutor, in this case legal

assistant are conducting the prosecution. To maintain the dignity, discipline and decorum of the Court, it is necessary that the trials and hearings are properly regulated by the presiding officer only. If the Court feels that non-appearance or refusal to hear the private person or aggrieved person will result into certain prejudice to the private person, the Court should grant permission in such case. In the present case, I do not think that the person is seriously prejudiced due to the impugned order. As the learned Magistrate has already granted her permission to submit written arguments, no serious prejudice is likely to be caused to the petitioner.

13 In view thereof, I do not find any merits in the petition. Petition stands dismissed.

14 At this stage, the petitioner has submitted that the learned Magistrate may be directed to consider the written arguments to be submitted by the petitioner. I do not think that any such direction is required. The learned Magistrate has permitted the petitioner to submit written arguments and, therefore, the learned Magistrate is under obligation to consider

the written submissions. No directions are needed from this Court.

(JUDGE)

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