

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.1190 of 2015

ORDER:

Aggrieved by the refusal of the trial Court to receive the petition filed by the *defacto* complainant under Section 301(2) Cr.P.C and permit her to submit memorandum of written arguments on behalf of the prosecution side, the petitioner/*defacto* complainant filed the present petition under Section 482 Cr.P.C.

2) In S.C.No.49 of 2013 pending on the file of VII Additional District Judge, Vijayawada, Krishna District, the accused are facing charges under Sections 148, 364, 302, 342, 323, 506, 201 r/w 149 and 34 IPC for allegedly committing the murder of the husband of the *defacto* complainant. The petitioner is the *defacto* complainant. It appears that the case, after full trial and hearing arguments, posted for judgment to 20.02.2015. The submission of petitioner is that thereafter on 11.02.2015, the *defacto* complainant filed a petition under Section 301(2) Cr.P.C requesting the Court to receive the memorandum of written arguments prepared by her counsel in the interest of justice and the same was returned without assigning any reason.

Hence, the present Criminal Petition.

3) The submission of learned counsel for petitioner is that under Section 301(2) Cr.P.C, the *defacto* complainant has a

right to engage a private counsel who can assist the Court and in view of the express provision, the trial Court ought not to have rejected the request of the petitioner and thereby, miscarriage of justice is being caused to her.

4) Per contra, learned Public Prosecutor argued that the entire trial was conducted by the Public Prosecutor without any hitch and at no stage, the *defacto* complainant expressed any dissatisfaction about the method and manner of conducting the prosecution and it was only after the matter was posted for judgment to 20.02.2015 after elaborate hearing of the arguments, the petition under Section 301(2) Cr.P.C was filed and therefore, the trial Court rightly rejected the petition. He relied upon the decision of Apex Court reported in ***Sushil Ansal and others vs. State***^[1] and submitted that in similar circumstances, the request of the accused to receive his written arguments after the matter was posted for judgment was refused by the trial Court and upheld by the Hon'ble Apex Court. He thus prayed to dismiss the Criminal Petition.

5) In the light of above rival arguments, the point for determination is:

“Whether there are merits in this petition to allow?”

6) **POINT:** The petitioner mainly contends that her right under Section 301(2) Cr.P.C was effected due to refusal of the trial Court. Hence, it is pertinent to peruse Sec. 301 Cr.P.C, which reads thus:

“Section 301 - 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 a pleader 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 pleader 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.”

There is also a similar provision under Section 24(8) Cr.P.C, which reads thus:

“Section 24 - Public Prosecutors:

xxx xxx

(8) The Central Government or the State Government may appoint, for the purposes 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.

[Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section.]”

So when the above sections are perused, no doubt Section 301(2) Cr.P.C says that with the permission of the Court, the private person i.e, the *defacto* complainant can engage a counsel to assist the Public Prosecutor or Assistant Public Prosecutor incharge of the case and to submit the written arguments. In this context, the facts have to be looked into. In this case, the entire prosecution was conducted by the

Public Prosecutor and no grievance was expressed against him by the *defacto* complainant throughout. Learned counsel for petitioner admitted the said fact across the Bar. It appears, the Public Prosecutor also addressed his arguments and after hearing both sides, the trial Court posted the matter for judgment to 20.02.2015. At that juncture, the complainant has come up with the petition under Section 301(2) Cr.P.C requesting the Court to receive the written arguments. When the Public Prosecutor conducted his duty and when the petitioner had no complaint against him so far, at this belated stage, the petitioner's request under Section 301(2) Cr.P.C, cannot be considered on the plea of fair trial or in the interest of justice. As rightly submitted by learned Public Prosecutor, in similar circumstances, the request of the accused was turned down by Hon'ble Apex Court by holding thus:

“Para 10: The fairness to the accused/petitioner does not mean that all requests of the petitioner/accused must be accepted by the trial Court and the procedure as laid down in Cr.P.C. be given a go by. A fair trial means that a proper opportunity has to be given to the accused to address arguments on charge, to cross-examine the witnesses, to answer the questions under Section 313 Cr.P.C., to lead defence and to address final arguments. Fair trial does not mean to concede to every request of adjournment and to cover an extra mile by taking written arguments on record even when the stage is over and the case is fixed for delivery of judgment.”

Therefore, there are no merits in this petition to allow.

7) In the result, this Criminal Petition is accordingly dismissed.

As a sequel, Miscellaneous Petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 18.02.2015

Note: Issue C.C today.

(b/o)

SCS

[\[1\]](#) 2008 Cri.L.J 2365