

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO
CRIMINAL PETITION No.5674 OF 2015

ORDER:

This Criminal Petition is filed by the petitioner under Section 482 Cr.P.C seeking to quash the order dated 06.01.2015 in CrI.M.P.No.3410 of 2014 in C.C.No.53 of 2009 on the file of III Additional Judicial Magistrate of First Class, Rajahmundry as confirmed in order dated 01.05.2015 in CrI.R.P.No.8 of 2015 on the file of the Special Judge for Trial of cases under S.Cs & S.Ts (POA) Act-cum-X Additional District and Sessions Judge, East Godavari at Rajahmundry.

Heard the learned counsel for the petitioner and the learned Public Prosecutor appearing for the State, before notice to respondent No.1 and before admission.

It is the main grievance of the learned counsel for the petitioner that the trial Court as well as revisional Court gravely erred in not considering the scope of Section 24(8) proviso of amended Code of Criminal Procedure (for short 'Cr.P.C.') which came into force w.e.f.31.12.2009, under which the *de facto* complainant, if a victim can assist the prosecution and by virtue of which when she can maintain an application apart from the right to represent through private advocate that can be permitted by the Court as per the above, if not even under Section 302 Cr.P.C. and the dismissal of the

application on *locus standi* is thereby unsustainable.

The scope of Section 24(8) proviso is answered by this Court in CrI.M.P.No.4382 of 2014 in CrI.P.No.4546 of 2014 and CrI.M.P.No.4383 of 2014 in CrI.P.No.4547 of 2014.

The *de facto* complainant herein is a victim within the meaning of Section 2(w)(a) of the amended Cr.P.C. w.e.f. 31.12.2009 and as per Section 24(8) proviso amended with effect from the same day by the same Act 25 of 2009, the victim got a right to ask the Court and the Court may permit the victim to engage an advocate of his or her choice to assist the prosecution irrespective of there is any Assistant Public Prosecutor or Additional Public Prosecutor or Special Public Prosecutor, as the case may be. Needless to say even from the existing provision under Section 302 Cr.P.C. in the proceedings before Magistrate the prosecution can be conducted by any person other than police officer not below the rank of Inspector, if not the investigating officer of the case and such conducting of the prosecution to be permitted is either personal or through pleader.

Hence, the application is disposed of giving liberty to the *de facto* complainant to approach the trial Court to file an application under Section 24(8) proviso Cr.P.C. to permit to conduct prosecution through private advocate and in such an event the learned Magistrate with necessary conditions so permit so as to file any

application to receive documents under Section 242(2) Cr.P.C. and to recall any witness under Section 311 Cr.P.C. and Section 165 of the Evidence Act to decide within the scope of the law.

Accordingly, this criminal petition is disposed of.

Miscellaneous petitions pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 26-06-2015

pab