

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2017

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

**Crl.R.C.No.825 of 2017 and
Crl.M.P.No.7554 of 2017**

D.Durairaj

... Petitioner

Vs.

1.The State of TamilNadu,
Rep. By Deputy Superintendent of Police,
CBCID, Salem.
[Crime No.232/11 Kannakurichi PS Salem]

2. Raja

3. Kasthuri

... Respondents

Petition filed under Section 397 and 401 of Cr.P.C to set aside the impugned order of the Court below made in Crl.M.P.No.92 of 2017 in Spl.S.C.No.98 of 2016 on the file of the learned Sessions Judge (Fast Track (Mahila Court) at Namakkal and allow the same.

For Petitioner	:	Mr.S.Sudarshan
For R1	:	Mr.R.Sekar, G.A (Crl side)
For R2 & R3	:	Mr.S.Ashok Kumar

ORDER

This criminal revision case has been filed against the order passed by the Sessions (Fast Track Mahila)Judge, Namakkal in Crl.M.P.No.92 of 2017 in Special S.C.No.98 of 2016 by order dated

28.3.2017.

2. The petitioner is the defacto complainant and father of the deceased. The deceased is the wife of A1 and daughter-in-law of A2 and A3. On 29.3.2011, the deceased committed suicide at the matrimonial house and according to the prosecution, the said suicide was taken place due to the dowry demand as well as cruelty and harassment given by the accused to the said deceased. Therefore, after investigation, final report and charge sheet had been filed by the respondent police on 20.01.2014 before the Court below.

3. It is the plea of the petitioner before the trial Court as he had filed a permission petition under Section 301 of Criminal Procedure Code, 1973 (in short, 'the Code') seeking the permission of the Court to render assistance to the prosecution in conducting the trial. The said petition was objected to by the prosecution and after considering both sides plea as well as arguments, the learned Judge by the impugned order dated 28.3.2017 has rejected the said request made by the petitioner to assist the prosecution.

4. In the said order, the learned Judge after having considered the scope of the said plea made by the petitioner to assist the prosecution in the teeth of the relevant provisions of the Code, though

has rejected the said plea of the petitioner, however, has permitted the petitioner to file the written arguments on completion of evidence of both sides. Aggrieved over the said order passed by the learned Judge, the petitioner has preferred the present revision.

5. Mr. S.Sudarshan, the learned counsel appearing for the petitioner would submit that all the accused persons are influential persons in the society and that is the reason why even at the time of investigation, it was handed over to the CBCID police. They infact investigated the case impartially and had laid charge sheet against the three accused, who are, according to the learned counsel for the petitioner, influential persons. Therefore, on that pretext, it seems that it was the apprehension of the petitioner that unless an effective assistance is provided to the prosecution to conduct the trial, there may be a chance of slip over of the case from the clutches of the law and thereby, the accused may not be punished at the end of the trial. Probably, for these reasons, the petitioner had approached the trial Court with a petition under Section 301 of the Code.

6. The learned counsel appearing for the petitioner in this regard has relied upon the Judgment of the Hon'ble Apex Court reported in **2001 (3) SCC 462** in the matter of **J.K.International Vs. State (Govt.of NCT of Delhi) and others.**

7. The learned counsel has relied upon the following passages of the said Judgment which are extracted hereunder:

9. The scheme envisaged in the Code of Criminal procedure (for short the Code) indicates that a person who is aggrieved by the offence committed, is not altogether wiped out from the scenario of the trial merely because the investigation was taken over by the police and the charge sheet was laid by them. Even the fact that the court had taken cognizance of the offence is not sufficient to debar him from reaching the court for ventilating his grievance. Even in the sessions court, where the Public Prosecutor is the only authority empowered to conduct the prosecution as per Section 225 of the Code, a private person who is aggrieved by the offence involved in the case is not altogether debarred from participating in the trial. This can be discerned from Section 301(2) of the Code which reads thus:

" 301. (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."

10. The said provision falls within the Chapter titled General Provisions as to Inquiries and Trials. When such a role is permitted to be played by a private person, though it is a limited role, even in the Sessions courts, that is enough to show that the private person, if he is aggrieved, is not wiped off from the proceedings in the criminal Court merely because the case was charge sheeted by the police. It has to be stated further, that the Court is given power to permit even such

private person to submit his written arguments in the Court including the Sessions court. If he submits any such written arguments the Court has a duty to consider such arguments before taking a decision.

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 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."

8. By relying upon the said decision of the Hon'ble Apex Court, the learned counsel would submit that there is no bar in permitting the defacto complainant to assist the prosecution as the case is very sensitive and the accused persons are very influential in the society

and unless and until, an effective assistance is rendered to the prosecution to support the case of the prosecution, the trial, as apprehended by the petitioner, may not be conducted and concluded in an expected manner in the eye of law.

9. In this regard, the learned counsel for the petitioner would also rely upon the counter filed by the prosecution opposing the said petition before the Court below, where the learned counsel has read the following passage of the counter filed by the prosecution:

"The averments stated in para No.2 of the affidavit is true and admitted. It is totally denied that the C.B.C.I.D. Police has conducted impartial investigation submitted the final report. It is totally false. Further, the defacto complainant cannot be permitted to conduct or assist the prosecution along with the special public prosecutor, since the offences are exclusively triable by court of Sessions.

Hence, it is prayed that this Hon'ble Court may be pleased to dismiss the petition filed by the petitioner/ defacto complainant and thus render justice".

10. In this regard, the learned counsel would submit that when the petitioner had filed a petition with a supporting affidavit to state that the CBCID police has impartially conducted investigation and has laid the charge sheet, the reply by way of counter affidavit by the prosecution is that, the said statement was totally false. By citing the flaw on the part of the prosecution, the learned counsel for the

petitioner would argue that this kind of statement would clearly expose the status of the prosecution side as they have not taken much care even in smaller issues and therefore, if this case is fully handled by the prosecution without an effective assistance from the defacto complainant side, then certainly, justice may not be rendered and therefore, in that circumstances, it triggered the petitioner to approach the Court below and seek for permission to assist the prosecution.

11. Per contra, Mr. R.Sekar, learned Government Advocate appearing on behalf of the first respondent, by relying upon the counter affidavit filed by the first respondent, has submitted that if the case was handed over to investigating agency i.e., CBCID, Salem City, it was thoroughly investigated and as has been rightly pointed out by the learned counsel for the petitioner, the investigation was done impartially and a charge sheet had been laid against the accused persons. When the prosecution has completed the investigation to the satisfaction of the defacto complainant and all the accused persons have been brought into book, the present apprehension on the part of the defacto complainant that, unless, the prosecution is assisted by the private counsel to be engaged by the defacto complainant, the prosecution may not complete the trial to the fullest satisfaction of the defacto complainant, shall have no substance.

12. In this regard, the learned Government Advocate would state that since the offence committed by the accused persons are triable by Court of Sessions and therefore, before the Court of Sessions, it is only for the Public Prosecutor to lead the prosecution and there can be no substitute for the prosecution, even by way of rendering assistance by private sources. Therefore, the learned Government Advocate would submit that the order passed by the Court below is not only justifiable, but also sustainable and hence, the revision may be dismissed.

13. On the other hand, Mr. S.Ashok Kumar, learned counsel appearing for second and third respondents, who are accused persons before the Court below has submitted that, in the impugned order, the learned Judge has not outrightly rejected the request of the petitioner. He would further submit that infact, the learned Judge has permitted the petitioner to file written arguments on completion of evidence of both sides. What has been rejected by the learned Judge is a proposal to engage a counsel by the defacto complainant / petitioner to assist the prosecution in all other aspects.

14. The learned counsel for the second and third respondents would also submit that the learned Judge after considering the legal position in this regard, especially in the context of Section 301 as well as Section 302 vis-a-vis Section 225 of the Code, has concluded that

the petitioner is not entitled to assist the prosecution as a matter of right. In this regard, the learned counsel by citing the very same decision, which has also been cited and followed by the learned Judge in the impugned order, i.e., **(1999) 7 SCC 467** in the matter of **Shiv Kumar Vs. Hukam Chand and Anr.**, has submitted that the learned Judge has taken into account the law laid down by the Hon'ble Apex Court in the said Judgment. In this regard, the learned counsel would rely upon paragraph 14 and 15 of the said Judgment which are infact heavily relied on by the learned Judge in the said impugned order. For the sake of convenience, paragraphs 14 and 15 of the said Judgment cited supra are extracted hereunder:

“14. From the scheme of the Code the legislative intention is manifestly clear that prosecution in a sessions court cannot be conducted by any one other than the Public Prosecutor. The legislature reminds the State that the policy must strictly conform to fairness in the trial of an accused in a sessions court. A Public Prosecutor is not expected to show a thirst to reach the case in the conviction of the accused somehow or the other irrespective of the true facts involved in the case. The expected attitude of the Public Prosecutor while conducting prosecution must be couched in fairness not only to the court and to the investigating agencies but to the accused as well. If an accused is entitled to any legitimate benefit during trial the Public Prosecutor should not scuttle/conceal it. On the contrary, it is the duty of the Public Prosecutor to winch it to the

fore and make it available to the accused. Even if the defence counsel overlooked it, Public Prosecutor has the added responsibility to bring it to the notice of the court if it comes to his knowledge. A private counsel, if allowed free hand to conduct prosecution would focus on bringing the case to conviction even if it is not a fit case to be so convicted. That is the reason why Parliament applied a bridle on him and subjected his role strictly to the instructions given by the Public Prosecutor.

15. It is not merely an overall supervision which the Public Prosecutor is expected to perform in such cases when a privately engaged counsel is permitted to act on his behalf. The role which a private counsel in such a situation can play is, perhaps, comparable with that of a junior advocate conducting the case of his senior in a court. The private counsel is to act on behalf of the Public Prosecutor albeit the fact he is engaged in the case by a private party. If the role of the Public Prosecutor is allowed to shrink to a mere supervisory role the trial would become a combat between the private party and the accused which would render the legislative mandate in [Section 225](#) of the Code a dead letter."

15. Therefore, the learned counsel for private respondents submits that the law is very clear that in the cases which are triable by the Court of Sessions, it is only for the Public Prosecutor to lead the prosecution and therefore, the assistance be rendered by private side

is almost denuded or restricted. Therefore, absolutely there is no plausible reason on the part of the petitioner to seek permission to assist the prosecution merely on the basis of surmises and apprehensions and based on which such a plea cannot be raised before the Court and therefore, the said plea infact has been rightly rejected by the learned Judge through the impugned order. Hence, it does not require any interference from this Court.

16. I have considered the respective submissions made by the learned counsel appearing for the petitioner as well as the Government Advocate(criminal side) for the prosecution and also the submissions made by the learned counsel appearing for the second and third respondents.

17. The petition which was rejected by the learned Judge through the impugned order was made under Section 301 of the Code. In this regard, the relevant provisions of the Code, namely, Sections 301, 302 as well as Section 225 are reproduced hereunder for easy reference:

"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.

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 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.

225. Trial to be conducted by Public Prosecutor. In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor."

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18. If we look at the said provision, namely, Section 301, it says that in any case, any private person instructed the pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor of the case shall conduct the prosecution and the pleader so engaged to assist him shall act only under the directions of the Public Prosecutor. However, the Pleader so permitted may with the permission of the Court submit written arguments after the evidence is

closed in the case.

19. The language used in Section 302 is that, 'any Magistrate inquiring into.....'. Therefore, Section 302 is only in respect of the Magistrate Court. However, in Section 301 since it uses the language any Court, in any such case, then it can be considered for both cases triable by Magistrate and also by Court of Sessions.

20. However, Section 225 of the Code says that, in every trial before the Court of Sessions, the prosecution shall be conducted by the Public Prosecutor.

21. Therefore, the prosecution before the Court of Sessions, as per Section 225 of the Code, shall only be conducted by the Public Prosecutor and not by anyone. Interpreting the same, in the said Judgment of **Shiv Kumar Vs. Hukam Chand and Anr.** (cited supra), the Hon'ble Apex Court has made it clear that if the role of Public Prosecutor is allowed to shrink to a mere supervisory role, the trial would become a combat between a private party and the accused which would render the legislative mandate in Section 225 of the Code a dead letter.

22. If we apply the interpretation on the ambit or scope in the said case in the teeth of Section 225 of the Code, it would be obvious

that in a Court of Sessions, it is the Public Prosecutor and Public Prosecutor alone shall conduct the prosecution and therefore, nothing has been specified or stated in the said section enabling the private parties, even though affected or close kith and kin of the affected, to engage a pleader on their own even for assisting the prosecutor.

23. In respect of Judgment cited by the learned counsel appearing for the petitioner, i.e., 2001(3) SCC 462 cited supra, at paragraph 12 of the Judgment, the following has been stated by the Hon'ble Apex Court which reads thus:

“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 any one 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 courts 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."

24. Even in the said case, the Hon'ble Apex Court has stated that the private person, if he is permitted to conduct prosecution in the Magistrate Court, can engage a counsel to do the needful. Therefore, whenever a plea comes to the Magistrate Court for assisting the prosecution, it is for the Court to take a decision accordingly, to permit or not to permit the private person to assist the prosecution. The Apex Court in the very said Judgment, i.e., at para 12 extracted above, has also said this wider amplitude is limited to Magistrate Courts only and such a right of private individual to participate to conduct prosecution in the Court of Sessions is very much restricted and is made subject to the control of the Public Prosecutor.

25. Though the assisting of prosecution by the private party in a Court of Sessions is not banned, it is certainly, restricted in view of Section 225 of the Code and even such restricted assistance will be subject to the control of the Public Prosecutor which means, unless and until the prosecution side permitting the private party to assist the prosecution, the private party's plea to assist the prosecution would

26. Here in the case in hand also, the prosecution has opposed the plea raised by the petitioner to assist the prosecutor and the same has been taken in to account by the learned Judge before passing the present impugned order.

27. Assuming that the private person can be permitted to submit written arguments after the evidence is closed as contemplated under Section 301(ii) of the Code, even such permission, in the opinion of this Court, shall be granted only in such case where already the private person is permitted to assist the prosecution. Therefore, even the present permission given to the petitioner to submit the written arguments, after the evidence is closed, through the impugned order, is a maximum permissible one to the private party before the Court of Sessions. Therefore, this Court feels that, beyond this point even the Subsection (ii) of Section 301 cannot be stretched upon, as the petitioner does not have any right to claim the permission to assist the prosecution. Moreover, if the said principle, as has been pronounced by the Hon'ble Apex Court in the said cases (cited supra) are applied to the facts of the given case, it can be easily found that the petitioner does not have a case to agitate the issue for getting permission from the Court below to assist the prosecution.

28. Further, it is informed across the bar that the trial is yet to be commenced. Therefore, even for entertaining the petition at this stage of this kind by a Sessions Court, as per the view of this Court, is a premature stage, as only after the commencement of the trial and after conducting the trial for some considerable time, then only it can be ascertained that whether the prosecution is taking the case in a right direction. Without the trial is commenced, it cannot be apprehended by the petitioner that the prosecution would not take the case in the right direction and therefore, based on such apprehension, he cannot make a plea that, he should be permitted to assist the prosecution. Therefore, considering all these aspects and for all the reasons stated above, this Court is of the considered view that, there is no infirmity in the order passed by the learned Judge, through the impugned order.

29. Hence, the revision case fails. Accordingly, it is liable to be dismissed. However, this dismissal will not preclude the petitioner from raising a plea, as the one which has already been raised and rejected through the impugned order, if any peculiar and extraordinary circumstance arises after some considerable progress is made in the trial which disclosed the fact that the prosecution is not taking the trial in a proper direction. If such eventuality arises, it is open to the petitioner to raise the same plea before the Court below and if such a plea is raised, it is open to the trial Court to consider the same in

accordance with law.

30. With these observations, the revision is dismissed.
Consequently, connected miscellaneous petition is closed.

25.07.2017

Index : Yes/No
Internet : Yes/No

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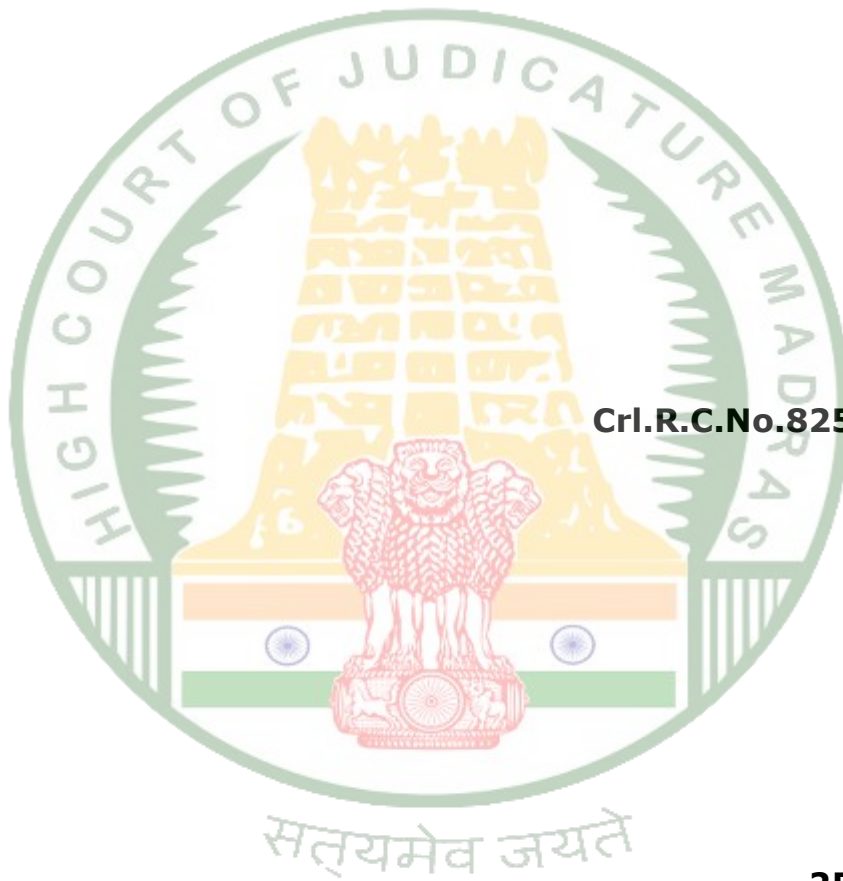
The Deputy Superintendent of Police,
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R.SURESH KUMAR, J.

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