

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2017

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.O.P.No.2529 of 2012

and

M.P.No.1 of 2012

B.Damodaran

.... Petitioner

Versus

1.Durga Vijayakumar
No.16, Veeraswamy Street,
Egmore, Chennai - 8.

2.The Inspector of Police,
CCB, Team IV,
Egmore, Chennai.
Cr.No.765 of 2006

... Respondents

Criminal Original Petition filed under section 482 of Criminal Procedure Code to call for the records and set aside the order dated 21.11.2008 passed in Crl.M.P.3209 of 2008 in C.C.No.1180 of 2007 on the file of the Chief Metropolitan Magistrate, Chennai.

For Petitioner : Mr.S.R.Vivekananthan

For Respondents : Mr.S.Shanmugasundaram, senior counsel
for Mr.K.V.Ganesh Kanna [R1]
Mr.M.Mohamed Riyaz,
Government Advocate [Crl.side] [R2]

ORDER

This Criminal Original Petition challenges the order of learned Chief Metropolitan Magistrate, Chennai, passed in CrI.M.P.No.3209/2008 in C.C.No.1180/2007 on 21.11.2008.

2. Heard learned counsel for petitioner, learned senior counsel for first respondent and learned Government Advocate [CrI.side].

3. By the order under challenge, Court below allowed a petition under Section 302 Cr.P.C. towards conduct of prosecution by the prosecutrix.

4. Learned counsel for petitioner has strenuously contended that though Section 302 Cr.P.C. empowers a Court to allow prosecution by a private party, the same ought not to be ordered as a matter of course but could only be done when a party established a case therefor. Learned counsel relied on the judgment of the Kerala High Court in ***Babu v. State of Kerala [1984 Cri. L.J. 499]*** wherein the following observations are made:

“4. Under Section 301 a pleader engaged by a private person can assist the Public Prosecutor or the Assistant Public Prosecutor, as the case may be, in the conduct of the prosecution while under Section 302 the magistrate may permit the prosecution itself to be

conducted by any person or by a pleader instructed by him. The distinction is when permission under S.302 is given, the Public Prosecutor, as the case may be, disappears from the scene and the pleader engaged by the person who will invariably be the de facto complainant will be in full charge of the prosecution. There is an ocean of difference between assisting the Public Prosecutor under S.301 and conducting the prosecution on the basis of a permission granted under Section 302. Public Prosecutors are really ministers of Justice whose job is non other than assisting the State in the administration of justice. They are not representatives of any party. Their job is to assist the court by placing before the court all relevant aspects of the case, they are not there to see the innocents go to the gallows. They are also not there to see the culprits escape a conviction. But the Pleader engaged by a private person who is a de facto complainant cannot be expected to be so impartial. Not only that it will be his endeavor to get a conviction even if a conviction may not be possible. So, the real assistance that a Public Prosecutor is expected to render will not be there if a pleader engaged by a private person is allowed to take the role of a public prosecutor by granting permission under S.302. This does not mean that permission cannot at all be granted under Section 302. Under very exceptional circumstances permission can be granted

under S.302. Otherwise, there is no reason why the provision is there in the Code. But that is to be done only in cases where the circumstances are such that a denial of permission under S.302 will stand in the way of meeting out justice in the case. A mere apprehension of a party that the Public Prosecutor will not be serious in conducting the prosecution simply because a conviction or an acquittal in the case will affect another case pending will not by itself be enough. At the same time, if the apprehension of the party is going to materialize the court can pending the trial grant permission under S.302 even if a request for permission was rejected as the outset.”

5. On perusal of the order under challenge, this Court finds that amidst other reasons, Court below has informed that specific allegations made in paragraph Nos.8 and 9 of the petition seeking permission u/s.302 Cr.P.C. had not been denied either by the accused or the prosecution. It is in such circumstance, Court below informed the view that there was some substance behind the apprehension entertained by respondent regards the conduct of the prosecution. This Court may state that Paragraph No.8 spoke of nexus between the accused and prosecutor in the case. When the order of Court below is supported by consideration which cannot be stated to be extraneous, it is not for this Court to interfere.

The Criminal Original Petition is dismissed. Taking into consideration the submission of learned counsel for petitioner that the case is of the year 2007 as also the submission of learned Government Advocate [Crl.side] that an expert opinion is awaited, this Court directs learned Chief Metropolitan Magistrate, Chennai, to dispose of C.C.No.1180/2007 as expeditiously as possible, in any event, within a period of six months of the receipt of this order. Connected miscellaneous petition is closed.

12.04.2017

Index:yes/no
Internet:yes/no
gm

To

- 1.The Chief Metropolitan Magistrate,
Chennai.
- 2.The Inspector of Police,
CCB, Team IV,
Egmore, Chennai.
- 3.The Public Prosecutor,
High Court,
Madras - 600 104.

C.T.SELVAM, J

gm

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