

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHARA PRADESH**

CRIMINAL PETITION No.7108 of 2017

Between:

Smt. Mahabunnisa Begum

.....Petitioner

and

The State of Telangana and 2 others

.....Respondents

Date of Judgment pronounced on : 25-10-2017

HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

1. Whether Reporters of Local newspapers
May be allowed to see the judgments? : Yes/No
2. Whether the copies of judgment may be marked
to Law Reporters/Journals: : Yes/No
3. Whether The Lordship wishes to see the fair copy
Of the Judgment? : Yes/No

*** HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO**

+ CRIMINAL PETITION No.7108 of 2017

% 25-10-2017

Smt. Mahabunnisa Begum

.....Petitioner

and

\$ The State of Telangana and 2 others

.....Respondents

< **GIST:**

> **HEAD NOTE:**

! Counsel for the petitioner : Sri J. Ravindra

^ Counsel for the respondents : Sri Mohd. Muzafferullah Khan
Learned Public Prosecutor

? **Cases referred**

1. AIR 2016 SC 4369
2. AIR 2001 SC 1102
3. 1999 7 SCC 467
4. 2015 (2) ALT (Crl.) 216
5. AIR 1959 SC 375
6. Crl.P.No.5674 of 2015 dated 26.06.2015

HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO**CRIMINAL PETITION No.7108 of 2017****ORDER:**

The petitioner is the defacto complainant in C.C.No.993 of 2104 pending on the file of XX Metropolitan Magistrate at Malkajgiri, Cyberabad. The respondent Nos.2 & 3 are the accused therein among other, A.1 is her husband. The C.C. is outcome of crime No.75 of 2010 from her report dated 24.02.2010 in all against 7 accused among whom A.2 and A.3 are parents in law, the 3rd respondent to the quash petition is her husband's brother's wife and the other 2 are sisters of her husband. The crime registered is for the offences punishable under Sections 498-A IPC and Sections 3 and 4 of Dowry Prohibition Act and after investigation police final report filed and taken cognizance by the learned Magistrate for the said offences. It is in the pending C.C., the defacto complainant filed Crl.M.P.No.505 of 2017 under Section 302 read with 24(8) amended Cr.P.C. to permit her to prosecute through private advocate. The accused persons opposed the same by filing counter and the learned Magistrate dismissed the same by impugned order dated 24.07.2017.

2. The contentions impugning the said dismissal order in the present quash petition are that the said order is contrary to law and settled proposition and provisions and learned Magistrate ought to have permitted to prosecute the case and thereby the dismissal order is liable to be set aside. The learned counsel for the defacto complainant/petitioner herein reiterated the said contentions in seeking to set aside the dismissal order and allow the same. Whereas the learned counsel for respondent Nos.2 and

3 submits that the impugned order is within the judicial discretion exercised by the trial Court and that no way requires interference much less by exercising the inherent powers under section 482 Cr.P.C. and thereby sought for dismissal of the quash petition. The learned Public Prosecutor representing the 1st respondent-State sought for deciding the matter on own merits to abide.

3. Heard both sides and perused the material on record.

4. The petition averments in seeking permission reads that the prosecution examined PWs.1 to 4 and after closure of the prosecution evidence the accused was examined under Section 313 Cr.P.C, the accused later filed application under Section 294 Cr.P.C. to receive some documents which are copies of some private correspondence. The learned Public Prosecutor did not file counter in opposing, consequently the petition was allowed to receive the documents in defence evidence. Earlier she filed Crl.M.P.No.1961 of 2014 dated 29.09.2014 seeking to engage private advocate to assist the prosecution and the Court allowed the same only to assist the learned Additional Public Prosecutor including to file any written arguments vide order dated 08.09.2014. It is her averment that the learned PP is overburdened and is in-charge of 4 courts and unable to concentrate and it requires detailed cross-examination of the accused by her with reference to documents filed by accused also and because the learned PP who is in-charge for several courts is unable to concentrate, which causes prejudice to her for avoiding such prejudice and injury to her rights from the inability of learned PP to attend and concentrate with facts in thoroughness, it requires to

permit her to engage a private advocate to conduct the prosecution and referred the expression of the Apex Court in **Dhariwal Industries Limited Vs. Kishore Wadhvani and Others**¹ where the Apex Court observed that Court got power to grant permission to defacto complainant to conduct prosecution independently as per Section 302 Cr.P.C. at any stage of the proceedings and thereby it is just to permit in so seeking.

5. The counter filed by the accused in opposing the same is with contest that all the allegations are false and the police mechanically filed the final report without proper investigation and court taken cognizance and framed the charges. The documents received are relevant for the purpose of case on behalf of accused by showing of such necessity, the Court considered to exhibit in defence, earlier the defacto complainant filed application only under section 301 Cr.P.C. that was allowed to assist the learned PP and to file written arguments if any and she cannot now because of accused filed 19 documents in seeking to receive that was allowed, seek permission to conduct prosecution through private advocate even there is learned APP allotted to the Court and what she contends of the APP is busy and in-charge of several Courts is not correct and the decision placed reliance of **Dhariwal supra** has no application and it is placing reliance by misreading by the defacto complainant, that too earlier filed only application under Section 301 Cr.P.C and once allowed again filing another application under Section 302 Cr.P.C by the present one to conduct prosecution through private advocate cannot be allowed. The learned PP on the behalf of the State filed counter saying the petition is not

¹ AIR 2016 SC 4369

maintainable as earlier permission is accorded to assist learned APP and file written arguments thereby another petition to conduct case through private advocate cannot be allowed.

6. The impugned order of the learned Magistrate is with a view from the rival contentions supra that section 24(8) Cr.P.C amended proviso is applicable to High Court and District Courts but not to Magistrate courts. What section 302 Cr.P.C. provides the victim may be permitted to conduct prosecution is discretionary and earlier permission is accorded to assist learned APP under Section 301 Cr.P.C. and thereby she cannot step into the prosecution agency to conduct prosecution independently.

7. The expression of Apex Court in **Dhariwal supra** is on the scope of Sections 301 and 302 Cr.P.C and not on the scope Section 24(8) proviso of the amended Cr.P.C. It is observed therein mainly referring to the earlier Constitution Bench expression of the Apex Court in **JK international Vs. State**² on the scope of section 302 Cr.P.C. of the Magistrate inquiring or trying the case may permit to conduct prosecution by any person other than police officer below the rank of Inspector, but no person other than Advocate General or Government Advocate or a PP or APP shall be entitled to do so without such permission and no police officer who investigated the case can be permitted for that purpose and a person conducting the prosecution may do so either personally or by a pleader and it also referred earlier expression of the Apex Court in **Shivkumar Vs. Hukum Chanel**³ wherein also it was held that in the Magistrate Court anybody other than the police officers below the

² AIR 2001 SC 1102

³ 1999 7 SCC 467

rank of Inspector and who conducted investigation can be permitted to conduct prosecution and once permission is granted to the person concerned, said person can appoint any private counsel on his behalf to conduct the prosecution. In fact referring to **JK international** and **Shivkumar supra** among several other expressions and on the scope of section 24(8) proviso of the amended Cr.P.C by Act No 5/2009, of the right of victim this Court in **Delta Car Private Limited Vs Sanjeev Shah**⁴ held that defacto complainant – a victim even in bail application can be permitted to come on record as co-respondent either to assist the court or to assist the PP as the case may be and even from the wording of Section 24(8) proviso Cr.P.C for such power is available as it should not be forgotten the factum of victim who is put to injury physically or mentally suffering being the ultimate loser can not be prevented from knocking the doors of the Court or participating in the proceedings, including under the guise of there is a danger by biased representation from victims; as it is the victim put to pain, trouble and damage as a result of offence mainly and no amount of compensation even awarded can bring back the life or limb nor restore the actual pain or damage or injury suffered and though under the public policy it is primary duty of the State to conduct prosecution that is not the be all or end all, much less to prevent the victim to participate in the proceedings including to conduct prosecution. In fact the Four Judge Bench expression of the Apex Court in **Leo Roy Frey Vs. State of Punjab**⁵ interpreted the word prosecute used in Article 20(2) of Constitution of India and at Para 10 of the expression it was observed that to prosecute means to

⁴ 2015 (2) ALT (Crl.) 216

⁵ AIR 1959 SC 375

seek, to obtain, to enforce or the like by legal process as to prosecute a right or claim in Court of law and otherwise to pursue by legal proceeding to redress or for punishment so to proceed judiciously to accuse of some crime or breach of law or pursue for redressal or punishment of crime or violation of law before legal Tribunal to prosecute a man.

8. Thus the word '**prosecution**' thereby means proceeding either by way of indictment or information in criminal Courts to put the offender upon trial. The proviso to section 24(8) of the amended Act No.5 of 2009 of Cr.P.C seeks that the Court may permit the victim to engage an advocate of his or her choice to assist the prosecution. Here to assist the prosecution does not mean mere assisting the Public Prosecutor under Section 301 Cr.P.C., but for conducting the prosecution itself by the victim or defacto complainant in person or through private advocate of his or her choice either under Section 24(8) proviso or under Section 302 Cr.P.C. as the case may be, but for to clarify further that irrespective of what is stated in Sections 225 & 226 Cr.P.C., even in a Sessions case, a victim can be permitted under Section 24(8) proviso of Cr.P.C. to conduct prosecution either independently or in addition to the public prosecutor by putting further questions in evidence during trial or in any enquiry or other proceedings including in any application to file counters or objections and participate.

9. It is in fact therefrom held by this Court in **Delta Car case supra** that defacto complainant and victim respectively are entitled

to conduct prosecution and participate in the proceeding including either personally or by engaging advocate of his/her choice.

10. It is also the need of the hour for the trial Courts to exercise the power, that too when APPs or Additional PPs or PPs not sufficiently available for each one to each Court so that the trial process cannot be delayed thereby and also for one APP may not concentrate effectively by attending regularly cases in more than one Court that too their duties are not only to conduct prosecution but also to represent in bail applications, policy custody petitions and several other pre-trial proceedings during investigation of the cases.

11. Further relying on the expression even in a subsequent expression of this Court in **Gude Bhavani Sujatha Vs. Muggulla Srinivasa Rao**⁶, it was held that either under Section 302 Cr.P.C or even under section 24(8) proviso of amended Cr.P.C Magistrate Court got power to permit the victim or the defacto complainant to conduct prosecution by participating in the proceeding by engaging private advocate.

12. Having regard to the above, the order of the learned Magistrate impugned herein dismissing the application saying Section 302 Cr.P.C is not applicable to the learned Magistrate is unsustainable so also in ignoring section 24(8) r/w Section 2(wa) of the amended Cr.P.C. which further recognizes the right of the victim and in ignoring the scope of Section 301 Cr.P.C. is only limited when compared to scope of Section 302 and Section 24(8) proviso r/w 2(wa) of Cr.P.C. and even permitting once under

⁶ Crl.P.No.5674 of 2015 dated 26.06.2015

Section 301 Cr.P.C. is not a bar for later permitting under Section 302 or 24(8) proviso r/w 2(wa) Cr.P.C.

13. Having regard to the above, the Criminal Petition is allowed and the dismissal order of the lower Court is set aside and while conducting the prosecution by the State represented by APP of the accused witnesses, the defacto complainant-cum-victim is directed to be permitted by virtue of this order by the learned Magistrate to engage a private advocate and conduct prosecution by further examination of any witness in addition to what APP conducts if any. Needless to say any permitting of putting of questions and eliciting of answers will be within the scope of law and power of the Court including on relevancy and admissibility within the scope of Section 136 of Indian evidence Act in particular and on proof with reference to other provisions, including from the availability of the power under Section 165 of the Indian Evidence Act.

Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 25.10.2017
L.R. Copy to be marked
(B/o)
ska

Note: The Registry is directed to issue circular to all subordinate Courts within the jurisdiction of this Court to follow the expression particularly the observations in the Paras 8 to 12.