

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 37 OF 2018**

Mr. Kishore K. Keswani,
Son of Kakumal Keswani,
Age 56 years,
Occupation- Business,
R/O Radhika Mahal,
Hill area, Section 17,
Ulhasnagar 3, District Thane,
Maharashtra,
Through his Power of Attorney
Mr. Deepak Ashok Keswani
Son of Ashok Keswani,
R/o Radhika Mahal,
71/72, Hill Area,
Section – 17, Ulhasnagar-421003
Thane, Maharashtra.

.... Petitioner

V E R S U S

1. Mr. Mahesh Tanna alias Suresh Thakkar,
B-202, New Link Palace, Off link road,
Lakandwala Complex, Andheri (W),
Mumbai – 400053.

2. State (Through Police Inspector)
Anjuna Police Station,
Anjuna, Bardez-Goa.

3. Public Prosecutor

.... Respondents

Coram:- C. V. BHADANG, J.**Date:- 15th February 2018.**

Adv. Galileo Francisco Teles for the Petitioner.

Mr. S. R. Rivankar, Public Prosecutor for the Respondents.

Oral Order:

The challenge in this petition is to the order dated 5/2/2018 passed by the learned Sessions Judge, Mapusa, by which, the application for intervention filed by the petitioner in an application for bail of the respondent, has been refused.

2. The brief facts are that; a complaint was filed by Ms. Tulika Katare against the petitioner alleging that the petitioner had forcible sexual intercourse with her after lacing her drink with a stupefying substance. On the basis of the investigation it was revealed that the complaint was false and in fact it was an outcome of a business rivalry between the petitioner and one Anil Jaisinghani and other co accused. The investigating officer on the basis of the complaint lodged by the petitioner has registered Crime No.79/2016 P.S. Anjuna against the respondent and others for offence punishable under sections 384, 388, 420, 467, 468, 471, 474, 109, 114, 115, 182, 193, 195, 199, 200, 205, 201, 120-B r/w 34 IPC. The respondent happens to be accused no.9 in the said crime.

3. The respondent came to be arrested and is seeking bail in Bail application no.11/2018 in which the petitioner as the original complainant sought intervention on the ground that he is a 'victim' within the meaning of

section 2(wa) of Cr.P.C. It is contended that by virtue of the amendment to section 24(8) Cr.P.C., the petitioner being a victim is entitled to intervene.

4. The application was opposed on behalf of the respondent.

5. The learned Sessions Judge, placing reliance on the decision of the Supreme Court in the case of **Sundeeep Kumar Bafna Vs. State of Maharashtra and anr. (2014) 16 SCC 623** and **Thakur Ram Vs. State of Bihar AIR 1966 SC 911** and the decision of this Court in **Vinay Poddar Vs. The State of Maharashtra and anr. (2009) ALL MR (CRI) 687** has found that there is no vested right in the complainant or the informant or aggrieved party to directly conduct the prosecution or to intervene and in that view of the matter the application came to be rejected.

6. I have heard Shri Teles the learned counsel for the petitioner and Shri Rivankar, the learned Public Prosecutor for the respondent.

7. Shri Teles, the learned counsel for the petitioner has submitted that the decision of this Court in the case of **Vinay Poddar (supra)** and that of the Hon'ble Supreme Court in the case of **Thakur Ram** are much prior to the coming into force of the amendment to Cr.P.C. by Act, 5 of 2009 w.e.f

31/12/2009. It is thus submitted that the said decisions would not apply.

6. On behalf of the petitioner strong reliance is placed on the decision of the Madras High Court in the case of **Sathyavni Ponrani Vs Samuel Raj & Another** CDJ 2010 MHC 4254 in which the Madras High Court has culled out the principles while considering an application for intervention of the present nature in para 71 of the judgment. It is submitted that the petitioner has rendered valuable assistance to the investigating agency in bringing out the truth and as such the intervention of the petitioner would help the cause of justice.

7. Shri Rivankar, the learned Public Prosecutor submits that notwithstanding the amendment to the Code of Criminal Procedure, the intervention cannot be claimed or allowed as of right and would depend upon facts and circumstances of each case. It is pointed out that nowhere it is the case of the petitioner that the investigating agency has conspired with or is hand in glove with the accused or that the investigating agency is not doing all that is required.

8. I have carefully considered the rival circumstances and the submissions made. It is not necessary to go to section 2(wa) of Cr.P.C.. in this case

inasmuch as the petitioner happens to be the complainant himself, against whom, a false FIR was allegedly found to be lodged by Ms. Tulika Katare. Thus, it cannot be disputed that the petitioner would be an aggrieved person. The question is whether in the facts and circumstances of the case, intervention can be allowed. By amendment of 5 of 2009 a proviso was added to sub section 8 of section 24 of Cr.P.C., which shows that the Court may permit the 'victim' to engage an advocate of his choice to 'assist' the prosecution under sub section 8 of section 24. Under section 301 of Cr.P.C., the prosecution is required to be conducted by a Public Prosecutor or an Assistant Public Prosecutor incharge, who can appear and plead on behalf of the investigating agency before the Court. Sub section 2 of section 301, provides that in any such case, a private person instructs a pleader to prosecute any person in Court, the pleader so instructed has to act under the directions of the Public Prosecutor or the Assistant Public Prosecutor and may with the permission of the Court submit written arguments after the evidence is closed. A distinction was tried to be made between sub section 2 of section 301 which uses the word "pleader" as against the proviso to section 24(8) which uses the word "advocate". I do not find that any such distinction can be accepted in the present circumstances.

9. The Madras High Court in the case of **Sathyavni Ponrani (supra)** has

held that section 301 and proviso 24(8) are mutually complementary and there is no bar for engaging a lawyer to 'assist the prosecution'. In fact, Shri Rivankar, the learned Public Prosecutor in all fairness submitted that he has no objection for the petitioner appointing any advocate to assist the prosecution. Even in the judgment in the case of **Sathyavni Ponrani (supra)** on which strong reliance is placed on behalf of the petitioner, it has been held that there is a discretion vesting in the Court to permit such intervention or leave to assist the prosecution which albeit would be a judicial discretion to be exercised in the facts and circumstances of the case. It is trite that existence of a jurisdiction and its exercise are two distinct aspects. Any such power has to be exercised on the facts and circumstances of each case. In the present case it is not even the case made out that the investigating officer has acted or for that matter the prosecution is being conducted in a manner so as to jeopardize the interest of the petitioner in any way. In that view of the matter, I do not find that any exception can be taken to the impugned order. The petition is accordingly dismissed. Nonetheless the learned Sessions Judge shall permit the petitioner to appoint an advocate to assist the Additional Public Prosecutor in conducting the case in accordance with law.

C. V. BHADANG, J.

Ap/-