

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2155 OF 2017

Shri Manubhai Hargovandas Patel ... Petitioner

Versus

Ravindra Sarjan Yadav & Anr. ... Respondents

Mr. M. H. Patel – Petitioner in person present.

Mr. S. S. Pednekar, APP for State.

CORAM : NITIN W. SAMBRE, J.

DATE : APRIL 06, 2018.

P.C. :

Mr. Manubhai Hargovandas Patel appears party in person.

2. The committee constituted by this Court pursuant to the provisions of Chapter IV-A (ii) of the Bombay High Court Appellate Side Rules has rejected the prayer of the Petitioner to appear as party in-person and order to that effect is placed on the record of the proceedings.

3. The Petitioner – party in person in the aforesaid backdrop submits that he has conducted the matter as party in-person before the Apex Court and also the other matters before this Court as party in-person. As well as the Court has ample power to hear the Petitioner as

party in-person. In the aforesaid backdrop of the Petitioner – party in person, matter is heard with the assistance of the learned APP. However, it is clarified that no absolute permission is granted by this Court to appear in person in all the pending matters, either before this Court or before the courts below.

4. The Petitioner has questioned the order dated October 20, 2016 passed by the Additional Chief Metropolitan Magistrate, 24th Court, Borivali, Mumbai to the extent of not permitting him to conduct the trial in person pursuant to Section 302 of the Code of Criminal Procedure and putting him to the condition that he can conduct the prosecution through Advocate of his choice in C.C.No.2406312/PW/2005.

5. The party in-person while inviting attention of this Court to the catina of judgments which are produced on record, particularly in the matter of *M/s J. K. International V/s State Government of NCT of Delhi* decided on 23 February 2001 by the Apex Court and the judgment of Madras High Court in the matter of *F. Anitha Fathima V/s State, decided on 20 October 2010 in Cri.O.P.No.21632 of 2010* would urge that the very object of Section 302 of the Code of Criminal Procedure is being frustrated by putting the present Petitioner to the condition that he should represent his case through a Lawyer of his choice. According to him, sub-section 2 of Section 302 of the Code of Criminal Procedure permits the Petitioner to conduct his case on his own. He feels that he is handicapped, as he cannot trust any Lawyer, as all the Lawyers who were engaged by him on earlier occasion, were won over by the other side. He submits that

order impugned to the extent of putting him to the condition to engage an Advocate be quashed and set aside and he be permitted to conduct the trial on his own, as he has legal acumen and understanding of law.

6. He would specifically rely upon the observations made in para nos. 10 and 11 of the Apex Court judgment in the matter of M/s J. K. International (*cited supra*) which read thus :

“10. 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 :

(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.

11. *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.”

7. He would also specifically rely upon the observations made in para nos. 1, 3, 12, 13 and 14 of the judgment in the matter of *F. Anitha Fathima (cited supra)* which read thus :

“1. This petition is filed, seeking for a direction to set aside the order dated 26.8.2010 in CMP No. 3482 of 2010 by the learned Judicial Magistrate No.1, Krishnagiri and permit the petitioner/defacto complainant/victim to engage a counsel of her choice to conduct the prosecution in the above CC No.115/2010 on the file of the learned Judicial Magistrate No.1, Krishnagiri.

3. Pending trial, the petitioner had filed an application under Section 302 of Criminal Procedure Code to permit the petitioner/defecto-complainant to engage a counsel of her choice to conduct the prosecution of the case in C.C.No.115/2010.

12. On perusal of the order of the Magistrate, it is

evident that the Magistrate has passed such an order keeping in mind, that the role of the Assistant Public Prosecutor cannot be replaced and has said 'shall act under the direction from the Public Prosecutor' thereby, the learned Magistrate has not given any liberty for the counsel to prosecute on behalf of the defacto-complainant. Therefore the role of the person permitted to prosecute either by himself or through a counsel shall be only to lead evidence when he satisfies the court tht the prosecution has omitted to examine the material evidence and on such circumstances the court may invoke the power under section 311 or any other relevant provision of the Code.

13. Under such circumstances, the restriction imposed by the learned Judicial Magistrate No.1, Krishnagiri that the Petitioner/defacto-complainant is allowed to engage counsel at he choice and such counsel shall act under the direction from the Public Prosecutor is not correct. The role of such counsel shall be as above said.

14. In the result, the criminal original petition is allowed and subject to the above observation, the restriction imposed by the learned Judicial Magistrate No.1, Krishnagiri in CMP No. 3482 of 2010 dated 26.8.2010 is set aside. Consequently, connected MP is closed.”

8. This Court having heard the Petitioner, who is appearing in person is of the prima facie view, particularly having observed the demeanor of the Petitioner in this Court that the condition imposed by the learned Magistrate by the impugned order of representing his case through a Lawyer does not warrant any interference.

9. Petitioner during hearing volunteered that financially he is self sufficient to bare professional charges. He is neither holding any law course degree nor his external behaviour warrants, his prayer in this Petition should be granted.

10. The Apex Court in the matter of *M/s J. K. International V/s State (cited supra)* has observed that a private person is permitted to conduct the prosecution only before the Court of the Magistrate by engaging a Counsel. He can also approach the Court of the Magistrate to conduct the prosecution by himself and it is left to the court of concerned Magistrate to consider the request. If the court is of the opinion that the cause of the justice would be subserved by granting such permission, the Court would generally grant such permission. In the aforesaid backdrop, the fact remains that the Court while dealing with the application moved by the Petitioner under Section 302 of the Code of Criminal Procedure was sensitive to the grievance that was brought by him before the court for the offence committed against him. The court then proceeded to allow the application, by putting Petitioner to condition that he can conduct his case through an Advocate of his choice.

11. In the aforesaid background, in my opinion, the condition incorporated by the learned Magistrate in the order impugned appears to be reasonable one, which does not warrant any interference.

12. As such, I hardly noticed any ground for interference in extraordinary jurisdiction. As such, the Writ Petition is dismissed.

(NITIN W. SAMBRE, J.)