

Anand

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

CRIMINAL APPLICATION NO. 777 OF 2017

Jagdish Patni (father of the deceased Prakash Patni) .Applicant

Vs.

Nikita Prakash Patni & ors. .Respondents

Mr. Charanjeet Chanderpal a/w Ms N. Shirke, Ms M. Lad & Mrs. H. Kaur, Advocate, for the Applicant

Mr. S. V. Walve, APP, for the Respondent No. 4 – State

CORAM : REVATI MOHITE DERE, J.

DATE : 11.01.2018

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant has impugned the Order dated 06.12.2016 passed by the learned Additional Sessions Judge, Sessions Court, Greater Mumbai below Exh. 11 in S. C. No. 217 of 2015, by which the Applicant's Application for conducting the trial by giving his own Advocate instead of APP came to be rejected.

Alternately, the Applicant has prayed as under :-

“b) Alternately the Applicant's privately appointed advocate be allowed to conduct the prosecution along with a Specially appointed Special Public Prosecutor which this Hon'ble

Court may direct the State Government to appoint on behalf of the informant / State with a further direction that all objections and pleadings which the Informant wishes to make to the Court shall be duly made and presented before the Sessions Court properly.”

3. Learned counsel for the Applicant submits that the prosecution is not being conducted properly by the prosecutor appearing in the trial Court. He submitted that the prosecutor, who is appearing in the said case is unduly friendly to the accused and the Advocate for the accused. He further submits that the prosecutor has also not taken any steps to conduct further investigation in the said case considering the lacuna in the investigation. He further submitted that despite the fact, that accused were absent on a few dates, no steps were taken by the prosecutor by filing an Application for securing the presence of the accused or for issuance of non-bailable warrant. He further submitted that out of 26 hearings, the prosecutor was present only on 10 hearings and that the prosecutors are changing randomly. He further submitted that the Applicant be permitted to conduct the prosecution under Section 302 of the Code of Criminal Procedure (for short “Cr.P.C.”).

4. Learned APP opposed the said Application. He submitted that no inference was warranted in the impugned order.

5. Perused the papers. The Applicant (Original Complainant) had filed an Application (Exh. 11) praying therein, that his Advocate be permitted to conduct the trial instead of the learned APP. It was contended that neither the police had properly investigated the said case nor was the prosecutor taking any steps in this regard. It was also contended that the prosecutor was not taking any interest in the said case and that the prosecutor was unduly friendly with the accused and their Advocate.

6. The said Application was resisted by the State. The learned Sessions Judge after hearing the parties was pleased to dismiss the said Application in view of the provisions of Section 301 of Cr.P.C..

7. Section 301 of Cr.P.C. reads thus :-

“301. Appearance by Public Prosecutors.- (1)

.....

(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.”

8. A perusal of Section 301(2) of Cr.P.C. shows that it is the APP who conducts the prosecution and that the pleader instructed by a private person, acts under the directions of the PP / APP. As far as Section 302 of Cr.P.C. is concerned, the same would not apply in the facts, as there is clear distinction between the provisions of Sections 301 & 302 of Cr.P.C.. Under Section 301(2) of Cr.P.C., the role of the informant or the private party is limited, during the prosecution of a case conducted in the Court of Session, where the counsel engaged by the private party is required to act only under the directions of public prosecutor, whereas, under Section 302 of Cr.P.C., the Magistrate is conferred with the powers of granting permission to the complainant to conduct the prosecution independently. Admittedly, the present case is being conducted in the Court of Sessions and thus, the counsel engaged by the Applicant is required to act under the directions of the public prosecutor. The impugned order can neither be said to be perverse nor unsustainable warranting inference in writ jurisdiction. Hence, there is no merit in the Application and accordingly, the same is dismissed. Needless to state, that the learned prosecutor shall conduct the prosecution diligently.

9. As far as prayer clause (b) is concerned, it is always open

to the Complainant to apply & request to the State Government to appoint a Special Public Prosecutor in the said case and it is for the State Government to consider the same.

(REVATI MOHITE DERE, J.)