

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 18.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE DR.G.JAYACHANDRAN

Criminal Revision No.426 of 2012

P. Sivanandam Petitioner/ Petitioner/Defacto Complainant

Vs

The State by
Inspector of Police
Hasthampatti Police Station
Salem
Crime.No.973 of 2008 Respondent/Respondent/complainant

Prayer: Criminal Revision Petition filed under Sections 397 r/w 401 of Cr.P.C. to set-aside the order dated 27.03.2012 in CMP No.2 of 2012 in SC No. 413 of 2010 by the learned III Additional Assistant Sessions Judge, Salem.

For Petitioner : Mr. I. Arokiasamy

For Respondent : Mr. T. Shunmuga Rajeswaran
Government Advocate

O R D E R

This Revision Petition is filed by the Defacto complainant against the order passed by the trial Court on his application filed under Section 301 of Cr.P.C.

2. The short point involved in this Revision petition is as under. The Private Complaint under Section 200 of Cr.P.C was filed by the petitioner herein, before the Judicial Magistrate Court No.III, Salem seeking direction to register his complaint and investigate under Section 256 (3) of Cr.P.C. Accordingly, after intervention of this Court, the case was registered in Cr.No.973 of 2008, Final Report was filed by the Investigating Officer. In the said circumstances, the petitioner/Defacto Complainant had thought fit that for conducting the prosecution the Public Prosecutor of the State may not be competent and therefore sought for permission of the trial Court to engage the pleader on his behalf to conduct the case, to assist the Additional Public Prosecutor.

3. The trial Court after considering the plea, allowed the petition to the effect that the Defacto Complainant can assist the prosecution through his Counsel, Mr. G. Ponnusamy and also permission was granted to file written arguments as per law. Not satisfied with the said permission to assist the prosecution, the Defacto Complainant has taken out this Revision petition, seeking the absolute right to conduct the case through his counsel.

4. The grounds of Revision perused. The complaint of the petitioner has culminated in the Final Report and the same been taken on file by the Sessions Court in SC No.413 of 2010 on the file of III Additional Assistant Sessions Judge, Salem. In the said circumstances, the petitioner has sought permission to conduct the trial through counsel of his choice instead of State appointed Public Prosecutor. Sections 301 and 302 of Cr.P.C, read as follows:

301. Appearance by Public Prosecutors:-

(1) The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.

(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.

302. Permission to conduct prosecution-

(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.

5. On combined reading of Sections 301 and 302 of Cr.P.C, it is clear as crystal that the request of the Revision Petitioner to conduct the prosecution through the Counsel of his choice is impermissible under the Act. At the most, he can only assist the prosecution, which has already been granted by the trial Court.

6. In view of the above discussions, the misconceived Revision Petition is dismissed. Interim stay already granted stands vacated. The trial Court is directed to take up the case on priority basis and established it, in accordance with law as expeditiously as possible.

Sd/-
Assistant Registrar(CS)

//True copy//

Sub Assistant Registrar

vrn

To

1. II Additional Assistant Sessions Judge, Salem
2. -do -through' The Principal Sessions Judge, Salem
3. The Inspector of Police
Hasthampatti Police Station
Salem
4. The Public Prosecutor, High Court, Madras

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VP(CO)
GMY(10/05/2019)

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