

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2019

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.1520 of 2018

S.Vijayalakshmi ... Petitioner/Defacto Complainant

Vs.

1. The Inspector of Police,
Vigilance and Anti-Corruption,
Head Quarters,
Chennai-600 028. ... Respondent/Respondent

2. K.Sivamani

3. Parasmal ... 2nd & 3rd Respondents/
1&2 Respondents

PRAYER: The Criminal Revision Petition has been filed under Section 397 & 401 Cr.P.C., to set aside the order passed in Crl.M.P.No.470 of 2017 in C.C.No.6 of 2016 by the Special Court for the cases under Prevention of Corruption Act, Chennai dated 17.10.2018.

For Petitioner : Mr.S.Jaikumar
for M/s.T.Surendran

For Respondent : Mr.R.Ravichandran,
Govt. Advocate (Crl. Side)

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O R D E R

The petitioner has filed this Criminal Revision Petition under Section 397 & 401 Cr.P.C., to set aside the order passed in Crl.M.P.No.470 of 2017 in C.C.No.6 of 2016 by the Special Court for the cases under Prevention of Corruption Act, Chennai dated 17.10.2018.

2.The petitioner is the defacto complainant. Based on her complaint, a case was registered by the respondent police against the private respondents for the offences under Section 448, 384 and 506 IPC and under Section 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988 and Final Report has been filed in C.C.No.6/2016 and the case is posted for trial.

3.The petitioner filed a petition before the Trial that as one of the officers (accused) is serving as an Inspector of Police in the State Government and the 2nd accused is an influenced person, the petitioner wants to assist the prosecution by engaging a private counsel on behalf of the petitioner. The said petition was dismissed by the Trial Court, against which, the present Revision Petition has been filed.

4.The learned counsel appearing for the petitioner has prayed in this Revision to set aside the order passed in Crl.M.P.No.470 of 2017 in C.C.No.6 of 2016 by the Special Court for the cases under Prevention of Corruption Act, Chennai dated 17.10.2018. Now, he has restricted his prayer only to permit the petitioner to file her written arguments to assist the prosecution under Section 301(2) Cr.P.C.

5.The learned Government Advocate (Crl. Side) would submit that without any audience, the petitioner may assist the prosecution by filing her written submissions.

6.Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate.

7.This issue has already been elaborately discussed by this Court by its order dated 07.07.2010 in Crl.O.P.(MD) No.5474 of 1010 (Sathyavani Ponrani Vs. samule Raj and the State) as follows:

"71.On a consideration of the above said principles and after analysing the provisions vis-a-vis the various judgments, the following conclusions are arrived at:

i.Section 301 Cr.P.C. is not a bar for entertaining an application to intervene in an application filed under Section 437 or 438 Cr.P.C.

ii.Section 301 and proviso under Section 24 (8) are mutually complimentary and not conflicting with each other and therefore there is no bar for engaging a lawyer to assist the prosecution.

iii.The discretion of the Court in invoking proviso under Section 24(8) is a judicial discretion.

iv. The judicial discretion of the Court will have to be exercised keeping in mind the objects and reasons for the introduction of proviso to sub-section 24(8) which is to provide an adequate opportunity to the victim to take part in the criminal proceeding.

v. Engaging a lawyer in accordance with proviso under Section 24(8) would mean permitting him to argue along with the Public Prosecutor and also in a given case even to examine a witness, of-course with the permission of the Court,

vi. The Court shall not allow any plea contrary to the case of the prosecution at the instance of the victim while assisting the prosecution.

vii. The Court can reject a request for engaging a lawyer by the victim if it is of the opinion that it lacks bonafides.

viii. While considering the application, the Court has to keep in mind, the nature of the offence, the injuries suffered by the victim, the position of the victim as well as the accused and the circumstances under which the offence has been committed.

ix. The word 'victim' would also include a legitimate and genuine person representing a victim.

x. When an application is filed by any other person other than the guardian seeking to represent the victim, the Court has to consider the bonafides, legitimacy and genuineness of the representative capacity while deciding such an application.

xi. In a given case the trial Court can also call upon a victim to engage a lawyer if in its opinion the same is required for the proper conduct of the case.

xii. In a given case the Court can on its own appoint a lawyer if it is of the opinion the same is required for the proper conduct of case.

xiii. When an application is made seeking permission under proviso to Section 24(8) the same cannot be rejected without even numbering the same but should be considered on merits.

xiv. An order rejecting an application seeking permission to assist the prosecution must be supported by reasons.

8. In view of the above decision, the Revision Petitioner is hereby permitted to assist the prosecution by filing her written arguments to assist the prosecution.

9. Accordingly, this petition is allowed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To.

1. Special Court for the cases under P.C.Act
Chennai
2. The Inspector of Police,
Vigilance and Anti-Corruption,
Head Quarters, Chennai-600 028.
3. The Public Prosecutor
High Court of Madras
Chennai 600 104
4. The Section Officer
Criminal Section
High Court of Madras

+1 cc to Mrs.V.Anuradha, Advocate Sr.No.1603

CA(CO)
CSL/01.02.2019

Cr1.R.C.No.1520 of 2018