

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-41846-2019 (O&M)

Date of decision : 11.12.2019

Rajan Aggarwal

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. B.S. Bhalla, Advocate for the petitioner.

Mr. Surinder Pal Singh Tinna, Additional A.G. Punjab.

Mr. Abhinav Singla, Advocate for respondent Nos.2 to 6.

ANIL KSHETARPAL, J. (ORAL)

First informant-alleged victim is in the revision against the order passed by the learned Judicial Magistrate, dismissing the application filed by him under Section 311 Cr.P.C. read with Section 165 of the Indian Evidence Act for permission to examine the Ahlmad to prove the statement of the accused-Sumit Kumar, suffered in a civil suit, SHO to prove the alleged compromise and to recall DW12 for further cross-examination.

It is undisputed that application was filed by the first informant through its own counsel. Application has not been countersigned by the Public Prosecutor.

Learned Judicial Magistrate on consideration of the matter, dismissed the application.

Learned trial Court has seized of the case arising from FIR No.40 dated 10.05.2011 registered under Sections 420/419/465/467/468/471/120-B of the Indian Penal Code at Police Station Mehna.

At the outset, learned counsel for the petitioner was requested to assist the Court as to whether such an application was maintainable at the hands of first informant/alleged victim without concurrence of the Public Prosecutor. He was apprised of recent judgment passed by Hon'ble the Supreme Court in the case of **Rekha Murarka Vs. State of West Bengal and another, in Criminal Appeal No.1727 of 2019**. In this judgment, Hon'ble the Supreme Court has dealt with the role of first informant/alleged victim and has held as under:-

“12. In light of this, we now proceed to consider the extent to which such assistance can be accorded. As mentioned supra, learned Senior Counsel for the Appellant has argued that there may be instances where the Public Prosecutor may fail to perform his functions properly, whether deliberately or due to oversight, which may obstruct justice instead of furthering it. To meet the ends of justice in such cases, he submitted that the role of the victim’s counsel should not be limited to filing of written arguments as provided with respect to pleaders engaged by private parties under [Section 301\(2\)](#). Instead, it should extend to making oral arguments and examining witnesses as well. On a perusal of the arguments advanced and the decisions relied on by both the parties, we find that such a broad mandate for the victim’s counsel cannot be given effect, as it is not rooted in the text of the Cr.PC.

12.1 The use of the term “assist” in the proviso to [Section](#)

24(8) is crucial, and implies that the victim's counsel is only intended to have a secondary role qua the Public Prosecutor. This is supported by the fact that the original Amendment Bill to the CrPC had used the words "co-ordinate with the prosecution". However, a change was later proposed and in the finally adopted version, the words "coordinate with" were substituted by "assist". This change is reflective of an intention to only assign a supportive role to the victim's counsel, which would also be in consonance with the limited role envisaged for pleaders instructed by private persons under Section 301(2). In our considered opinion, a mandate that allows the victim's counsel to make oral arguments and cross-examine witnesses goes beyond a mere assistive role, and constitutes a parallel prosecution proceeding by itself. Given the primacy accorded to the Public Prosecutor in conducting a trial, as evident from Section 225 and Section 301(2), permitting such a free hand would go against the scheme envisaged under the CrPC.

12.2 In some instances, such a wide array of functions may also have adverse consequences on the fairness of a trial. For instance, there may be a case where the Public Prosecutor may make a strategic call to examine some witnesses and leave out others. If the victim's counsel insists upon examining any of the left out witnesses, it is possible that the evidence so brought forth may weaken the prosecution case. If given a free hand, in some instances, the trial may even end up becoming a vindictive battle between the victim's counsel and the accused, which may further impact the safeguards put in place for the accused in criminal trials. These lapses may be aggravated by a lack of advocacy experience on the part of the victim's counsel. In contrast, such dangers would not arise in the case of a

Public Prosecutor, who is required to have considerable experience in the practice of law, and act as an independent officer of the Court. Thus, it is important to appreciate why the role of a victim's counsel is made subject to the instructions of the Public Prosecutor, who occupies a prime position by virtue of the increased responsibilities shouldered by him with respect to the conduct of a criminal trial.

12.3 At the same time, the realities of criminal prosecutions, as they are conducted today, cannot be ignored. There is no denying that Public Prosecutors are often overworked. In certain places, there may be a single Public Prosecutor conducting trials in over 2-3 courts. Thus, the possibility of them missing out on certain aspects of the case cannot be ignored or discounted. A victim-centric approach that allows for greater participation of the victim in the conduct of the trial can go a long way in plugging such gaps. To this extent, we agree with the submission made by the learned Senior Counsel for the Appellant that the introduction of the proviso to [Section 24\(8\)](#) acts as a safety valve, inasmuch as the victim's counsel can make up for any oversights or deficiencies in the prosecution case. Further, to ensure that the right of appeal accorded to a victim under the proviso to [Section 372](#) of the Cr.P.C. is not rendered meaningless due to the errors of the Public Prosecutor at the trial stage itself, we find that some significant role should be given to the victim's counsel while assisting the prosecution. However, while doing so, the balance inherent in the scheme of the [CrPC](#) should not be tampered with, and the prime role accorded to the Public Prosecutor should not be diluted.

12.4 In this regard, given that the modalities of each case are different, we find that the extent of assistance and the

manner of giving it would depend on the facts and circumstances of each case. Though we cannot detail and discuss all possible scenarios that may arise during a criminal prosecution, we find that a victim's counsel should ordinarily not be given the right to make oral arguments or examine and cross-examine witnesses. As stated in [Section 301\(2\)](#), the private party's pleader is subject to the directions of the Public Prosecutor. In our considered opinion, the same principle should apply to the victim's counsel under the proviso to [Section 24\(8\)](#), as it adequately ensures that the interests of the victim are represented. If the victim's counsel feels that a certain aspect has gone unaddressed in the examination of the witnesses or the arguments advanced by the Public Prosecutor, he may route any questions or points through the Public Prosecutor himself. This would not only preserve the paramount position of the Public Prosecutor under the scheme of the [CrPC](#), but also ensure that there is no inconsistency between the case advanced by the Public Prosecutor and the victim's counsel.

12.5 However, even if there is a situation where the Public Prosecutor fails to highlight some issue of importance despite it having been suggested by the victim's counsel, the victim's counsel may still not be given the unbridled mantle of making oral arguments or examining witnesses. This is because in such cases, he still has a recourse by channelling his questions or arguments through the Judge first. For instance, if the victim's counsel finds that the Public Prosecutor has not examined a witness properly and not incorporated his suggestions either, he may bring certain questions to the notice of the Court. If the Judge finds merit in them, he may take action accordingly by invoking his powers under [Section 311](#) of the CrPC or [Section 165](#) of the

Indian Evidence Act, 1872. In this regard, we agree with the observations made by the Tripura High Court in [Smt. Uma Saha v. State of Tripura](#) (supra) that the victim's counsel has a limited right of assisting the prosecution, which may extend to suggesting questions to the Court or the prosecution, but not putting them by himself."

In view of the aforesaid binding precedent, this Court is of the considered view that the revision petition filed by the petitioner is not maintainable particularly when neither the Public Prosecutor has countersigned the application nor the Presiding Judge of the learned trial Court considers the evidence sought to be led is necessary for the decision of the case.

Accordingly, the present petition is dismissed.

11.12.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No