

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION Nos. 9285 and 9475 of 2018

COMMON ORDER:

Criminal Petition No.9285 of 2018 is filed under Section 482 Cr.P.C. by the petitioner/*de facto* complainant, seeking to quash the docket order, dated 16.08.2018 passed in C.C.No.454 of 2018 on the file of the VII-Additional Chief Metropolitan Magistrate, Nampally, Hyderabad.

Criminal Petition No.9475 of 2018 is filed, under Section 482 Cr.P.C., by the petitioner/*de facto* complainant, seeking to quash the order, dated 07.08.2018 passed in CrI.M.P.No.1475 of 2018 in C.C.No.454 of 2018 on the file of the VII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad.

Since the issue involved in both the Criminal Petitions is inter connected, they are being disposed of by this common order.

The facts in issue are that on a complaint lodged by the petitioner/*de facto* complainant, the police, Musheerabad, registered a case in Crime No.187 of 2013. After completion of investigation, a charge sheet came to be filed against respondent Nos. 2 and 3/A-1 and A-2 for the offences punishable under Sections 406 and 420 of I.P.C. The allegations in the charge sheet are that the 2nd respondent/A-1 is none other than the close relative of the petitioner/*de facto* complainant. In the year 2010, the 2nd

respondent/A-1 approached the petitioner/*de facto* complainant stating that they are going to start some business as such they require huge capital and also stated that they are investing funds into real estate, which will multiply the amount invested in the said business. The 2nd respondent/A-1 lured the petitioner/*de facto* complainant to pay amounts to her as loan and assured that the said amount will be returned with huge returns. Accordingly, the petitioner/*de facto* complainant had paid huge amounts to the 2nd respondent/A-1 to the tune of Rs.21,00,000/- during the period from 01.03.2010 to 01.12.2010. Further, respondent Nos.2 and 3/A-1 and A-2 have approached the petitioner/*de facto* complainant and requested that they have got some opportunity to invest in some real estate venture and they are in need of another Rs.14,00,000/-, as such the petitioner/*de facto* complainant again paid Rs.14,00,000/-. In total she paid Rs.35,00,000/- to respondent Nos.2 and 3/A-1 and A-2. On 24.12.2011, the petitioner/*de facto* complainant purchased one diamond necklace, diamond bangles and pair of jumkas worth Rs.10,20,000/-. The 2nd respondent/A-1 asked the petitioner/*de facto* complainant that she wants to wear the said diamond jewellery to attend a function. Upon her request, the petitioner/*de facto* complainant had given the said diamond jewellery to the 2nd respondent/A-1, but she failed to return back the same. Thereafter, the petitioner/*de facto* complainant came to know that the 2nd respondent/A-1 pledged the said diamond jewellery with a pawn broker shop. Therefore, the petitioner/*de facto* complainant

demanded the 2nd respondent/A-1 to return back the jewellery as well as the entire amount of Rs.35,00,000/-, but respondents 2 and 3/A-1 and A-2, refused to return the same and also threatened the petitioner/*de facto* complainant stating that they have close acquaintance with various senior politicians as well as police officers. The said charge sheet was taken on file as C.C.No.454 of 2018 and the same is pending before the VII-Additional Chief Metropolitan Magistrate, Nampally at Hyderabad.

During pendency of the aforesaid Calendar Case, the petitioner/*de facto* complainant filed CrI.M.P.No.1430 of 2018 under Section 24 (8) of Cr.P.C. to permit her to engage Sri G.Narender Raj and Krupa Madhuri Gadde, Advocates, to assist the prosecution in the above C.C. By an order, dated 07.08.2018, the learned Magistrate, allowed the said petition and Sri Narender Raj, was permitted to assist the prosecution. The petitioner/*de facto* complainant also filed CrI.M.P.No.1475 of 2018 under Section 302 of Cr.P.C., to permit her Counsel to conduct cross-examination of the defence witnesses without prejudice to the authority of the learned Assistant Public Prosecutor and also permit the Counsel to submit the written arguments on her behalf in the above C.C. By an order dated 07.08.2018, the learned Magistrate passed the following order:

“Heard. M.P.No.1430 of 2018 is allowed. Hence, this petition is infructuous.”

Thereafter, on 16.08.2018, the learned Magistrate passed the following docket order:

“A.1 present. A.2 absent. Petition filed. D.W.1 present. For cross-examination by A.P.P. Call on 07.09.2018.”

Aggrieved by the orders, dated 07.08.2018 and 16.08.2018, the above Criminal Petitions are filed.

Heard learned Counsel appearing for the petitioner/*de facto* complainant and learned Additional Public Prosecutor appearing for the 1st respondent-State. None appeared on behalf of respondents 2 and 3/A-1 and A-2.

Learned Counsel for the petitioner/*de facto* complainant would submit that the learned Magistrate ought to have noticed that docket orders under challenge are nothing but doing away the order passed by the trial Court in CrI.M.P.No. 1430 of 2018. The learned Magistrate one way allowed the petition i.e., CrI.M.P.No.1430 of 2018, other way declined the request of the victim's Counsel to conduct cross-examination of D.W.1. It is further submitted that the trial Court is under an obligation to implement its own order in CrI.M.P.No.1430 of 2018; that the Victim has got a right to cross-examine the defence witnesses even to the recourse of Section 24 (8) of Cr.P.C. and that the learned Magistrate failed to consider that in terms of Section 302 of Cr.P.C., the Victim through her Counsel is entitled to conduct cross-examination of the defence witnesses. He

further submits that when the Court permits the Victim to engage an advocate of choice, the Court thereafter cannot deprive the Advocate to cross-examine the defence witnesses and address the Court in addition to her right to file the written arguments after closure of evidence.

Learned Additional Public Prosecutor would submit that the learned Magistrate has already permitted the counsel for the petitioner/ *de facto* complainant to assist the prosecution. Once the permission is accorded to the Advocate of the victim to assist the prosecution, his assistance could be limited only to assist the prosecution, but not to cross-examine the witnesses by himself independently.

In *Rekha Murarka v. The State of West Bengal and another*¹ the Apex Court held as under:

“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 crossexamine 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

¹ (CrL.A.No.1727 of 2019)

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 the instant case also, vide order dated 07.08.2018 passed in CrI.M.P.No.1430 of 2018, the learned Magistrate has already permitted the Counsel for the petitioner/*de facto* complainant i.e., Sri Narender Raj, to assist the prosecution. Therefore, in view of the principles laid down by the Apex Court in **Rekha Murarka case (supra)**, and since the Counsel for the petitioner/*de facto* complainant has a limited right of assisting the prosecution only, I do not find any illegality or irregularity in the impugned orders.

Accordingly, both the Criminal Petitions are dismissed. However, if the Public Prosecutor has not examined a witness properly, the Counsel for the petitioner/*de facto* complainant is at liberty to bring it to the notice of the Court, in which event, if the learned Magistrate finds merit, he may take appropriate steps in accordance with law.

Miscellaneous petitions, if any, pending, shall stand closed.

02.03.2020
gkv/Gsn

JUSTICE G. SRI DEVI

