

Sr. 3
07-01-2021
s. d.
ct, no.42

CRR 1870 of 2018

In Re : **Abu Kalam****petitioner.**

In the matter of : An application under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure in Sessions Case No. 46 of 2018 arising out of General Register Case No. 2518 of 2017 originated from the Harischandrapur P. S. Case No. 1014 of 2017 dated 21.12.2017 under Section 302 of the Indian Penal Code pending before the Learned Additional Sessions Judge, Chanchal, Malda

Mr. Ayan Bhattacharya
Mr. Arup Sarkar

.....for the petitioner.

Mr. S. G. Mukherji,
Mr. Arijit Ganguly

....for the State.

This revisional application has been preferred against the order dated 10th May, 2018 passed by the Additional District and Sessions Judge, Chanchal, Malda in Sessions Case No. 46 of 2018(G. R. Case No. 2518 of 2017).

Mr. Bhattacharyya, learned advocate appearing for the petitioner submits that presently the case has been committed to the court of Sessions and charge has also been framed. The next date fixed before the learned trial court is for evidence.

The learned advocate for the petitioner submits that in view of the changed circumstances and the manner in which the sessions case is progressing at this stage, it may not be proper in the fitness of circumstances to prefer further investigation.

The learned advocate relies upon paragraphs 11.3 and 11.5 of the Judgement reported in **(2020) 2 Supreme Court Cases 474** wherein it has been held as follows:-

“11.3. 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 two-three 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 CrPC 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 CrPC should not be tampered with, and the prime role accorded to the Public Prosecutor should not be diluted”.

“11.5. 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 channeling 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 CrPC or Section 165 of the Evidence Act, 1872. In this regard, we agree with the observations made by the Tripura High Court in Uma Saha v. State of Tripura 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 observations made by the Hon'ble Apex Court that the de facto complainant/informant may be allowed to assist, participate and file applications including bringing to the notice of the learned trial court omissions while conducting the trial.

I find sufficient force in submission of the learned advocate appearing for the petitioner.

Mr. Mukherji, learned Public Prosecutor has not disputed if the informant or the de facto complainant is afforded such opportunity.

The learned trial court is directed to give effect to the paragraphs referred to above in the Judgement of the Hon'ble Apex Court in its true and proper spirit.

With the aforesaid observations, CRR 1870 of 2018 is disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Tirthankar Ghosh, J.)