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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 CRIMINAL WRIT PETITION NO.1203 OF 2021

**DR. ANUJA W/O. SATYAJIT NIGHUTE
VERSUS
THE STATE OF MAHARASHTRA**

Advocate Poonam V. Bodke Patil, for the petitioner
Mr. S. P. Sonpawale, APP for the respondent/State

CORAM : N. R. BORKAR, J.

DATE : 07-12-2021

P. C.

. This petition challenges the order dated 22-02-2021 passed by the learned Magistrate, Ahmedpur, below Exh.24 in RCC No. 198 of 2020.

2. The petitioner who is the first informant in the aforesaid criminal case, has moved an application at Exh.24 under Section 302 of the Code of Criminal Procedure seeking permission to conduct the prosecution through an Advocate appointed by her. The learned trial court by the order impugned granted permission to the present petitioner to engage the private Advocate to assist the learned APP. The trial court, however, rejected prayer of the petitioner to permit her to conduct the

prosecution through private Advocate.

3. I have heard the learned counsel for the petitioner and the learned APP for the respondent/State.

4. The learned counsel for the petitioner submits that there is distinction between sections 301 and 302 of the Code of Criminal Procedure. It is submitted that as per Section 301 the Public Prosecutor or Assistant Public Prosecutor can conduct the trial but 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. It is submitted that, however, as per Section 302 prosecution can be conducted with the permission of the learned Magistrate by any person other than a police officer below the rank of Inspector. It is submitted that as per proviso the police officer who has taken part in the investigation cannot be permitted to conduct the

prosecution. It is submitted that the trial court lost sight of this distinction and committed error in rejecting the application. In support of the submission the learned counsel for the petitioner has relied upon the judgment in the case of *Dilnashin Shaikh W/o. Amir Hamza Shaikh Vs the State of Maharashtra in Criminal Writ Petition No. 4939 of 2018 dated 27-11-2018.*

5. On the other hand the learned APP for the respondent submits that no reasons are assigned in the application as to why the petitioner should be permitted to appoint the private Advocate to conduct the prosecution. It is submitted that the trial court has thus rightly rejected the application in absence of any reason.

6. This court in the case of *Dilnashin Shaikh W/o. Amir Hamza Shaikh* (supra) after examining similar issue has held that on reading Section 302, it is clear that the Magistrate can give permission to conduct the prosecution to any person if application is made by the party.

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7. The present matter is squarely covered by the abovesaid judgment of this court. In view of this, the order impugned is set aside. The petitioner is permitted to appoint the private Advocate to conduct the prosecution as sought by her. The petition is disposed of in above terms.

[N. R. BORKAR, J.]

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