



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.02.2021

Pronounced on : 09.03.2021

WEB COPY

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.RC(MD).No. 399 of 2017

and

CrI.M.P(MD).No.3982 of 2017

R. Vijaya Rani

...Petitioner/Petitioner/
LW1/Defacto complainant

Vs.

1. Deputy Superintendent of Police,
District Crime Branch,
Tiruchirappalli.

...Respondent/Respondent/
Complainant

2.Duraiaraj

3.Murugesan

4.Rajavel

5.Chezian

6.Jegadheesan

7.Philomin Irudhayaraj

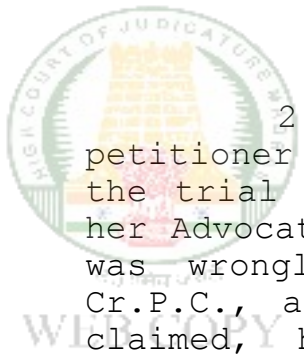
...Respondents 2to7/
Respondents 2to7/Accused 1to6

PRAYER:- Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., to call for the records and set aside the order made in Cr.M.P.No. 1333 of 2017, dated 12.04.2017 in C.C.No.124 of 2010 on the file of the learned Judicial Magistrate No.III, Tiruchirappalli.

For petitioner	: Mr. S. Samuel James Deva Sagayam
For R1	: Mrs. S.E. Veronica Vincent
	Government Advocate (Criminal Side)
For R5	: Mr. Sakthivel for Mr. R. Sundar
For R2	: Died
For R3,R4,R6 & R7	: No appearance

ORDER

This Criminal Revision is directed against the order passed in CrI.M.P.No. 1333 of 2017 in C.C.No.124 of 2010 dated 12.04.2017, by the learned Judicial Magistrate No.III, Thiruchirappalli dismissing the petition filed under Section 302 Cr.P.C.,



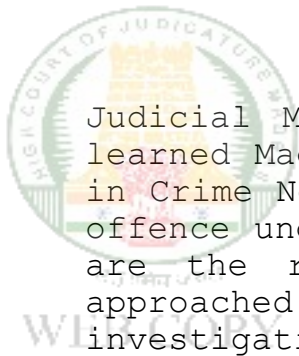
2. At the outset, learned counsel appearing for the petitioner would contend that they have filed an application before the trial Court to permit her to appoint three named Advocates as her Advocates to assist the prosecution, but, the provision of law was wrongly quoted as 302 Cr.P.C., instead of Section 301(2) Cr.P.C., and that the trial Court without considering the relief claimed, has treated the petition, as if the same was filed under Section 302 Cr.P.C., dismissed the same. It is not known as to whether the above said wrong quoting of provision of law was brought to the notice of the trial Court, but, whatever it is, as rightly contended by the learned counsel for the petitioner, in the affidavit filed in support of the above application, prayed that the Court may be pleased to allow her to appoint Mr.S. Balasubramanian, Mr.V. Udhayakumar and Ms.R.Sakunthala as her advocates to assist the prosecution in her favour and the same was reiterated in the petition also.

3. But, it is evident from the records, that the learned trial Judge has dealt with that application as if the same was filed under Section 302 Cr.P.C., relied on some decisions and by observing that the petitioner has not raised any allegations against the Assistant Public Prosecutor and that since the trial itself is not commenced, the petition is not maintainable, dismissed the same.

4. There is an ocean of difference between the role of private counsel permitted to assist the prosecution under Section 301(2) Cr.P.C., and the person permitted to conduct the prosecution under Section 302 Cr.P.C., Any party invoking Section 302 Cr.P.C., has to complain about inadequate prosecution by the Assistant Public Prosecutor and on filing of such application, the Magistrate is required to consider such request and to pass appropriate orders. Generally, the Public Prosecutor or Assistant Public Prosecutor should be in charge of the conduction of the proceedings and the defacto complainant cannot have any right to participate in the trial proceedings and the only restricted or limited exception available in Cr.P.C., is Section 301(2) Cr.P.C.,

5. It is pertinent to note that even if the Court grants permission to the complainant to appoint a counsel to assist the prosecution, the role of that counsel is very much limited and the control still is in the hands of the Public Prosecutor or the Assistant Public Prosecutor, as the case may be. The responsibility to conduct the prosecution continues to be with the Assistant Public Prosecutor despite the permission granted under Section 301(2) Cr.P.C., and the above Section does not contemplate any other power or authority for the counsel, who is allowed to assist the prosecutor.

6. In the case on hand, the petitioner has filed a petition under Section 156(3) Cr.P.C., before the Court of the



Judicial Magistrate and on the basis of the order passed by the learned Magistrate, First Information Report came to be registered in Crime No. 3 of 2008 on the file of the respondent police for the offence under Section 420 r/w. 120(B) IPC against the accused, who are the respondents 2 to 5 herein, that the petitioner has approached this Court in Crl.O.P(MD).No. 20860 of 2014 for further investigation, that as per the orders of this Court dated 30.01.2015 in the above said Crl.O.P., further investigation was conducted and final report was filed adding the respondents 6 and 7 as additional accused and that the case was taken on file in C.C.No. 124 of 2010, on the file of the Court of Judicial Magistrate - III, Trichy. After the completion of necessary legal formalities and framing of necessary charges, when the case is pending for the commencement of trial, the above petition came to be filed. As rightly contended by the learned counsel for the petitioner, to invoke Section 301(2) Cr.P.C., it is not necessary for the petitioner to make any complaint about the inadequacy of the prosecution. According to the petitioner, he could not be able to approach the Assistant Public Prosecutor liberally and that since they have no adequate legal knowledge to conduct the case, he was constrained to file the above application.

7. Considering the efforts taken by the petitioner from the filing of petition under Section 156(3) Cr.P.C., till the filing of the final report with an addition of accused and also considering the reasons assigned, this Court is of the view that the permission sought for by the petitioner is to be granted. Since the power of the counsel allowed to assist the prosecution is very much limited, the defence would not be prejudiced in any way. Considering the above, since the trial Court has passed the impugned order under the misconception that the petition was filed under Section 302 Cr.P.C., the same is liable to be set aside and is set aside accordingly.

8. In the result, the criminal revision case is allowed and the permission sought for to appoint the counsels to assist the prosecution is granted under Section 301(2) Cr.P.C., and the petitioner is at liberty to seek permission of the learned Judicial Magistrate after the closure of the evidence for submitting the written arguments if any. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

TRP

<https://hcservices.ecourts.gov.in/hcservices/>



To

1. The Judicial Magistrate No.III,
Tiruchirapalli.
2. The Deputy Superintendent of Police,
District Crime Branch,
Tiruchirappalli.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
CRL.RC(MD) .No. 399 of 2017 and
CrI.M.P(MD) .No.3982 of 2017
09.03.2021

NA(CO)
SRS (22/03/2021) 4P : 4C