

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2022

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRL.R.C.NO.730 OF 2018

AND

CRL.M.P.NO.8423 OF 2018

G.Raghu

... Petitioner

Vs.

1. State by
Inspector of Police,
Thirumangalam Police Station,
Chennai.
(Crime No.13 of 1995)

2. Dr.G.Vimala
(2nd respondent impleaded as per order in
Crl.M.P.No.9029 of 2021 dated 04.03.2022)

... Respondents

Prayer: Criminal Revision Case is filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the order passed by the learned X Metropolitan Magistrate in Crl.M.P.No.2387 of 2018 dated 11.06.2018 in C.C.No.7236 of 2000 on the file of the X Metropolitan Magistrate Court, Egmore at Allikulam.

For Petitioner : Mr.C.Rajan

For Respondents : Mr.N.S.Suganthan, for R1
Government Advocate

O R D E R

The revision petition is filed challenging the order passed by the Judicial Magistrate, allowing the petition filed under Section 302 Cr,P.C., seeking permission to assist the prosecution. The Miscellaneous Petition in Crl.M.P.No.2387 of 2010 filed by one Raghu, the accused in C.C.No.7236 of 2000. Being aggrieved by the order passed by the learned Magistrate, dismissed his application filed under Section 302 Cr.P.C.

2. The facts of the case is a checkered history since the alleged occurrence has taken place on 05.01.1995. The defacto complainant and the accused initially charged under Sections 341 and 326 IPC was investigated and later charge was altered to 341 and 324 IPC. On filing the final report, the accused has taken leave of the Court, represented by the counsel by way of filing the petition under Section 302 of Cr.P.C., and the same was allowed. Being not satisfied with the said order, the defacto complainant has preferred appeal and revision unsuccessfully. Now the issue before this Court is that the order obtained by the defacto complainant to engage a lawyer to assist the prosecution, which happened the Court to allow the Crl.O.P.No.28413/2010 vide order dated 07.12.2010 and the order of the Magistrate in Crl.M.P.No.2387 of 2018 dated 11.06.2018 is now subject matter of the revision. The permission granted by the Court to the defacto complainant to assist the prosecution.

3. It is challenged by the accused in this revision petition stating that the order of the High Court permitting the defacto complainant to get the assistance was passed behind his back and when this was brought to the notice of the learned Magistrate, he has erroneously held that under Section 301 Cr.P.C., notice to accused is not mandated. Further, it is pointed out by the learned counsel Mr.V.K.Sathyamoorthy, who represent the petitioner earlier and had appeared before this Court to assist the Court, since his name being shown in the cause list that the observation of the Magistrate stating that the accused has not heard in-person even for one single hearing and protracting the proceeding is unwarranted and contrary to the facts.

4. He would submit that the accused person has obtained exemption under Section 205 and in his non appearance before this Court personally, is pursuant to the permission granted by the Court and the delay in completing the trial, cannot be attributed to the conduct of the accused but to the complainant itself. Also submit that getting permission to assist the prosecution is not an automatic right and there must be specific reason for seeking such permission in a trial for the alleged offence under Section 341 and 323 IPC.

5. The learned Public Prosecutor appointed by the State can adequately represent the State and the defacto complainant without any specific and special reason cannot seek permission to prosecute the case to counsel of his choice. He would further submit that by getting such permission, the defacto complainant may misuse the right.

6. This Court on going through the records and the law governing provision under 301 and 302 and the checkered history of the case in hand, passed the following order in the interest of justice.

7. The defacto complainant herein is permitted to engage counsel of his choice to assist the prosecution which shall be subject to the order passed by this Court on 07.12.2010 in Cr1.O.P.No.28413 of 2010 which reads as below:-

"13. Therefore, under Sec.302 Cr.P.C., the defacto-complainant may be permitted to prosecute through a counsel of his choice. Once the magistrate thinks that the cause of justice would be served better by granting such permission, the magistrate would generally grant such permission without any restriction. However this should not mean that the role of the Assistant Public Prosecutor is replaced by the person permitted to conduct the prosecution. The role of the such person shall be only to lead evidence when he satisfies the Court that the prosecution has omitted to examine the material evidence and on such circumstances the Court may invoke the power under Section 311 or any other relevant provision of the Code."

8. In addition, this Court wants to make clear that the role of the counsel whom the defacto complainant wants to engage, shall be only after completion of examining the prosecution witness and he shall be an officer of the Court to assist the prosecution and make submissions by drawing the attention of the Court, regarding any omission of examining the material evidence. The accused herein who so far being enjoying the privilege of being represented by his counsel under Section 205 Cr.P.C., shall be permitted to be represented by his counsel subject to the condition that he shall appear before the Magistrate to answer Section 313 questions and also on summons by the Magistrate, if, he intent to summon the accused for personal appearance. The learned Magistrate shall take up the trial and complete within three months from the date of receipt of copy of this order. Interim order of stay stands vacated. The counsel who has preferred this revision appeared before this Court and submitted that he has already given concern for change of counsel. However, as propriety, required since his name being shown in the cause list, he is before this Court and also duly assisted this Court.

9. Accordingly, this criminal revision is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

AT

To

1. The X Metropolitan Magistrate Court, Egmore at Allikulam.
2. The Inspector of Police,
Thirumangalam Police Station,
Chennai.
3. The Public Prosecutor,
High Court of Madras.

+2ccs to Mr.C.Rajan, Advocate, S.R.No.36295

+1cc to Mr.L.Infant Dinesh, Advocate, S.R.No.36830

Cr1.R.C.No.730 of 2018 and
Cr1.M.P.No.8423 of 2018

GSM(CO)
RLP(11/07/2022)