



WEB COPY



CCr.O.P.No.15339 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2022

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.O.P.No.15339 of 2022

and

Crl.M.P.No.8617 of 2022

R.Subramanian

... Petitioner

Vs.

1. The State, Rep by its Assistant Commissioner,
Cyber Crime Cell,
Central Crime Branch,
Egmore.

2. V.Rajendran
3. V.Sathish Raj

... Respondents

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order dated 11.03.2022 of the Chief Metropolitan Magistrate Egmore dismissing Crl.M.P.No.13079 of 2021 on its filed and allow the same and permit the Petitioner to conduct the prosecution in the case C.C.No.1986 of 2017 on its file.

For Petitioner

: Mr.R.Subramanian
for Mrs.K.Panjalakshmi

For Respondent-1

: Mr.A.Gokulakrishnan
Additional Public Prosecutor



CCrI.O.P.No.15339 of 2022

ORDER

WEB COPY This Criminal Original Petition has been filed to challenge the dismissal order passed by the learned Chief Metropolitan Magistrate, Egmore, in CrI.M.P.No.13079 of 2021, filed under Section 302 of Cr.P.C. to conduct the prosecution personally.

2. The contention of the petitioner is that the petitioner had filed the petition in CrI.M.P.No.13079 of 2021 in C.C.No. 1986 of 2017 on the file of the learned Chief Metropolitan Magistrate, Egmore, under Section 302 Cr.P.C. to conduct the prosecution personally whereas, the learned Judicial Magistrate dismissed the application merely on the ground that the charges had already been framed and the copies were also furnished to the accused and that the reasons adduced by the petitioner was not proper and hence, declined the relief.

3. The petitioner appeared in person before this Court and submitted that there is a clear distinct between Section 301 and 302 Cr.P.C. As far as Section 301 Cr.P.C. is concerned, the public prosecutor or Assistant Public Prosecutor only can be assisted by private party Section 302 Cr.P.C. operates in different field in which, a Magistrate who inquiries or trying a case may permit any



person to conduct the prosecution other than a police officer below the rank of Inspector. Hence, it is submitted that the learned Judicial Magistrate has not appreciated the provision of law properly. Hence the petitioner seeks to set aside the order passed by the learned Chief Metropolitan Magistrate.

4. The learned Additional Public Prosecutor appearing for the respondent Police would submit that granting of permission is the discretion of the learned Magistrate. Further submitted that the learned Magistrate had applied his mind and rejected the application and therefore, there is no interference is called for.

5. Heard the petitioner and the learned Additional Public Prosecutor appearing for the respondent police.

6. It is relevant to extract the provision under Section 302(1) Cr.P.C.

Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of Inspector; but no person, other than the Advocate General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission: provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the



investigation into the offence with respect to which the accused is being prosecuted.

7. As far as the provision under Section 302 (2) Cr.P.C. is concerned, a person may conduct the prosecution personally or by pleader also and the above Section also makes it clear that the power granting such permission is vested with the Magistrate. Whereas Section 301 Cr.P.C. has restriction for the person to prosecute personally. Though pleaders are engaged to prosecute any person, such pleaders have to act only at the direction of the Public Prosecutor or otherwise, he has to only assist the Public Prosecutor, whereas Section 302 Cr.P.C. enables a private person to conduct the prosecution or any person can conduct the prosecution other than the Police Officer below the rank of Inspector of Police. In this regard, it is useful to refer the judgment of the Hon'ble Apex Court reported in (2016) 10 SCC 378 in the case of ***Dhariwal Industries Limited Vs Kishore Wadhwani and Others*** and relevant paragraphs viz., 13 and 17 are extracted as follows;

13. Having carefully perused both the decisions, we do not preceive any kind of anomaly either in the analysis or ultimate conclusion arrived at by the Court. We may note with profit that in Shiv Kumar, the Court was dealing with the ambit and sweep of Section 301 of Cr.P.C and in that context observed that Section 302 Cr.P.C. is intended only for the Magistrate's Court. In J.K. International from the passage we have quoted herein before it is



evident that the Court has expressed the view that a private person can be permitted to conduct the prosecution in the Magistrate's Court and can engage a counsel to do the needful on his behalf. The further observation therein is that when permission is sought to conduct the prosecution by a private person, it is open to the Court to consider his request. The Court has proceeded to state that the Court has to form an opinion that cause of justice would be best subserved and it is better to grant such permission. And, it would generally grant such permission. Thus, there is no cleavage of opinion.

17. Section 302 Cr.P.C. is concerned, power is conferred on the Magistrate to grant permission to the complainant to conduct the prosecution independently.

8. Considering the above judgment, this Court is of the view that the Magistrate shall exercise its power permitting any person to conduct the prosecution. The order of granting or rejecting such permission must be based on the materials and the discretion should be exercised judicially. On a perusal of the order of the learned Chief Metropolitan Magistrate shows that except highlighting the reasons that the charges were already framed and the copies were furnished to the accused and the witnesses have not been examined so far, no other reasons were highlighted by the learned Chief Metropolitan Magistrate for rejecting the permission to conduct the prosecution personally. Therefore, this Court is of the view that the Judicial discretion exercised by the learned Chief Metropolitan Magistrate is not on proper appreciation of entire materials.



CCrI.O.P.No.15339 of 2022

Admittedly the law was set in motion on the basis of FIR on the complaint of the petitioner himself and that the petitioner is well versed with the facts of the case and he is also having quiet legal knowledge.

9. In such view of the matter, permitting the petitioner to conduct his own case, there would not be any prejudice to the case. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed. The order passed by the learned Chief Metropolitan Magistrate Egmore in CrI.M.P.No.13079 of 2021 in C.C.No.1986 of 2017 is set aside.

10. The petitioner is permitted to conduct the prosecution personally and the petitioner should ensure that the prosecution is conducted in a fair manner and there should not be any undue delay and that the witnesses should be examined on the date fixed by the Trial Court or when they summon on a particular date to examine the witnesses, without any further delay.

05.07.2022

Speaking Order/Non-speaking Order

Index :Yes/No

Internet:Yes/No

nti/ksa-2



WEB COPY



CCrI.O.P.No.15339 of 2022

N. SATHISH KUMAR,J.

Nti

To

1. The Chief Metropolitan Magistrate, Egmore.
2. The Assistant Commissioner,
Cyber Crime Cell,
Central Crime Branch,
Egmore.
3. The Public Prosecutor,
Madras High Court,
Chennai.

Crl.O.P.No.15339 of 2022
and
Crl.M.P.No.8617 of 2022

05.07.2022