



WEB COPY



Crl.O.P.No.23375 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.09.2022

PRONOUNCED ON : 31.10.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.O.P.No.23375 of 2022

M/s. Quadrangle Trading Services P Ltd.,
Flat No.2-F1, "Kalyan", 4, Atkinson Palace,
Vepery, Chennai 600 007.,
rep. by its Director Mr. Rathinakumar

... Petitioner

/vs/

1. The State represented by
Inspector of Police,
Central Crime Branch,
Egmore, Chennai 600 008.

2. G.Ravanan,
Thalaikadu House,
Periyar Nagar, Madipakkam,
Chennai 600 091.

3. G. Balaji,
Thalaikadu House,
Periyar Nagar, Madipakkam,
Chennai 600 091.

... Respondents



Crl.O.P.No.23375 of 2022

Prayer : This Criminal Original Petition has been filed under Section 482 of Cr.P.C. to set aside the order dated 30.08.2022 of the Trial Court dismissing Crl.M.P.No.909 of 2022 on its file and allow the same and permit the petitioner to conduct the prosecution in the case in C.C.No.55 of 2013 on the file of the Special Metropolitan Magistrate Land Grabbing Court No.II, Egmore at Allikulam, Chennai.

For Petitioner	...	Mr. R. Subramanian, for M/s.G.Rajathi
For Respondents	...	Mr. S.Santhosh, Gov. Advocate (Crl. side), for R1
	...	Mr. D.Saikumaran, for R2 & R3

ORDER

=

This Criminal Original Petition has been filed to set aside the order passed by the learned Special Metropolitan Magistrate, Land Grabbing Court No.II, Egmore at Allikulam, Chennai in Crl.M.P.No.909 of 2022 in C.C.No.55 of 2013, dated 30.08.2022.



Crl.O.P.No.23375 of 2022

2. The fact of the case is that the petitioner gave a complaint against the 5 accused persons for the fraud committed by them. On receiving the complaint, the respondent police, registered a case in Crime No.815 of 2022 for the offences under Sections 420, 468, 471 r/w. 34 of IPC. After investigation, the respondent police had filed a final report for the offences under sections 420, 465, 468, 471 r/w. 468 and r/w. 34 of IPC only against 3 accused persons, viz., Gnanasundaram, G.Ravanan, G.Balaji, before the XI Metropolitan Magistrate, Saidapet, Chennai, which was taken on file in the year 2007 in C.C.No.9035 of 2007 and thereafter, case number was re-assigned as C.C.No.28 of 2010. Thereafter, the case was transferred to Special Court No.II, for the Exclusive Trial of Land Grabbing Cases, Allikulam, Chennai and the case number was re-assigned as C.C.No.55 of 2013.

3. Pending trial, the petitioner had sought permission for conducting prosecution by filing petition in Crl.M.P.No.909 of 2022 under Section 302 Cr.P.C., for the offences as stated above. The learned Judicial Magistrate declined permission on the ground that the petitioner had not shown any acceptable reason for permission to conduct the prosecution independently,



Crl.O.P.No.23375 of 2022

besides the petitioner was already permitted to assist the prosecution on 07.03.2022 upon his petition filed under Section 301(2) Cr.P.C before the commencement of the trial and hence, the petitioner may not have any reason conduct the prosecution and thus, dismissed the petition in Crl.M.P.No.909 of 2022 on 30.08.2022, which is under challenge.

4. The learned counsel for the petitioner submitted that the Trial Court erroneously dismissed the petition filed under Section 302 Cr.P.C. seeking permission for victim to conduct the case, as though the trial Court considered the petition as a similar petition, which was already filed by the petitioner under Section 301(2) Cr.P.C., to assist the prosecution. The allegations against the accused are cheating and forging documents. The petitioner as a purchaser had entered into agreement of sale with the accused persons and they had received the entire sale consideration and also handed over the possession of the property to the petitioner. A power of attorney was executed by them in favour of the nominee of the petitioner and the same was also got registered. They have also represented to be the owners of the properties and also produced documents, thereby made the petitioner to believe the encumbrance certificates showing as though they had not dealt



with the property. The petitioner subsequently discovered that parts of the property was sold by the sellers even prior to the transactions with the accused by creating a false encumbrance certificate. The matter not involving any larger societal issues the State should have no vested interest in prosecuting the case. There can be no reason to deny the petitioner the right to conduct its prosecution in the case as per the ratio of the Hon'ble Supreme Court as well as this Court. The Trial Court failed to consider the decisions of the Hon'ble Supreme Court of India as well as this Court.

5. He further submitted that in view of the decision of the Hon'ble Supreme Court in *Dhariwal Industries Limited (supra)* case, the complainant is not alien to the proceedings and he may be permitted to engage his counsel to conduct the prosecution case and thus, pleaded to set aside the impugned order and to allow the Criminal Original Petition. In support of his arguments, the learned counsel relied upon the following judgments:

- (i) *J.K.International /vs/ State (Govt. of NCT of Delhi) and others (2001(3) SCC 462),***
- (ii) *Dhariwal Industries Limited /vs/ Kishore Wadhwani and others (2016(10) SCC 378),***



Crl.O.P.No.23375 of 2022

(iii) Order of this Court in the case of Thamiraparani Investments Pvt. Ltd., /vs/ Inspector of Police, E-1, Mylapore Police Station, Chennai and anothers in Crl.O.P.No.731 of 2021, dated 29.07.2022

(iv) Order of this Court in the case of R.Subramaniam /vs/ The State, rep. by its Assistant Commissioner, Cyber Crime Cell, in Crl.O.P.No.15339 of 2022, dated 05.07.2022) .

6. The learned Government Advocate (Criminal side) appearing for the first respondent justifying the impugned order contending that though the victim has a right to assist the Court at the time of trial before the Magistrate, the Court cannot give permission to prosecute mechanically, if the parties are allowed to proceed to take over the prosecution avowed object of the fairness in the criminal justice dispensation system shall be shaken and thus, pleaded to dismiss the Criminal Original Petition.

7. To support his argument, the learned Government Advocate placed reliance on the decision of the Hon'ble Supreme Court of India in the case of ***Amir Hamza Shaikh and others /vs/ State of Maharashtra and another [2019 (8) SCC 387]***.



8. I have considered the matter in the light of the submissions made by the learned counsel for the parties and perused the materials available on records carefully.

9. Whether permission should be granted or not is a matter left to the discretion of the Court, the discretion being used in a judicial manner as observed by Hon'ble Supreme Court in the case of ***Subash chandran /vs/ State of Kerala [1981 KLT Case No.125]***.

10. I have considered the decision relied on by the learned counsel for the petitioner in the case of ***J.K.International /vs/ State (Govt. of NCT of Delhi) and o thers [2001(3) SCC 462]***.

11. In that case, the accused approached the High Court for quashing the criminal proceedings initiated by the appellant. It may not be that the complainant should have been made a party by the accused himself in the petition for quashing the criminal proceedings, as the accused has no such obligation when the case was charge-sheeted by the police. It is



predominantly the concern of the State to continue the prosecution. But, when the complainant wishes to be heard when the criminal proceedings are sought to be quashed, it would be a negation of justice to him if he is foreclosed from being heard even after he makes a request to the Court in that behalf.

12. The scheme envisaged in the Code of Criminal Procedure indicates that a person who is aggrieved by the offence committed is not altogether wiped out from the scenario of the trial merely because the investigation was taken over by the police and the charge sheet was laid by them. Even the fact that the Court had taken cognizance of the offence is not sufficient to debar him from reaching the Court for ventilating his grievance. Even in the Sessions Court, where the Public Prosecutor is the only authority empowered to conduct the prosecution as per Section 225 of the Code. A private person, who is aggrieved by the offence involved in the case is not altogether debarred from participating in the trial. This can be discerned from Section 301(2) of the Code. Further, when the trial is before a Magistrate's Court, the scope of any other private person intending



Crl.O.P.No.23375 of 2022

to participate in the conduct of the prosecution is still wider. This can be noticed from Section 302 of the Code. The genesis in almost all such cases is the grievance of one or more individual that they were wronged by the accused by committing offences against them.

13. The private person, who is permitted to conduct prosecution in the Magistrate's Court can engage a counsel to do the needful in the Court on his behalf. Further if a private person is aggrieved by the offence committed against him or against anyone in whom he is interested he can approach the Magistrate and seek permission to conduct the prosecution by himself. It is open to the Court to consider his request. If the Court thinks that the cause of justice would be served better by granting such permission, the Court would generally grant such permission. Of course, this wider amplitude is limited to Magistrates' Courts, as the right of such private individual to participate in the conduct of prosecution in the Sessions Court is very much restricted and is made subject to the control of the Public Prosecutor.



WEB COM

14. In another case in ***Dhariwal Industries Limited /vs/ Kishore Wadhvani and others [2016(10) SCC 378]*** .In that case, the appellant filed a complaint under Section 200 Cr.P.C. for the offences punishable under Sections 109, 193, 196, 200, 465, 467 and 471 read with Section 120-B of the IPC,1860. The learned magistrate exercising the power under Section 156(3) Cr.P.C. directed the police to investigate into the allegations. The investigating agency registered an FIR and eventually laid the charge-sheet before the Court and thereafter, the case was registered as CC.No.927/PW/2007. After the charge sheet was filed, the accused persons filed an application under Section 239 Cr.P.C. seeking discharge. At that juncture, the appellant made an oral prayer before the learned Magistrate seeking permission to be heard along with the Assistant Public Prosecutor. The learned Magistrate, after hearing the learned counsel for the parties, observed that the original complainant is not alien to the proceeding and therefore, he has a right to be heard even at the stage of framing of charge and accordingly, granted the permission. The High Court modified that order and directed the counsel engaged by the victim to act under the directions of the Assistant Public Prosecutor in charge of the case.



15. Questioning that order, the Criminal Appeal was filed before the Hon'ble Supreme Court. The Apex Court finally held that Section 302 Cr.P.C applies to every stage including the stage of framing charges in as much as the complainant is permitted by the Magistrate to conduct the prosecution and if an application is filed it shall be dealt with on its own merits.

16. The decision of this Court rendered in ***Crl.O.P.No.15339 of 2022*** based upon the ratio laid down by the Hon'ble Supreme Court in ***Dhariwal Industries Limited (supra)*** and not considered the judgment of the Hon'ble Supreme Court in ***Amir Hamza Shaikh and others /vs/ State of Maharashtra and another [2019 (8) SCC 387]***.

17. The settled principle of law is Section 302 Cr.P.C. enables the Magistrate to permit any person to conduct the prosecution independently. When permission is sought to conduct the prosecution by a private person, it is open to the Court to consider his request. The Court must be satisfied that the cause of justice would be best subserved, if such permission is



granted. The Magistrate is not bound to grant permission at mere asking.

In the case on hand, the Magistrate would be within his jurisdiction to grant permission to the victim to take over the prosecution case pending before the Magistrate. In the present case, the Magistrate has not satisfied that the cause of justice would be best subserved for granting permission. In the order, the Magistrate further recorded that the petitioner was already permitted to assist the prosecution on 07.03.2012. Apart from this, the petitioner had not stated any valid reason in his petition to permit him to engage private counsel to conduct the prosecution case. The Hon'ble Supreme Court in the case of *Nagawwa /vs/ Veeranna Shivalingappa Konjalgi and others [AIR 1976 SC 1947]* held that once, the Magistrate has exercised his discretion, it is not for the High Court or even the Hon'ble Supreme Court to substitute its own discretion for that of the Magistrate.

18. Under these circumstances, the Magistrate declined to grant permission to the defacto complainant to prosecute the trial as there was no satisfactory ground, further the request of the petitioner does not meet the



Crl.O.P.No.23375 of 2022

parameters laid down by the Hon'ble Supreme Court in *Amir Hamza Shaikh /vs/ State of Maharashtra [2019 (8) SCC 387]* . Thus, the Magistrate, by exercising his discretion, dismissed the petition.

19. In view of the above, I find no reason for interference with the impugned order and I find no merit in this petition and the same is liable to be dismissed.

20. Accordingly, this Criminal Original Petition is dismissed.

31.10.2022

mrp

Index : yes/no

Internet : Yes/no

To

1. The Special Metropolitan Magistrate Land Grabbing Court No.II, Egmore at Allikulam .
2. The Inspector of Police, Central Crime Branch, Egmore, Chennai 600 008.
3. The Public Prosecutor, High Court, Madras.



WEB COPY



Crl.O.P.No.23375 of 2022

V.SIVAGNANAM ,J.

mrp

Pre-delivery Order
in
Crl.O.P.No.23375 of 2022

31.10.2022