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CRL.RC.No.1621 of 2022

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

Dated : 22.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRL.RC.No.1621 of 2022

&

Crl.M.P.No.19416 of 2022

Pinky

.. Petitioner

Vs.

State, represented by
The Assistant Commissioner of Police,
Flower Bazaar Range,
Chennai 600 001.

.. Respondent

Prayer: Criminal Revision Case is filed under Section 397 r/w. 401 of the Code of Criminal Procedure to call for the entire records relating to this case and set aside the order dated 28.10.2022 passed by the I Additional Sessions Judge, City Civil Court, Chennai in Crl. M.P.No.8547 of 2022 in S.C.No.315 of 2021 and allow the petitioner to assist the prosecution in the above Sessions Case.

For Petitioner

: Mr.W.M. Abdul Azeez

For Respondent

: Mr. V. Meganathan
Govt. Advocate (crl.side)



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ORDER

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2. The learned counsel for the petitioner submitted that the petitioner is the defacto complainant in the case registered by the respondent police in Crime No.916 of 2020 against A1 to A3 for the offences punishable under section 302 IPC and section 27(3) of Arms Act. After investigation, final report was filed before the concerned court charging A1 to A6 for the offences under sections 120(B) r/w.302, 450, 302(3 counts) 380 r/w.34 of IPC, A1 to A3 for the offence under section 27(3) of Arms Act, 1959, A7 for the offences under sections 29(b) and 30 of Arms Act, 1959 and A8 for the offence under section 29(b) of Arms Act 1959 and A9 for the offences under sections 120(B) r/w.302 of IPC and 302 r/w.109 of IPC. Thereafter, the case was committed to I Additional Sessions Court, Chennai in S.C.No.315 of 2022. Before the trial court, the petitioner filed an application under section 301(2) Cr.P.C. seeking to permit the petitioner to engage a private counsel to assist the public prosecutor in



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conducting the prosecution case. The trial court, after considering the arguments, dismissed the petition on the ground that now the case is at the stage of trial for examination of prosecution witnesses and at this stage, the question of permission to engage a private counsel of her choice to assist the prosecution case does not arise.

3. The learned counsel further submitted that the petitioner is not seeking to replace the Public prosecutor, but she seeks permission only to assist the public prosecutor in conducting the prosecution case. Thus, she seeks to quash the impugned order and to permit the petitioner to engage a counsel to assist public prosecutor enabling her to conduct the prosecution case.

4. When the matter was taken up for hearing, the learned Govt. Advocate (crl.side) submitted that in view of section 301 (2) of Cr.P.C., the defacto complainant will be permitted to engage a private counsel to assist public prosecutor in conducting prosecution case and he has no objection for the same.



5. On perusal of records, the fact reveals that the petitioner is the defacto complainant in S.C.No.315 of 2021 pending on the file of I Additional Sessions Court, Chennai. The respondent police has registered a case on the complaint given by the petitioner in Cr.No.916 of 2020 against the accused persons. After filing of final report, the case was committed to the Additional Sessions Court, Chennai in S.C.No.315 of 2022. Before the trial court, the petitioner filed an application under section 301(2) Cr.P.C., seeking permission to engage a private counsel to assist the public prosecutor in conducting the prosecution case.

6. Section 301(2) of Cr.P.C., reads as follows;

301. Appearance by public prosecutors.

(1).....

(2) If 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, and may, with the permission of the Court,



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submit written arguments after the evidence is closed

in the case

7. In view of section 24 of Cr.P.C., a sessions case has to be conducted only by Public Prosecutor. Section 301(2) of Cr.P.C., enables the complainant/victim to engage a private pleader to prosecute any person in any Court and 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, as the case may be. With the permission of the Court, he may submit written arguments after the evidence was closed in the case

8. For the reasons stated above, this court is of the view that the impugned order passed by the court below is unsustainable. Therefore, this Court passes the following order;

- The Criminal Revision Case is allowed;
- the order passed by the I Additional Sessions Judge, City Civil Court, Chennai in Crl.M.P.No.8547 of 2022 in S.C.No.315 of 2021 is hereby set aside;



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- the petitioner is permitted to engage a private counsel to assist the public prosecutor in charge of the case for conducting the prosecution case filed by the respondent police in Cr.No.916 in S.C.No.215 of 2021.

Consequently, the connected miscellaneous petition is closed.

22.12.2022

Index :yes/no
Internet:yes/no
msr

To

1. The I Additional Sessions Judge, City Civil Court, Chennai
2. The Assistant Commissioner of Police,
Flower Bazaar Range,
Chennai 600 001.
3. The Public Prosecutor, High Court, Madras.

V. SIVAGNANAM, J.



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