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Crl.R.C.(MD)No.722 of



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :18.08.2022

PRONOUNCED ON: 24.08.2022

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

Crl.R.C.(MD)No.722 of 2022

Rama Palaniappan : Petitioner/Petitioner/Defacto Complainant

Vs.

1.Murali @ Muralidharan

2.Vivek

3.Anantharaj

4.Shanthi

: Respondents 1 to 4/Respondents 1 to 4/
Accused

5.The Inspector of Police,
Aranthangi Police Station,
Pudukottai District.

(Crime No.231/2015)

: 5th Respondent/5th Respondent/Complainant

PRAYER : Criminal Revision Case has been filed under Section 397 r/w 401 Cr.P.C., to call for the records an set aside the order dated 01.07.2022 passed by the Sub-Court, Aranthangi in Cr.M.P.NO.72 of 2022 in S.C.No.53 of 2021.

For Petitioner : Mr.T.Lenin Kumar

For Respondents : Mr.V.Selvakumar
for R.1 to R.4

: Mr.S.Manikandan
Government Advocate(Crl.Side)
for R.5



ORDER

WEB COPY This Criminal Revision is directed against the order passed in Cr.M.P.No. 72 of 2022 in S.C.No.53 of 2021, dated 01.07.2022, on the file of the Subordinate Court, Aranthangi, dismissing the petition filed under Section 302 Cr.P.C.

2. The learned Counsel for the petitioner would submit that they have filed an application before the trial Court to permit the petitioner to appoint his Advocate to assist the prosecution, but the provision of law was wrongly quoted as under Section 302 Cr.P.C., instead of Section 301(2) Cr.P.C., and that the trial Court, without considering the relief claimed, has treated in the petition, as if the same was filed under Section 302 Cr.P.C., dismissed the same.

3. No doubt the learned Assistant Sessions Judge, in the impugned order has referred both the provisions under Sections 302 and 301(2) Cr.P.C., but by referring that the petition was filed under Section 302 Cr.P.C., and by holding that the petitioner has not assigned any sufficient reason for granting the relief, dismissed the petition filed under Section 302 Cr.P.C.

4. In the petition allegedly filed under Section 302 Cr.P.C., it has been stated that the Public Prosecutor would not disclose the facts, stage and the



status of the case to the petitioner and there arose delay in getting the necessary particulars and that therefore, permission was sought for to appoint his Advocate to assist the prosecution. No doubt, the respondents 1 to 4/Accused 1 to 4 have filed their counter statement raising objections for granting the relief claimed. The learned Assistant Sessions Judge, after enquiry, has passed the impugned order dated 01.07.2022 wherein it has been stated that the reason's stated do not warrant for passing of order permitting the private persons' assistance to Public Prosecutor and that since the Court does not satisfy with the petition filed under Section 302 Cr.P.C., the same was ordered to be dismissed in the interest of justice. Except the above, the learned Assistant Sessions Judge has not assigned any other reason or ground for rejecting the relief claimed.

5. The learned Counsel for the petitioner has relied on the decision of this Court in ***R.Vijaya Rani Vs. The Deputy Superintendent of Police and others*** passed in ***Crl.R.C.(MD)No.399 of 2017, dated 09.03.2021*** and wherein this Court has dealt with a similar case and the relevant passages are extracted hereunder:

“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. Admittedly, the petitioner is the defacto complainant and only at his instance, the case came to be registered and that thereafter, the fifth respondent has laid the final report and the case was taken on file in S.C.No.53 of 2021 and that the case is pending for trial. Considering the legal position above referred and also the facts and circumstances of the present case and 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 limited, the defence would not be prejudiced in any way.



7. 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., and the impugned order is bereft of valid reasons, 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 his Counsel 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 Assistant Sessions Judge, after the closure of the evidence for submitting the written arguments.

24.08.2022

Index : Yes/No

Internet : Yes/No

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

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1. The Sub-Court, Aranthangi.
2. The Inspector of Police,
Aranthangi Police Station,
Pudukottai District
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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