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Crl.M.P.No.2603 of 2023
in Crl.A.No.977 of 2022

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S.S. SUNDAR, J.
and
SUNDER MOHAN, J.

[Order of the Court was made by **S.S. SUNDAR, J.**]

The *de facto* complainant, who was examined as P.W.1 and who is also the brother of the deceased, has filed this petition to implead himself as a party in the Criminal Appeal in Crl.A.No.977 of 2022.

2.The case of the petitioner is that, due to election dispute, his own brother by name Krishnamoorthy was done to death by the accused/respondents 1 and 2, on 24.04.2019. The respondents 1 and 2/A1 and A12 were convicted and sentenced by the trial Court as follows:

<i>Accused</i>	<i>Offence for which Convicted</i>	<i>Sentence</i>
A1 & A2	Section 148 IPC	Simple Imprisonment for six months
	Section 341 IPC	Simple Imprisonment for one month
	Section 302 r/w. 149 IPC	Life imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo Rigorous Imprisonment for two years
A2	Section 342 IPC	Simple Imprisonment for three months
	Section 427 IPC	Simple Imprisonment for six months

Though the accused/respondents 1 and 2 were convicted and sentenced



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by the trial Court as above, the petitioner prays that he should be permitted to assist the Public Prosecutor by getting himself impleaded as party to the proceedings.

3.This petition is strongly opposed by the learned counsel for the respondents 1 and 2/accused by relying upon a judgment of the Hon'ble Supreme Court in ***Rekha Murarka v. State of West Bengal and another [Criminal Appeal No.1727 of 2019, dated 20.11.2019]***. The Hon'ble Supreme Court, considering the scope of few provisions of Criminal Procedure Code, considered the petition that was filed by the victim before the trial Court under Section 301 r/w. proviso to Section 24(8) of the Code of Criminal Procedure. The Hon'ble Supreme Court, referring to the role of Public Prosecutor, has held as follows :

“12.1.The use of the term “assist” in the proviso to Section 24(8) is crucial, and implies that the victim’s counsel is only intended to have a secondary role qua the Public Prosecutor. This is supported by the fact that the original Amendment Bill to the CrPC had used the words “co-ordinate with the prosecution”. However, a change was later proposed and in the finally adopted version, the words “co-ordinate with” were substituted by “assist”.



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This change is reflective of an intention to only assign a supportive role to the victim's counsel, which would also be in consonance with the limited role envisaged for pleaders instructed by private persons under Section 301(2). In our considered opinion, a mandate that allows the victim's counsel to make oral arguments and cross-examine witnesses goes beyond a mere assistive role, and constitutes a parallel prosecution proceeding by itself. Given the primacy accorded to the Public Prosecutor in conducting a trial, as evident from Section 225 and Section 301(2), permitting such a free hand would go against the scheme envisaged under the CrPC.

12.2. In some instances, such a wide array of functions may also have adverse consequences on the fairness of a trial. For instance, there may be a case where the Public Prosecutor may make a strategic call to examine some witnesses and leave out others. If the victim's counsel insists upon examining any of the left out witnesses, it is possible that the evidence so brought forth may weaken the prosecution case. If given a free hand, in some instances, the trial may even end up becoming a vindictive battle between the victim's counsel and the accused, which may further impact the safeguards put in place for the accused in criminal trials. These lapses may be aggravated by a lack of advocacy experience on the



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part of the victim's counsel. In contrast, such dangers would not arise in the case of a Public Prosecutor, who is required to have considerable experience in the practice of law, and act as an independent officer of the Court. Thus, it is important to appreciate why the role of a victim's counsel is made subject to the instructions of the Public Prosecutor, who occupies a prime position by virtue of the increased responsibilities shouldered by him with respect to the conduct of a criminal trial.

12.3. At the same time, the realities of criminal prosecutions, as they are conducted today, cannot be ignored. There is no denying that Public Prosecutors are often overworked. In certain places, there may be a single Public Prosecutor conducting trials in over 2-3 courts. Thus, the possibility of them missing out on certain aspects of the case cannot be ignored or discounted. A victim-centric approach that allows for greater participation of the victim in the conduct of the trial can go a long way in plugging such gaps. To this extent, we agree with the submission made by the learned Senior Counsel for the Appellant that the introduction of the proviso to Section 24(8) acts as a safety valve, inasmuch as the victim's counsel can make up for any oversights or deficiencies in the prosecution case. Further, to ensure that the right of appeal accorded to a victim under the



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proviso to Section 372 of the Cr.P.C. is not rendered meaningless due to the errors of the Public Prosecutor at the trial stage itself, we find that some significant role should be given to the victim's counsel while assisting the prosecution. However, while doing so, the balance inherent in the scheme of the CrPC should not be tampered with, and the prime role accorded to the Public Prosecutor should not be diluted.”

While upholding the prayer that the victim can be permitted to assist the prosecution, the Hon'ble Supreme Court found that the victim should not make any oral arguments except to assist the Public Prosecutor.

4.However, the learned Additional Public Prosecutor brought to the notice of this Court a recent judgment of the Hon'ble Supreme Court in ***Jagjeet Singh v. Ashish Mishra*** reported in ***(2022) 9 SCC 321***, wherein, the Hon'ble Supreme Court has held as follows :

“20.It is pertinent to mention that the legislature has thoughtfully given a wide and expansive meaning to the expression “victim” which “means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian



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or legal heir”.

21. This Court in Mallikarjun Kodagali v. State of Karnataka [Mallikarjun Kodagali v. State of Karnataka, (2019) 2 SCC 752, paras 3 and 8 : (2019) 1 SCC (Cri) 801] , while dealing with questions regarding a victim's right to file an appeal under Section 372CrPC, observed that there was need to give adequate representation to victims in criminal proceedings. The Court therein affirmed the victim's right to file an appeal against an order of acquittal. In Mallikarjun Kodagali [Mallikarjun Kodagali v. State of Karnataka, (2019) 2 SCC 752, paras 3 and 8 : (2019) 1 SCC (Cri) 801] , though the Court was primarily concerned with a different legal issue, it will be fruitful in the present context to take note of some of the observations made therein : (SCC pp. 760-61, paras 3 and 8)

“3. What follows in a trial is often secondary victimisation through repeated appearances in court in a hostile or a semi-hostile environment in the courtroom. Till sometime back, secondary victimisation was in the form of aggressive and intimidating cross-examination, but a more humane interpretation of the provisions of the Evidence Act, 1872 has made the trial a little less uncomfortable for the victim of an offence, particularly the victim of a sexual crime. In this regard, the judiciary has been proactive in



ensuring that the rights of victims are addressed, but a lot more needs to be done. Today, the rights of an accused far outweigh the rights of the victim of an offence in many respects. There needs to be some balancing of the concerns and equalising their rights so that the criminal proceedings are fair to both. [Girish Kumar Suneja v. CBI, (2017) 14 SCC 809 : (2018) 1 SCC (Cri) 202] ...

8. The rights of victims, and indeed victimology, is an evolving jurisprudence and it is more than appropriate to move forward in a positive direction, rather than stand still or worse, take a step backward. A voice has been given to victims of crime by Parliament and the judiciary and that voice needs to be heard, and if not already heard, it needs to be raised to a higher decibel so that it is clearly heard.”

(emphasis supplied)

22.It cannot be gainsaid that the rights of a victim under the amended CrPC are substantive, enforceable, and are another facet of human rights. The victim's right, therefore, cannot be termed or construed restrictively like a brutum fulmen [Ed. : The literal translation from the Latin approximates to “meaningless thunderbolt or lightning”, and is used to convey the idea of an “empty threat” or something which is ineffective.] . We reiterate that these rights are totally independent, incomparable,



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and are not accessory or auxiliary to those of the State under the CrPC. The presence of “State” in the proceedings, therefore, does not tantamount to according a hearing to a “victim” of the crime.

23.A “victim” within the meaning of CrPC cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/She has a legally vested right to be heard at every step post the occurrence of an offence. Such a “victim” has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. We may hasten to clarify that “victim” and “complainant/informant” are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/informant is also a “victim”, for even a stranger to the act of crime can be an “informant”, and similarly, a “victim” need not be the complainant or informant of a felony.”

5. In the light of the views expressed by the Hon'ble Supreme Court in the latest judgment in *Jagjeet Singh's case (supra)*, this Court is of the view that the petitioner can be impleaded to assist the Public Prosecutor.



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However, the impleading is subject to the rights and privileges of the victim as held by the Hon'ble Supreme Court in *Jagjeet Singh's case* (*supra*).

6. Accordingly, this Criminal Miscellaneous Petition is ordered.

(S.S.S.R., J.) (S.M., J.)
22.11.2023

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