



Crl.R.C. Nos.1325, 1329 & 1478 of 2023 &  
Crl. M.P. Nos.13071, 10984 & 10971 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

**Crl.R.C. Nos.1325, 1329 & 1478 of 2023 &**  
**Crl. M.P. Nos.13071, 10984 & 10971 of 2023**

S.Y. Eswaran ...Petitioner in all Crl.R.Cs.

Vs.

1. The Inspector of Police, (L&O)  
R-8, Police Station, Vadapalani,  
Chennai 600 026.

2. Vigneswaran ...Respondent in Crl.R.C. No.1325/2023

1. The Inspector of Police, (L&O)  
R-8, Police Station, Vadapalani,  
Chennai 600 026.

2. Chitra

3. Mohan

4. Hari

5. Vigneswaran ...Respondent in Crl.R.C. No.1329/2023

1. The Inspector of Police, (L&O)  
R-8, Police Station, Vadapalani,  
Chennai 600 026.

2. Gowri

3. Hemakumar

4. Suresh

5. Durgasankar

Page 1 of 16



Crl.R.C. Nos.1325, 1329 & 1478 of 2023 &  
Crl. M.P. Nos.13071, 10984 & 10971 of 2023

6. Mageswari  
7. Ragupathi

...Respondent in Crl.R.C. No.1478/2023

Common Prayer : Criminal Revision Cases filed under Section 397(1) r/w 401 Cr.P.C. against the orders dated 23.06.2023 in Crl.M.P. Numbers 6495, 6497 and 6498 of 2023 in C.C.3650, 3639 and 3651 of 2022, on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai.

For Petitioner : Mr. S.Y.Eswaran (party in person)  
in all Crl.R.Cs.  
For R1 : Mr.R.Vinothraja  
Government Advocate (Crl.Side)  
in all Crl.R.C.s

### **COMMON ORDER**

Challenge in these Criminal Revisions are made to the orders dated 23.06.2023 passed in Crl.M.P. Nos. 6495, 6497 and 6498 of 2023 in CC 3650, 3639 and 3651 of 2022, respectively by the learned XVII Metropolitan Magistrate, Saidapet, Chennai.



**Crl.R.C. Nos.1325, 1329 & 1478 of 2023 &  
Crl. M.P. Nos.13071, 10984 & 10971 of 2023**

WEB COPY

2. The revision petitioner is the defacto complainant in C.C.3639, 3650, and 3651 of 2022, on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai. He filed Criminal Miscellaneous Petitions in Crl. M.P. Nos. 6495, 6497 and 6498 of 2023 in the aforesaid Calendar Cases under Section 24(8) Cr.P.C. to permit him to conduct the prosecution through a counsel of his choice.

3. The main grievance of the revision petitioner is that the police have not investigated the case properly and that they have filed a final report on flimsy grounds in collusion with the accused. His further contention is that his statement was not at all recorded by the police and therefore, he must be allowed to engage a counsel of his own choice under Section 24(8) Cr.P.C., to conduct prosecution.

4. The learned XVII Metropolitan Magistrate, Saidapet, Chennai, dismissed the said petitions on the ground that there is an Assistant Public Prosecutor appointed by the State Government to represent the State in all the cases and that when there is no specific



**Crl.R.C. Nos.1325, 1329 & 1478 of 2023 &  
Crl. M.P. Nos.13071, 10984 & 10971 of 2023**

WEB COPY

allegation against the concerned Public Prosecutor, the petitioner cannot be permitted to engage a counsel of his choice to conduct prosecution. However, the petitioner was given liberty to engage a counsel to assist the prosecution. Aggrieved over the same, the present Criminal Revision Cases are filed by the complainant.

5. Mr. S.Y.Eswaran, the revision petitioner (party in person) contended that the findings of the learned XVII Metropolitan Magistrate, Saidapet, Chennai, are perverse since the statutory right given under Section 24(8) Cr.P.C. to the victim cannot be restricted by assisting the Public Prosecutor. The right given to the victim in Criminal cases under Section 24(8) Cr.P.C. is a statutory right and letting additional evidence by the defacto complainant cannot be curtailed by Public Prosecutor. His further contention is that when the defacto complainant wanted to examine certain witnesses on his side, the trial court disallowed the said petition on the ground that the Public Prosecutor objected for examination of those witnesses.



WEB COPY

Crl.R.C. Nos.1325, 1329 & 1478 of 2023 &  
Crl. M.P. Nos.13071, 10984 & 10971 of 2023

5.1. He relied on the decision in ***Khumukcham Nikita Devi vs. State of Manipur*** reported in ***2018 CRI LJ 1557*** and contended that Section 24(8) Cr.P.C. empowers the Court to permit a victim to engage a counsel of his choice to assist the prosecution and once the permission is accorded to the Advocate of the victim to assist the prosecution, his assistance could not be restricted to the terminology of Section 301 Cr.P.C, i.e., only to assist the prosecutor. According to him, the court can permit the Advocate so engaged by the victim to advance his arguments apart from submitting his written arguments.

5.2. The revision petitioner also relied on the decision of the Telangana High Court in ***Gude Bhavani Sujatha vs. Muggulla Srinivasa Rao and another*** (in Crl.P.No.5674/15) and contended that the trial court gravely erred in not considering the scope of amended proviso to Section 24(8) Cr.P.C. which came into force with effect from 31.12.2009, under which the defacto complainant/victim can engage a counsel of his choice to assist the prosecution and the dismissal of the



Crl.R.C. Nos.1325, 1329 & 1478 of 2023 &  
Crl. M.P. Nos.13071, 10984 & 10971 of 2023

WEB COPY said application is unsustainable.

5.3. Reliance was also placed upon the decision of Andhra High Court in *Mahabunnisa Begum vs. The State of Telangana and 2 others* (CrlP. No.7108/2017 decided on 25.10.2017), by the revision petitioner and his contention is that the victim can be permitted under proviso to Section 24(8) Cr.P.C to conduct prosecution either independently or in addition to public prosecutor by putting further questions to witnesses during trial or in any enquiry or other proceedings including filing of an application, counters or objections and participate fully. Hence, he prayed for allowing the present Criminal Revisions.

6. A perusal of the Criminal Miscellaneous Petitions filed by the present revision petitioner before the XVII Metropolitan Magistrate, Saidapet, Chennai, shows that he had prayed that he must be permitted to engage a counsel of his choice to conduct prosecution. The Additional Public Prosecutor filed a detailed counter stating that as per Section



Crl.R.C. Nos.1325, 1329 & 1478 of 2023 &  
Crl. M.P. Nos.13071, 10984 & 10971 of 2023

WEB COPY

24(8) Cr.P.C., the Central or State Government alone can appoint a Public Prosecutor and the victim can only be permitted to engage a counsel to assist the prosecution. At this juncture it is relevant to extract Section 24(8) and 301(2) Cr.P.C, which read as under:

***Section 24(8) in The Code Of Criminal Procedure, 1973***

*(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor.*

*Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section.*

***Section 301(2) in The Code Of Criminal Procedure, 1973***

*(2) If in 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,*

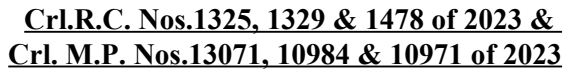


Crl.R.C. Nos.1325, 1329 & 1478 of 2023 &  
Crl. M.P. Nos.13071, 10984 & 10971 of 2023

WEB COPY *with the permission of the Court, submit written arguments  
after the evidence is closed in the case.*

Thus it is seen that the proviso to Section 24(8) Cr.P.C. *the word used are “assist the prosecution” and not to ‘assist the public Prosecutor’ as mentioned in **Section 301 Cr.P.C.***

7. The trial court judge in his orders has observed that the petitioner is at liberty to submit additional evidence, if any, through the Assistant Public Prosecutor and to assist the prosecution through a counsel of his choice in the interests of justice. It is incomprehensible as to how the present revision petitioner is prejudiced by the orders passed by the trial court judge when the petitioner has been given liberty to engage a counsel of his choice and also adduce additional evidence, if any, through the Assistant Public Prosecutor and to assist the prosecution. It is relevant to extract Section 24(1), 225, 301 and 302 Cr.P.C.



*(1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be.*

*225. Trial to be conducted by Public Prosecutor. In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.*

*301. Appearance by Public Prosecutors.*

(1) *The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.*

(2) If in any such case, any private person instructs a pleader to prosecute any person in any Court, the Public



**Crl.R.C. Nos.1325, 1329 & 1478 of 2023 &  
Crl. M.P. Nos.13071, 10984 & 10971 of 2023**

WEB COPY

*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, submit written arguments after the evidence is closed in the case.*

### ***Section 302 in The Code Of Criminal Procedure, 1973***

*302. Permission to conduct prosecution.*

*(1) 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.*

*(2) Any person conducting the prosecution may do so personally or by a pleader.*



**Crl.R.C. Nos.1325, 1329 & 1478 of 2023 &  
Crl. M.P. Nos.13071, 10984 & 10971 of 2023**

WEB COPY

From a reading of these provisions, it is clear that the Public Prosecutor is entrusted with the responsibility of conducting the case of the prosecution and the role played by him is very crucial. As per proviso to Section 24(8), a victim can engage a counsel of his choice. The revision petitioner contended that the Public Prosecutor may sail with the police thereby weakening the prosecution favouring the accused. According to him it would obstruct justice instead of furthering it. He therefore prayed that this Court should direct the counsel engaged by the victim to present his case before the concerned trial court irrespective of the objections that may be raised by the Assistant Public Prosecutor/Public Prosecutor as the case may be.

8. The use of the term 'assist' in the proviso to Section 24(8) of the Code of Criminal Procedure, 1973 is crucial, and implies that the Victim's Counsel can only have a secondary role qua the Public Prosecutor. This is supported by the fact that the original Amendment Bill to the Criminal Procedure Code had used the words "coordinate with the prosecution". However, a change was later proposed and in the



Crl.R.C. Nos.1325, 1329 & 1478 of 2023 &  
Crl. M.P. Nos.13071, 10984 & 10971 of 2023

finally adopted version, the words "coordinate with" were substituted for "assist". 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) Cr.P.C. If the counsel engaged by the victim goes beyond an assertive role and cross-examine witnesses on the side of the prosecution, the same would amount to a parallel prosecution proceedings by itself. In some cases, it may have adverse consequences on the fairness of trial, thus weakening the case of the prosecution itself.

9. In the decision in ***Rekha Murarka vs. State of West Bengal and another*** reported in ***(2020) 2 Supreme Court Cases 474***, the Hon'ble Supreme Court had held thus:

*"12.4. In this regard, given that the modalities of each case are different, we find that the extent of assistance and the manner of giving it would depend on the facts and circumstances of each case. Though we cannot detail and discuss all possible scenarios that may arise during a*



Crl.R.C. Nos.1325, 1329 & 1478 of 2023 &  
Crl. M.P. Nos.13071, 10984 & 10971 of 2023

WEB COPY

*criminal prosecution, we find that a victim's counsel should ordinarily not be given the right to make oral arguments or examine and cross-examine witnesses. As stated in [Section 301\(2\)](#), the private party's pleader is subject to the directions of the Public Prosecutor. In our considered opinion, the same principle should apply to the victim's counsel under the proviso to [Section 24\(8\)](#), as it adequately ensures that the interests of the victim are represented. If the victim's counsel feels that a certain aspect has gone unaddressed in the examination of the witnesses or the arguments advanced by the Public Prosecutor, he may route any questions or points through the Public Prosecutor himself. This would not only preserve the paramount position of the Public Prosecutor under the scheme of the [CrPC](#), but also ensure that there is no inconsistency between the case advanced by the Public Prosecutor and the victim's counsel.*

*12.5 However, even if there is a situation where the Public Prosecutor fails to highlight some issue of importance despite it having been suggested by the victim's counsel, the victim's counsel may still not be given the unbridled mantle of making oral arguments or examining*



**Crl.R.C. Nos.1325, 1329 & 1478 of 2023 &  
Crl. M.P. Nos.13071, 10984 & 10971 of 2023**

WEB COPY

*witnesses. This is because in such cases, he still has a recourse by channelling his questions or arguments through the Judge first. For instance, if the victim's counsel finds that the Public Prosecutor has not examined a witness properly and not incorporated his suggestions either, he may bring certain questions to the notice of the Court. If the Judge finds merit in them, he may take action accordingly by invoking his powers under [Section 311](#) of the CrPC or [Section 165](#) of the Indian Evidence Act, 1872. In this regard, we agree with the observations made by the Tripura High Court in [Smt. Uma Saha v. State of Tripura](#) (supra) that the victim's counsel has a limited right of assisting the prosecution, which may extend to suggesting questions to the Court or the prosecution, but not putting them by himself."*

Thus the role of the counsel engaged by the victim is restricted to the extent mentioned in the above decision of the Hon'ble Supreme Court and thus the matter has been set at rest by the Hon'ble Supreme Court.



**Crl.R.C. Nos.1325, 1329 & 1478 of 2023 &  
Crl. M.P. Nos.13071, 10984 & 10971 of 2023**

WEB COPY

10. In the result,

- i. the Criminal Revision cases are dismissed. Consequently, connected Criminal Miscellaneous Petitions are closed.
- ii. The orders dated 23.06.2023 passed in Crl.M.P. Numbers 6495, 6497 and 6498 of 2023 in CC. Nos. 3650, 3639 and 3651 of 2022, passed by the learned XVII Metropolitan Magistrate, Saidapet, Chennai, are confirmed.

**07.09.2023**

Index: Yes/No  
Internet: Yes/No  
Speaking/Non-Speaking order  
bga

To

1. 1. The Inspector of Police, (L&O)  
R-8, Police Station, Vadapalani,  
Chennai 600 026.
2. The XVII Metropolitan Magistrate, Saidapet, Chennai,



WEB COPY



**Crl.R.C. Nos.1325, 1329 & 1478 of 2023 &  
Crl. M.P. Nos.13071, 10984 & 10971 of 2023**

**R. HEMALATHA, J.**  
bga

**Crl.R.C. Nos.1325, 1329 & 1478 of 2023 &  
Crl. M.P. Nos.13071, 10984 & 10971 of 2023**

07.09.2023