



Crl.R.C.(MD).No.443 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.04.2023

Pronounced on : 02.06.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.443 of 2023

and

Crl.M.P.(MD)No.6542 of 2023

Joseph Jayaseelan

... Petitioner/Petitioner/P.W.1

Vs.

1.The State represented by
The Inspector of Police,
Keeraithurai Police Station,
Madurai.
(Crime No.571 of 2016)

... Respondent

2.Jaya

... Respondent/Respondent/Accused

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records relating to the order dated 30.03.2023 made in Cr.M.P.No.8441 of 2021 in C.C.No.391 of 2018 on the file of Judicial Magistrate Court No.IV, Madurai partly allowed the petition filed under Section 302(2) of Cr.P.C. by the petitioner and set aside the same and allow the above revision so as to engage a private counsel on behalf of petitioner/defacto complainant.



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For Petitioner : Mr.K.Althaf Sheriff
For R1 : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

ORDER

This Criminal Revision is directed against the order passed in Crl.M.P.No. 8441 of 2021 in C.C.No.391 of 2018 dated 30.03.2023, on the file of the Court of Judicial Magistrate No.4, Madurai, dismissing the petition filed under Section 302 of the Code of Criminal Procedure.

2. On the basis of the complaint lodged by the petitioner/defacto complainant, FIR came to be registered in Crime No.571 of 2016 against the second respondent/accused on 06.08.2016 for the offences under Sections 409, 468, 474 and 477A IPC. The first respondent police, after completing the investigation, has laid the final report and the same was taken on file in C.C.No. 391 of 2018 on the file of the Court of Judicial Magistrate No.4, Madurai. When the trial was in progress, the above petition under Section 302 Cr.P.C. came to be filed seeking permission to conduct the prosecution by separately engaging a counsel. The first respondent police as well as the second respondent filed their



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reply raising objections. The learned Judicial Magistrate, after enquiry, has passed the impugned order dated 30.03.2023 dismissing the petition filed under Section 302 Cr.P.C. Aggrieved by the said dismissal, the defacto complainant has preferred the present revision.

3. The case of the petitioner is that the second respondent was working as as a Noon Meal Scheme Organizer in Sundarambal Middle School, Keeraithurai, Madurai, in which, the petitioner is working as a Head Master, that the second respondent had sent her application for medical leave for 15 days through post, that the second respondent got inpatient treatment in Government Rajaji Hospital, Madurai from 13.04.2015, that the second respondent, after attending her duty, had made corrections in the school records, as if, she was working during the medical leave period and got her salary, that when enquiry with respect to the above was pending, she had absented herself for duty without any intimation from 27.11.2015 till 09.12.2015, that subsequently, she had entered into the school premises forcibly and made corrections and subscribed her signature, as if, she was working during the absent period and got her salary, that the first respondent police, in their final report, has not added the concerned BDO and medical officer of the Government Rajaji Hospital, where, the second



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respondent was taking inpatient treatment, to prove the main charges levelled against her, that when the above aspects were brought to the notice of the Assistant Public Prosecutor, he had not taken the same seriously and that therefore, the petitioner was constrained to file the above application seeking permission to examine the concerned BDO and the medical officer attached to the Government Rajaji Hospital and to permit him to conduct the prosecution by engaging a counsel.

4. The defence of the first respondent police is that the prosecution has already examined 8 witnesses as P.W.1 to P.W.8, that the prosecution has already filed 3 applications under Section 311 Cr.P.C. to recall P.W.1 and to examine the medical officer attached to the Government Rajaji Hospital and to examine the BDO, Madurai East and are pending, that the petitioner has never informed the above aspects to the Assistant Public Prosecutor, who is now conducting the prosecution, that after examination of 8 witnesses, if permission is granted to the petitioner to conduct the prosecution separately that will cause serious prejudice to the case of the prosecution and that therefore, the above petition of the defacto complainant is liable to be dismissed.



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5. The second respondent has taken a stand that the petitioner with ulterior motive to make illegal gain has filed the above petition with false averments, that the petitioner is not the aggrieved person, that the petitioner has not levelled any allegations against the Public Prosecutor and that since the above petition was filed only to drag on the proceedings and to take revenge on the accused, the same is liable to be dismissed.

6. The learned counsel appearing for the petitioner would submit that the first respondent has not taken any steps to examine the BDO, East Panchayat Union, Madurai, the Doctor attached to the Government Rajaji Hospital, the then Noon Meal Assistant and PA attached to the District Collector, Madurai, that the accused had defrauded the School Management by manipulating the attendance register in order to defame the petitioner's name in the School Management and thereby cheated the public money, that engaging a private counsel by the defacto complainant, who set the law in motion is mandated to bring out the truth by adducing necessary evidence before the trial Court and that the learned Magistrate, without assigning any valid reasons, has dismissed the above petition.



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7. It is evident from the impugned order that the learned Magistrate, by observing that out of 12 witnesses, 8 witnesses have already been examined, that the prosecution has already filed application under Section 311 Cr.P.C. in Crl.M.P.No.9597 of 2021 to examine the BDO, Madurai East and the same was allowed, that the prosecution has filed another application under Section 311 Cr.P.C. in Crl.M.P.No.404 of 2022 to recall P.W.1 for marking certain documents and the same was ordered on 07.07.2022, that another application filed under Section 311 Cr.P.C. in Crl.M.P.No.403 of 2022 to examine duty medical officer attached to the Government Rajaji Hospital and the same was ordered on 07.07.2022, that the Assistant Public Prosecutor Grade-2 has examined the witnesses properly, that he has already filed applications for examining additional witnesses and the same was already permitted, that the Assistant Public Prosecutor has not committed any mistake and is conducting the prosecution properly, that there was no loss or prejudice caused to the defacto complainant and that since the petitioner has not advanced any valid reason or ground for granting permission to engage a counsel for conducting the prosecution properly, permission cannot be granted, has dismissed the petition.



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8. As already contended by the learned Additional Public Prosecutor, it is not the case of the petitioner that the Assistant Public Prosecutor, who is now conducting the prosecution, has committed any blunder or serious mistake in conducting the prosecution so as to affect the case of the prosecution itself.

9. As already pointed out, the main grievance of the petitioner is that the BDO, Madurai East and the medical officer attached to the Government Rajaji Hospital are the necessary witnesses to be examined to prove the charges levelled against the accused, but the prosecution has already filed necessary applications for examining those witnesses and the same were already permitted by the trial Court. Except the above, the petitioner has not canvassed any other valid reason or ground, warranting to grant permission to conduct the prosecution separately.

10. No doubt, Sections 301(2) and 302 Cr.P.C. speak about the permission to conduct the prosecution, but 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.



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11. It is pertinent to note that any person 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. In criminal cases, 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 the Code of Criminal Procedure is Section 301(2) Cr.P.C. Even if the Court grants permission to the defacto complainant to appoint a counsel to assist the prosecution, the role of that counsel is very much limited and the control of the prosecution is still in the hands of the Public Prosecutor / Assistant Public Prosecutor, as the case may be and that 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 any authority for the counsel, who is allowed to assist the prosecution.



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12. In the case on hand, the learned Magistrate, by assigning good reasons, has rightly rejected the petition filed under Section 302 Cr.P.C., but at the same time, granted permission to the petitioner's counsel to assist the prosecution. To put it in other way, though the learned Magistrate has rejected the permission sought for under Section 302 Cr.P.C., granted permission under Section 301(2) Cr.P.C.

13. No doubt, as rightly pointed out by the learned counsel appearing for the petitioner, the learned Magistrate has not specified that the permission under Section 301(2) Cr.P.C. was granted, but on perusal of the impugned order, it can easily be inferred that though the permission sought for under Section 302 Cr.P.C. was rejected, he has chosen to grant permission under Section 301(2) Cr.P.C. to assist the prosecution.

14. As rightly contended by the learned counsel appearing for the petitioner, law was set in motion on the basis of the complaint lodged by the petitioner and only at his instance, the case came to be registered. Moreover, when the petitioner's application in Crl.M.P.No.8441 of 2021 was dismissed for default, vide order dated 20.10.2022, he has preferred a revision in Crl.R.C.



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(MD)No.1159 of 2022 and the learned Judge of this Court, vide order dated 30.11.2022, setting aside the order dismissing the petition under Section 302 Cr.P.C. for default and remitted the matter back to the trial Court to consider the said application on its own merit in accordance with law, after giving reasonable opportunity to both the sides.

15. Considering the facts and circumstances of the case and the efforts taken by the petitioner, this Court is of the view that the order of the Magistrate in dismissing the petition filed under Section 302 Cr.P.C., but granting permission under Section 301(2) Cr.P.C., cannot be found fault with.

16. It is pertinent to note that since the power of the counsel allowed to assist the prosecution is very much limited, the defence would not be prejudiced in any way.

17. Hence, the order of the learned Magistrate rejecting the permission sought for under Section 302 Cr.P.C., stands confirmed. However, the petitioner is permitted to engage a counsel to assist the prosecution under Section 301(2) Cr.P.C. and he is at liberty to seek permission of the learned Judicial Magistrate,



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after the closure of the evidence, for submitting written arguments. The Criminal Revision is disposed of accordingly. Consequently, connected Miscellaneous Petition is closed.

02.06.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To

- 1.The Inspector of Police,
Keeraithurai Police Station,
Madurai.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

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Pre-Delivery order made in
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and
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Dated : 02.06.2023