



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPP) NO. 148/2024

Gita d/o Bhaskar Shejwal V/s State of Maharashtra

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. A.S. Mardikar, Senior Counsel a/b Mr. Sameer Sonwane, counsel for the applicant.

Mr. V.A. Thakre, APP for the non-applicant/State.

Mr. D.V. Chauhan, counsel for assist to prosecution./intervenor.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 08/02/2024.

1. The present application is filed under Section 301 of the Code of Criminal Procedure, 1973, the applicant / intervener- Narendra s/o Vasant Sharma seeks permission to Assist the Prosecution in the instant matter.

2. As per the contention of the applicant, he filed this application as an intervener to assist the prosecution, as he is the person who is the initiator behind the lodging of the FIR. He is the person on whose application dated 05/12/2022 which was preferred under the Right to Information Act the present crime which was initially closed down and came to be reopened.

3. Mr. D.V. Chauhan, learned counsel for the applicant /intervener submitted that the intervenner had also preferred a complaint dated 15/12/2023 addressing the various authorities requesting the concerned authority to cancel the gun license permit of another accused namely Sanket Bharat

Gaikwad. The present crime came to be registered against the unknown persons on 12/01/2024.

4. He further submitted that the present applicant – Narendra Vasant Sharma is the proper party without whose submission, the bail application ought not to be decided. The notice under Section 41 of the Code of Criminal Procedure, 1973 (for short the Code') came to be issued against the applicant, therefore, apprehending her arrest on 15/01/2024, she had preferred an application for grant of pre-arrest bail. The applicant had filed an application seeking intervention, but the same was rejected.

5. It is submitted by learned counsel for the applicant/ intervener Mr. D.V. Chauhan that the present intervener is also threatened by the present applicant, such conduct of the present applicant who serving as an R.T.O. Officer is deprecated. He further submitted that the learned trial Court has not considered at the initiation of the present *intervenor's* action, the crime came to be reopened and investigated the same. Therefore, it is the right of the present applicant to intervene in the application by way of Assisting the Prosecution within the four corners of Section 301 of the Code of Criminal Procedure, 1973.

6. In support of his contention, he placed reliance in the cases of **A.R. Antulay Vs Ramdas Srinivas Nayak and another¹**, **J.K. International Vs State (Govt. of NCT of Delhi)**

1 (1984) 2 SCC 500

and others², and Ghanshyam Upadhyay Vs Central Bureau of Investigation and another³. On the basis of this submission, he submitted that the intervenor has filed this application to assist the prosecution and brought some facts on record which show that, the earlier statements made by the present applicant and the co-accused regarding the injuries, are falsified. There is active involvement of the applicant in committing the said crime, and in view of that the applicant be permitted to intervene in the application by engaging the counsel to Assist the Prosecution.

7. The said application is strongly opposed by learned counsel for the applicant stating that, the intervenor is neither the informant and nor the victim, and therefore, he is not entitled to be entered into the application as an intervenor. He further submitted that in fact, the intervenor has no locus standi to prefer this application, and therefore, application deserves to be rejected.

8. The issue involved in the present application is whether the application of the intervenor can be entertained, when he is neither victim nor the informant as far as the registration of the crime is concerned. Admittedly, the Public Prosecutor occupy the position to deal with the application for grant of bail in our criminal justice system. The crimes are treated as a wrong against the society as a whole, and his role

² (2001) 3 SCC 462

³ In Cr. W.P. 300/2023 along with interim appln. St. No.1523/2023 (Bom. H.C.) decided on 20/01/2023

in the administration of justice is special, as he is not just representative of the aggrieved person but he is the representative of the State at large, though he is appointed by the Government, he is not a servant of the Government or the investigating agency. He is an officer of the Court and his primary duty is to assist the Court in arriving at the truth by putting-forth all the relevant material on behalf of the prosecution.

9. 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 to assist the Public Prosecutor. This is supported by the fact, in view of the Section 301 of the Code of Criminal Procedure, 1973 which reads as under:-

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 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.*

10. Thus, in view of Section 301(2) of the Code, the private person if instructs a pleader to prosecute any person, he can assist the prosecutor by engaging a counsel, of course

with the permission of the Court. Thus, the scope of Section 301(2) of the Code is specified by the Sub-Section (2) of the said Section. Of course, it is at the discretion of the Court whether the said person is to be allowed or not to allow. Admittedly, the definition of a private person is not defined anywhere in the Act, therefore, locus of the person requires to be seen.

11. “Locus Standi” signifies a right of appearance in a Court of justice or right to be heard or place of standing. Such a Locus Standi confers on a person only if he has an interest in the matter. The Victim/Private person in that sense does have an interest in the matter since it is he/she are the ultimate sufferer of such crime. However, under Section 301(2) of the Code, the legislature has consciously regulated it in the manner that the pleader so instructed by a private person, shall act in any such case under the directions of the Public Prosecutor only and not as an absolute legal right of independent appearance before the Court. The aforesaid provision is therefore, in a clear distinction from the specific provision under Section 372 of the Code conferring upon the victim a distinct legal right to prefer an appeal which was not earlier available to him/her. The conscious distinction made by the legislature in the wording of the two provisions is apparent and with a definite legislative intent and purpose.

If by taking a view that victim/private party or informant has legal right to appear in a proceeding initiated at the instance of the accused under the provision of Section

301(2) of the Code, it would mean that the victim/private party is a necessary party in every such proceeding and as a matter of right is entitled to receive notice which is never the intention of legislature to confer specific legal right. Such interpretation is not appropriate while interpreting the specific language used in the statute keeping into mind aim and object.

12. In the case of *J.K. International (supra)*, the matter related to the petition for quashing filed by the accused before the High Court where the prayer for impleadment as a party was declined. The Hon'ble Apex Court held that under the scheme envisaged in the Code of Criminal Procedure, a person who is aggrieved by the offence committed is not altogether wiped out from the scenario of the trial merely because the investigation was taken over by the police and the charge-sheet was laid by them. Considering this provision of Section 301(2) of the Code, it was held that even in the Sessions Court where public prosecutor is only authority empowered to conduct the prosecution, as per Section 225 of the Cr.P.C., a private person who is aggrieved by the offence involved in the case is not altogether debarred from participating in the trial.

The Hon'ble Apex Court further held that under Section 301(2) of the Code under Chapter-XXIV "General Provision to inquiry and trial" a limited role is permitted to be played by a private person if he is aggrieved and his presence is not wiped out from the proceeding in the criminal trial merely because the case was charge-sheeted by the Police. The

Hon'ble Apex Court also referred the judgment in the case of ***Bhagwant Singh Vs Commissioner of Police***⁴ in the above said decision.

13. Upon considering the law laid down by the Hon'ble Apex Court in various decisions, the role and rights of the victims are recognised. On the basis of various decisions, it can be said that the Victim or a Private Person has the locus to appear in a proceeding initiated at the instance of the accused, in any case before any Court where it is an affected party, however, subject to the discretion conferred upon the Court, to be exercised in the manner as may be required in the facts and circumstances of a particular case. 'Locus Standi' as defined in the Blacks Law Dictionary as 'the right to bring an action or to be heard in a given Forum'.

14. As per the Law Lexicon by Ramnatha Aiyer 'Locus Standi' signifies a right of appearance in a Court of justice or right to be heard or place of standing. Such a locus standi confers on a person only if he has an interest in the matter. The victim/private person in that sense does have an interest in the matter, since he/she are the ultimate sufferer of such crime.

15. In the light of the above observation by the Hon'ble Apex Court and in the light of the legal provisions, in the present application it nowhere appears to my mind, that the applicant or intervener is the direct sufferer due to the action or inaction on the part of the present applicant who is the

4 (1985) 2 SCC 537

accused of the crime. As the intervenor has no Locus Standi which is apparent from the application, the application is devoid of merits and deserves to be rejected. Accordingly, I proceed to pass the following order:

The criminal application is **rejected**.

[URMILA JOSHI-PHALKE, J.]