



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

36 CRIMINAL WRIT PETITION NO. 2084 OF 2024

TANUJA MADHAV BIRADAR
VERSUS
THE STATE OF MAHARASHTRA

Mr. Poonam V. Bodke Patil, Advocate for the petitioner.
Mr. R.B. Dhaware, APP for the respondent-State.

CORAM : KISHORE C. SANT, J.
DATE : 11.08.2025

PC :-

01. Heard learned Advocates for the parties for sometime. The petitioner happens to be an informant on the basis of whose information, crime was registered for the offences punishable under sections 354, 452, 294, 323, 506 r/w section 34 of the Indian Penal Code. On the basis of the crime and the investigation, charge-sheet came to be filed. After filing of the charge-sheet, case is numbered as RCC No. 140 of 2018. In the said case, the informant filed application below Exh.19, seeking permission of the learned JMFC to conduct case through an Advocate appointed by the complainant. The application was filed under sections 302(1) and (2) of the Cr.P.C. It is contention of the petitioner that the prosecution is not being effectively conducted by the prosecutor. For last 5 years, no charges were framed as the accused remained

absent. Still no steps were taken by the learned prosecutor to secure attendance of the accused, who are on bail. Ultimately, the charges were framed on 15.12.2023. There is undue delay in the trial. Since the trial is not being expeditiously conducted, she apprehends prejudice.

02. The learned JMFC rejected the application observing that if at all the petitioner wants to engage special prosecutor, she has to follow the provisions of Section 24 of the Cr.P.C. The learned Advocate vehemently submitted that the Trial Court has committed mistake in not making distinction between the provisions of sections 301 and 302 of the Cr.P.C. Section 24 is required mainly under Sessions cases. So far as section 302 of the Cr.P.C. is concerned, it is the Magistrate, who has the power to grant permission to conduct prosecution through private lawyer of the choice of the informant or the victim, as the case may be. In support of her submissions, she relied upon judgment passed by this Court in Cr. Writ Petition No. 1203 of 2021 (Aurangabad) dated 07.12.2021 in the case of **Dr. Anuja Satyajit Nighute Vs. State of Maharashtra**. In the said case, this Court relied upon judgment in the case of **Dilnashin Shaikh w/o. Amir Hamza Shaikh Vs. The State of Maharashtra** in Cri. W.P. No. 4939 of 2018 (Bombay). In the said case, this Court has made distinction between section 301 and 302 of the

Cr.P.C. It is held that section 302 of the Cr.P.C. gives Magistrate a power to grant permission to conduct prosecution by any person if application is made by such party. This Court held that there is no limitation on the power of the Magistrate to grant such a permission.

03. Learned Advocate for the petitioner fairly points out that the judgment in the case of **Dalnashin Shaikh (supra)** was carried to the Hon'ble Supreme Court by Amir Hamza Shaikh, wherein the Hon'ble Supreme Court has though, upheld the order passed by this Court in the Writ Petition has observed in para 15 and 16 that though the Magistrate is not bound to grant permission at mere asking but the victim has a right to assist the Court in a trial before the Magistrate. The Magistrate need to consider as to whether the victim is in a position to assist the Court and as to whether the Trial does not involve such complexities, which cannot be handled by the victim. In that case the victim herself wanted to prosecute the trial and it is only on that count, the order passed by the High Court was set aside, but with observation and the matter was remanded back to the learned Magistrate to consider as to whether complainant should be granted permission to prosecute offence under section 498-A and 406 r/w 34 of the Indian Penal Code.

04. The learned APP vehemently opposes the petition. He submits that merely because there is delay, there is no reason to allow the complainant to conduct the prosecution by engaging a private lawyer. In the present case he submits that charge-sheet was filed on 26.06.2018. Thereafter, there was Covid pandemic and for about 2 years Covid pandemic situation continued and it is for that reason the accused could not be produced in the Court and the charges could not be framed. It cannot be said that there is lethargy on the part of concerned prosecutor.

05. This Court finds that in the present matter, it is sufficiently shown by the applicant that for five years, no charges were framed. The learned Advocate for the petitioner is justified in making submission that in the present case for five years the charges are not framed due to lethargic approach of the APP.

06. This Court has considered arguments and judgments cited above. This Court finds that the learned Magistrate in the present case has considered the case keeping in mind section 301 of the Cr.P.C., whereas the case was under section 302 of the Cr.P.C. Sufficient reason is shown to engage a private lawyer to conduct prosecution. It is,

therefore, this Court finds that present petition deserves to be allowed.

07. Criminal Writ Petition is allowed. The impugned order dated 09.09.2024 is quashed and set aside. The petitioner is permitted to engage a private lawyer to conduct prosecution of RCC No. 140 of 2018 pending before the Court of learned JMFC, Udgir.

[KISHORE C. SANT, J.]