

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

Criminal Writ Petition No.4580 of 2025

Dr. Ramesh Kanuba Doiphode ... Petitioner
V/s.
The State of Maharashtra and anr. ... Respondents.

Mr. Pritesh Haridas Bodekar a/w. Ms. Pratiksha Thube i/b Maharashtra Law Associates	Advocates for the Petitioner.
Mr. Ashok Gawai	APP for the State.

CORAM : S.M. MODAK, J

DATE : 3rd September 2025.

P.C. :

Heard learned Advocate for the Petitioner-first informant and learned APP.

2. The trial is pending before the Court of learned Judicial Magistrate, Vikhroli for the offences punishable under Sections 323, 506(ii) of old IPC. The present Respondent No.2 is sole accused. The trial has started. Prosecution has examined two witnesses. They are PW No.1-Santosh and PW No.2-Shantaram (Page-92 and 93). They have not supported the prosecution case.

3. The Petitioner apprehends that their case will not be put forth properly before the learned Magistrate, if the APP in-charge of the

case will conduct the prosecution. That is why they have moved an application under Section 302 Cr.P.C. for seeking permission to conduct the prosecution through the Advocate appointed by him. Learned Magistrate by a detail order passed on 8th May 2025 has rejected that prayer.

4. Today it is argued that the Respondent is the Clerk working in a Khadi Commission and he is an influential person and due to influence the prosecution witnesses are not supporting the case. The provisions of Section 302 Cr.P.C. are read. All criminal prosecutions are conducted by the APP appointed on behalf of the State. The first informant is granted limited rights in the conduct of criminal trial. It depends upon the stage of the proceedings. Whether it is at the stage of investigation, whether it is at the stage of trial or whether it is at the stage of filing an appeal, Section 301 and 302 of Cr.P.C. are the relevant provisions. As per Section 301(2) of Cr.P.C. a person can instruct the pleader and pleader has to act as per directions of the Public Prosecutor and he can file the written arguments with the permission of the Court. In this case the Petitioner do not want this liberty but he wants liberty to conduct the prosecution through Advocate in place of APP. This is as per Section 302 of Cr.P.C..

5. It is true the Section does not lays down any guidelines but Hon'ble Supreme Court has interpreted the provisions of Code of Criminal Procedure. It is also clarified in various judgments in which contingencies learned Magistrate can use powers under which

provisions. The fact of allowing the first informant to take over the prosecution is having far reaching consequences. If it is allowed the prosecution would not be conducted by regular Assistant Public Prosecutor.

6. This is a prosecution instituted on a police report. For conducting the prosecution, number of acts are required to be done including issuing summons, getting executed through police and interacting with the police machinery. Examination of witness is one of the part of conducting the prosecution. As two witnesses have not supported, the Petitioner apprehended that his case will not be put up properly. But for that purpose handing over of prosecution is not a correct remedy. Reason is the facts and circumstances do not warrant the exceptional exercise of power to take over the prosecution. Best course available before the Petitioner is to apply as to the provisions of Section 301(2) of Cr.P.C. He can give instructions to the public prosecutor in-charge and can file written arguments with the permission of the Court.

7. After reading the order I find no reason to interfere the order. The reasoning is the sound reasoning. No interference is warranted. At the most the Petitioner can apply under the provisions of Section 301(2) of Cr.P.C. With these observations, the Writ Petition is dismissed.

(S.M. MODAK, J.)