



Crl.R.C.No.1310 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 05.08.2025

Coram:

THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C.No.1310 of 2025 &
Crl.M.P.No.14987 of 2025

Lavanya Kumari

...Petitioner

Vs.

1. The Inspector of Police
W9 AWPS Villivakkam,
Chennai – 600 099

2. K.Bhaskar
3. Jayalakshmi
4. Mahalakshmi
5. Jayaram

...Respondents

Prayer:

Criminal Revision filed under Section 438 r/w Section 442 of BNSS, 2023 as against the order of the learned Metropolitan Magistrate, Additional Mahila Court, Egmore, Chennai in Crl.M.P.No.1170 of 2024 in C.C.No.35 of 2021 and to allow the present revision and to permit the petitioner to conduct prosecution by engaging private counsel.

For Petitioner	: Mr.S.Selva Thirumurugan
For Respondents	: Mr.A.Gopinath for R1 Government Advocate (Crl.Side)



Crl.R.C.No.1310 of 2025

ORDER

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2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) appearing for the 1st respondent and perused the documents placed on record.

3. The petitioner is the defacto complainant and on her complaint, the 1st respondent registered FIR as against the respondents 2 to 5 herein in Crime No.3 of 2018 for the offences punishable under Sections 498(A), 406 and 506(i) of IPC. After completion of investigation, final report was filed in C.C.No.35 of 2021 and while the case is pending for framing of charges, the accused 2 and 3 have filed a petition to discharge in Crl.M.P.No.860 of 2022. However, it was not even informed to the petitioner, who is being defacto complainant and the accused 2 and 3 were discharged by an order dated 10.03.2023, against which, the 1st respondent also failed to file any Revision. Further, the same came to the knowledge of the petitioner only after a period of



Crl.R.C.No.1310 of 2025

three months, immediately, the petitioner filed the Revision before this Court

challenging the order of discharge in Crl.R.C.No.1359 of 2023. Subsequently,

the Revision was allowed on 24.06.2025 by this Court. Even while pending

Revision, the petitioner filed a petition under Section 304 of Cr.p.C., to conduct

prosecution on the ground that the public prosecutor did not even inform about

the discharge petition filed by the accused 2 and 3 and the trial court failed to

implead the defacto complainant as a party in the discharge petition. In these

circumstances, the petitioner filed a petition to conduct prosecution under

Section 302 of Cr.P.C. However, it was dismissed on the ground that a mere

non-information about the discharge petition filed by A.2 and A.3, cannot be a

ground to conduct prosecution by the petitioner personally instead of public

prosecutor and the trial court permitted the petitioner to assist the prosecution

instead of taking over the entire case of prosecution. As against the same, the

present revision is filed.

4. It is relevant to extract the provisions of 302 of Cr.P.C.,

“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



CrI.R.C.No.1310 of 2025

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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.”

Thus, it is clear that a person may conduct prosecution personally or by a pleader also. The power under Section 302(2) of Cr.P.C., is vested with the trial court. However, the proviso under Section 301 of Cr.P.C., has restrictions for the person to prosecute personally. Though the pleaders are engaged to prosecute any person, the pleaders are to act only as per directions of the Public Prosecutor. Therefore, the proviso under Section 302 enables a private person to conduct prosecution or any person can conduct the prosecution other than the police officer below the rank of Inspector of police.

5. It is relevant to rely upon the Judgment of the **Hon'ble Supreme Court reported in (2016) 10 SCC 378 in the case of Dhariwal Industries Limited Vs. Kishore Wadhwani and Others, wherein the Paragraph Nos.13 and 17** are extracted hereunder:-



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“13. Having carefully perused both the decisions, we do not perceive any kind of anomaly either in the analysis or ultimate conclusion arrived at by the Court. We may note with profit that in Shiv Kumar, the Court was dealing with the ambit and sweep of Section 301 of Cr.P.C., and in that context observed that Section 302 Cr.P.C., is intended only for the Magistrate's Court. In J.K. International from the passage we have quoted herein before it is evident that the Court has expressed the view that a private person can be permitted to conduct the prosecution in the Magistrate's Court and can engage a counsel to do the needful on his behalf. The further observation therein is that when permission is sought to conduct the prosecution by a private person, it is open to the Court to consider his request. The Court has proceeded to state that the Court has to form an opinion that cause of justice would be best subserved and it is better to grant such permission. And, it would generally grant such permission. Thus, there is no cleavage of opinion.

17. Section 302 Cr.P.C., is concerned, power is conferred on the Magistrate to grant permission to the complainant to conduct the prosecution independently.”

therefore, the learned Magistrate shall exercise its power to permit any person to conduct the prosecution. The order of granting or rejecting such permission must be based on the materials and the discretion should be exercised



Crl.R.C.No.1310 of 2025

judicially. On persual of the order passed by learned Magistrate, it shows that except highlighting a reason that the prosecution failed to file any revision, no other reason / ground has been stated for rejecting the permission to conduct the prosecution personally.

In view of the above, this Court is inclined to handover the entire prosecution to the petitioner and the order passed by the learned Metropolitan Magistrate, Additional Mahila Court, Egmore, Chennai in Crl.M.P.No.1170 of 2024 dated 29.01.2025 is set aside. The trial court is directed to handover the entire case of the prosecution to the petitioner and the petitioner is permitted to conduct trial by engaging counsel. Accordingly, the present Criminal Revision is allowed. Consequently, connected miscellaneous petition is closed.

05.08.2025

Index : Yes / No
Internet : Yes / No
Speaking Order / Non Speaking Order
ssd

To

1. The learned Metropolitan Magistrate, Additional Mahila Court, Egmore,
2. The Inspector of Police, W9 AWPS Villivakkam, Chennai – 600 099
3. The Public Prosecutor, High court, Madras

G.K.ILANTHIRAIYAN, J.



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Crl.R.C.No.1310 of 2025

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Crl.R.C.No.1310 of 2025

05.08.2025