

**HIGH COURT OF MADHYA PRADESH AT JABALPUR**

**M.Cr.C. No. 41175/2018**

***Anchal Tiwari vs. State of Madhya Pradesh & Ors.***

**[Single Bench : Hon'ble Smt. Justice Anjali Palo]**

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Shri Siddharth Gulatee, counsel for the petitioner.

Shri Ravikant Patidar, Government Advocate for the respondent-State.

Shri Vivek Shukla, counsel for respondent Nos. 2 to 5.  
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**ORDER**  
**(25/11/2019)**

This petition has been filed by the petitioner being aggrieved by the order dated 10.08.2018 passed by the Second Additional Sessions Judge, Itarsi in Criminal Revision No. 10/2018, arising out of the order dated 16.05.2018 passed by the Judicial Magistrate First Class, Itarsi, District Hoshangabad in RCT No. 401001/2015.

2. Brief facts of the case are that on the complaint filed by the petitioner/complainant, a charge-sheet has been filed against the respondent Nos. 2 to 5 and charges under Sections 294, 323, 323 r/w 34, 324, 324 r/w 34 and 506-II of the Indian Penal Code have been framed by the trial Court. During trial, the petitioner/complainant had moved an application under Section 302 of Cr.P.C. and got permission to assist the prosecution. Subsequently, he filed an application under Section 91 of the Cr.P.C. for production of additional document, which has been dismissed by the trial Court on 16.05.2018 on the ground that the counsel for the complainant has no *locus standi* to file such an application. Against the said order, the petitioner/complainant filed a revision before the Court of Second Additional Sessions Judge, Itarsi which has been dismissed on the ground that revision is

not maintainable against any interlocutory order.

3. The petitioner/complainant has challenged both the aforesaid orders contending that they are arbitrary, illegal and erroneous. The documents are relevant for the complete adjudication of the case. The complainant, as a victim, could not have been deprived from bringing the documents on record merely on technicalities. Hence, he has prayed to quash the impugned orders and the documents be taken on record.

4. Learned counsel for the petitioner has placed reliance on the case of **Rekha Murarka vs. State of West Bengal & Anr., 2019 SCC Online SC 1495** in support of his contentions.

5. On the contrary, learned counsel for the respondent has strongly objected the contentions of the petitioner and has placed on the case of **Shiv Kumar vs. Hukum Chand & Anr., (1999) 7 SCC 467**, wherein the Supreme Court has broadly discussed about the right of a private counsel to conduct prosecution in a Sessions Court with regard to the limited role to act under the directions of the public prosecutor.

6. Heard learned counsel for the parties. Perused the record.

7. On the FIR lodged by the petitioner/complainant, charge-sheet was filed under Sections 294, 323, 323/34, 324, 324/34 and 506-II of the IPC against the respondents at Police Station Pathrota, District Hoshangabad. It is pertinent to note that in the impugned order itself, the learned trial Court mentioned that earlier the Court had granted leave in favour of the counsel for the petitioner to assist the prosecution on behalf of the complainant. Section 301(2) of the Cr.P.C. prescribes as under :

“(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.”

8. The aforesaid provision provides that the private counsel of a complainant has liberty only to submit written arguments after the closure of evidence in the trial with the permission of the Court. The object behind the said provision is that the Court should be zealous to see that the prosecution of an offender is not handed over completely to a professional person instructed by a private party.

9. In the case of **Shiv Kumar (supra)**, the Supreme Court has observed as under :

“9. In the Magistrate’s Court anybody (except a police officer below the rank of Inspector) can conduct prosecution, if the Magistrate permits him to do so. Once the permission is granted the person concerned can appoint any counsel to conduct the prosecution on his behalf in the Magistrate’s Court.

10. But the above laxity is not extended to other courts. A reference to Section 225 of the Code is necessary in this context. It reads thus :

“225. Trial to be conducted by Public Prosecutor.- In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

11. The old Criminal Procedure Code (1898) contained an identical provision in Section 270 thereof. A Public Prosecutor means any person appointed under Section 24 and includes any person acting under the directions of the Public Prosecutor, (vide Section 2(u) of the Code).

12. In the backdrop of the above provisions we have to understand the purport of Section 301 of the Code. Unlike its succeeding provision in the Code, the application of which is confined to magistrate courts, this particular section is applicable to all the courts of criminal jurisdiction. This distinction can be discerned from employment of the words any court in Section 301. In view of the provision made in the succeeding section as for magistrate courts the insistence contained in Section 301(2) must be understood as applicable to all other courts without any exception. The first sub-section empowers the Public Prosecutor to plead in the court without any written authority, provided he is in charge of the case. The second sub-section, which is sought to be invoked by the appellant, imposes the curb on a counsel engaged by any private party. It limits his role to act in the court during such prosecution under the directions of the Public Prosecutor. The only other liberty which he can possibly exercise is to submit written arguments after

the closure of evidence in the trial, but that too can be done only if the court permits him to do so.

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15. An early decision of a Full Bench of the Allahabad High Court in **Queen-Empress v. Durga (ILR 1894 Allahabad 84)** has pinpointed the role of a Public Prosecutor as follows:

‘It is the duty of a Public Prosecutor to conduct the case for the Crown fairly. His object should be, not to obtain an unrighteous conviction, but, as representing the Crown, to see that justice is vindicated: and, in exercising his discretion as to the witnesses whom he should or should not call, he should bear that in mind. In our opinion, a Public Prosecutor should not refuse to call or put into the witness-box for cross-examination a truthful witness returned in the calendar as a witness for the Crown, merely because the evidence of such witness might in some respects be favorable to the defence. If a Public Prosecutor is of opinion that a witness is a false witness or is likely to give false testimony if put into the witness-box, he is not bound, in our opinion, to call that witness or to tender him for cross- examination.’

16. As we are in complete agreement with the observation of a Division Bench of the High Court of Andhra Pradesh in **Medichetty Ramakistiah & ors. v. The State of Andhra Pradesh (AIR 1959 A.P. 659)** we deem it fit to extract the said observation:

‘A prosecution, to use a familiar phrase, ought not to be a persecution. The principle that the Public Prosecutor should be scrupulously fair to the accused and present his case with detachment and without evincing any anxiety to secure a conviction, is based upon high policy and as such courts should be astute to suffer no inroad upon its integrity. Otherwise there will be no guarantee that the trial will be as fair to the accused as a criminal trial ought to be. The State and the Public Prosecutor acting for it are only supposed to be putting all the facts of the case before the Court to obtain its decision thereon and not to obtain a conviction by any means fair or foul. Therefore, it is right and proper that courts should be zealous to see that the prosecution of an offender is not handed over completely to a professional gentleman instructed by a private party.’

17. Another Division Bench of the same High Court in **Bhupalli Malliah, Re & ors. (AIR 1959 A.P. 477)** had in fact deprecated the practice of Public Prosecutors sitting back and permitting private counsel to conduct prosecution, in the following terms:

‘We would like to make it very clear that it is extremely undesirable and quite improper that a Public Prosecutor should be allowed to sit back, handing over the conduct of the case to a counsel, however eminent

he may be, briefed by the complainant in the case.’

18. Equally forceful is the observation of Bhimasankaram, J. for the Division Bench in **Medichetty Ramakistiah (cited supra)** which is worthy of quotation here:

‘Unless, therefore, the control of the Public Prosecutor is there, the prosecution by a pleader for a private party may degenerate into a legalized means for wreaking private vengeance. The prosecution instead of being a fair and dispassionate presentation of the facts of the case for the determination of the Court, would be transformed into a battle between two parties in which one was trying to get better of the other, by whatever means available. It is true that in every case there is the overall control of the court in regard to the conduct of the case by either party. But it cannot extend to the point of ensuring that in all matters one party is fair to the other.’”

[See also **Amir Hamza Shaikh & Ors. State of Maharashtra & Anr., (2019) 8 SCC 387**]

**10.** On the aforesaid reasons, the Hon’ble Supreme Court further considered that the modalities of each case are different. The extent of assistance and manner of giving it, would depend on the facts and circumstances of each case.

**11.** The petitioner, in his application under Section 91 of the Cr.P.C. (Annexure P/2), has stated that the relevant documents which were mentioned by him were in the custody of the SHO, Police Station, Pathrota. As those documents were not produced by the Police at the time of filing of the charge-sheet before the Court, therefore, for consideration of the relevancy of the said documents, the complainant has a right to produce the said document before the Court.

**12.** In case of **Rekha Murarka (supra)** which has been relied upon by the learned counsel for the petitioner, the Supreme Court with regard to term ‘Assist’ has observed as under:

“12.1 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 qua the Public Prosecutor. This is supported by the fact that the original Amendment Bill to the Cr.P.C. had used the words “co-ordinate with the prosecution”. However, a change was

later proposed and in the finally adopted version, the words “co-ordinate with” were substituted by “assist”. This change is reflective of an intention to only assign a supportive role to the victim’s counsel, which would also be in consonance with the limited role envisaged for pleaders instructed by private persons under Section 301(2). In our considered opinion, a mandate that allows the victim’s counsel to make oral arguments and cross-examine witnesses goes beyond a mere assistive role, and constitutes a parallel prosecution proceeding by itself. Given the primacy accorded to the Public Prosecutor in conducting a trial, as evident from Section 225 and Section 301(2), permitting such a free hand would go against the scheme envisaged under the Cr.P.C.

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12.3 At the same time, the realities of criminal prosecutions, as they are conducted today, cannot be ignored. There is no denying that Public Prosecutors are often overworked. In certain places, there may be a single Public Prosecutor conducting trials in over 2-3 courts. Thus, the possibility of them missing out on certain aspects of the case cannot be ignored or discounted. A victim centric approach that allows for greater participation of the victim in the conduct of the trial can go a long way in plugging such gaps. To this extent, we agree with the submission made by the learned Senior Counsel for the Appellant that the introduction of the proviso to Section 24(8) acts as a safety valve, inasmuch as the victim’s counsel can make up for any oversights or deficiencies in the prosecution case. Further, to ensure that the right of appeal accorded to a victim under the proviso to Section 372 of the Cr.P.C. is not rendered meaningless due to the errors of the Public Prosecutor at the trial stage itself, we find that some significant role should be given to the victim’s counsel while assisting the prosecution. However, while doing so, the balance inherent in the scheme of the Cr.P.C. should not be tampered with, and the prime role accorded to the Public Prosecutor should not be diluted.”

13. In the aforesaid case of **Rekha Murarka (supra)**, the Supreme Court, particularly in Para 12 held that:

“We agree with the observations made by the Tripura High Court in **Smt. Uma Saha Vs. State of Tripura – 2014 SCC OnLine Tri 859** that the victim’s counsel has a limited right of assisting the prosecution, which may extend to suggesting questions to the Court or the prosecution, but not putting them by himself.”

14. In the said case, it was directed by the Supreme Court that if the Sessions Judge finds that the assistance of a private counsel is necessary for the victim, he may permit it, keeping in mind the observations made supra.

15. In the light of the principle laid down by the Supreme Court in

the aforementioned latest judgments, the trial Court is under an obligation to consider the prayer of the petitioner. It is essential for the petitioner or his counsel that the relevant documents be produced before the Court through the public prosecutor. Thus, it is directed that the petitioner shall file fresh application through the public prosecutor before the trial Court, thereafter, the trial Court shall reconsider his prayer made under Section 91 of the Cr.P.C. and pass an appropriate fresh order.

**16.** With the aforesaid observations and directions, this M.Cr.C. stands disposed of.

**(Smt. Anjali Palo)**  
**Judge**

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