

Petitioner Vs. Respondent

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Court : Chennai

Decided On : May-04-2016

Judge : M. Venugopal

Appeal No. : Crl.M.P.No. 5232 of 2016 in Crl.R.C.No. 679 of 2016

Appellant : Petitioner

Respondent : Respondent

Judgement :

M. Venugopal, J.

1. The Petitioner/Defacto Complainant has filed the present Miscellaneous Petition praying for passing of an order by this Court to permit him to implead as 2nd Respondent and to put forth his submissions in Crl.R.C.No.679 of 2016.

Petitioner's Contentions:

2. The Learned Senior Counsel for the Petitioner submits that the Petitioner/Defacto Complainant cannot be driven out of Court and he, being a victim, has got every right to take part in the prosecution proceedings.

3. The Learned Senior Counsel for the Petitioner contends that the right of the Petitioner to bring necessary relevant facts and legal issues involved in the case before a Court of Law for better appreciation of the entire gamut of the case and

understanding is very much recognised in Law and therefore, in furtherance of substantial cause of Justice, the instant CrI.M.P.No.5232 of 2016 seeking to implead him as 2nd Respondent is to be allowed by this Court.

4. The Learned Senior Counsel for the Petitioner draws the attention of this Court that before the trial Court, the Defacto Complainant filed CrI.M.P.No.6038 of 2014 (to assist the prosecution) and the same was allowed, as a result of which, the Petitioner took part in the discharge proceedings in CrI.M.P.No.3616 of 2015 (discharge petition filed under Section 239 of Cr.P.C. filed by the 1st and 2nd Respondents/A2 and A3).

5. In this connection, it is also represented on behalf of the Petitioner/Defacto Complainant that the Petitioner filed his objections to CrI.M.P.No.3616 of 2015 (filed by the Revision Petitioners/A2 and A3) before the trial Court and also furnished written arguments thereto and therefore, at any stage of the case, the Petitioner is entitled to be heard because of the simple reason that the Petitioner/P.W.1/Defacto Complainant is a necessary party in a pending cause.

6. The Learned Senior Counsel for the Petitioner submits that the CrI.O.P.No.28733 of 2013 (filed by the Revision Petitioners/A2 and A3) to quash the FIR in Crime No.3 of 2013 on the file of the 3rd Respondent/Police was dismissed as withdrawn on 07.04.2016. Admittedly, it is not in dispute that charges against A.1 to A.3 were framed in C.C.No.3546 of 2014 on the file of the trial Court.

7. The Learned Senior Counsel for the Petitioner refers to Section 401(2) of the Criminal Procedure Code and takes a stand that the said Section speaks of not only to an accused but also to any person and if he is prejudiced, he is required to be heard. To fortify his plea that the Petitioner is a necessary party to be arrayed as 2nd Respondent in the main Criminal Revision Petition, the Learned Senior Counsel for the Petitioner seeks in aid of the decision of the Hon'ble Supreme Court in Raghu Raj Singh Rousha V. Shivam Sundaram Promoters Private Limited and another, (2009) 2 Supreme Court Cases 363, at special page 366, wherein at paragraph 10 to 14, it is observed as follows:

10. When a complaint petition is filed under Chapter XV of the Code, the Magistrate has a few options in regard to exercise of his jurisdiction. He may take cognizance of the offence and issue summons. He may also postpone the issue of process so as to satisfy himself that the allegations made in the complaint petition are prima facie correct and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit for the purpose of deciding as to whether or not there is sufficient ground for proceeding. By reason of the aforementioned order dated 07.02.2008, the learned Magistrate intended to inquire into the case himself. It is for the said purpose he directed examination of the complainant and his witnesses.

11. One of the questions which arises for consideration is as to whether the learned Magistrate has taken cognizance of the offence. Indisputably, if he had taken cognizance of the offence and merely issuance of summons upon the accused persons had been postponed, in a criminal revision filed on behalf of the complainant, the accused was entitled to be heard before the High Court.

12. Section 397 of the Code empowers the High Court to call for records of the case to exercise its power of revision in order to satisfy itself as regards correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of such inferior court. Sub-section (2) of Section 397 of the Code, however, prohibits exercise of such power in relation to any interlocutory order passed in any proceeding.

13. Whereas Section 399 of the Code, deals with the Sessions Judge's power or revision, Section 401 thereof deals with the High Court's power of revision. Sub-section (2) of Section 401 of the code reads thus:

401. (2) No order under this Section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

14. Submission of Mr.Jaspal Singh that by reason of the impugned order the appellant was not prejudiced and in any event at the pre-summoning stage, he was not an accused, cannot be accepted. Sub-section (2) of Section 401 of the

Code refers not only to an accused but also to any person and if he is prejudiced, he is required to be heard. An order was passed partially in his favour. The learned Metropolitan Magistrate has refused to exercise its jurisdiction under Section 156 (3) of the Code. Had an opportunity of hearing been given to the appellant, he could have shown that no revision application was maintainable and / or even otherwise, no case has been made out for interference with the impugned judgment.

Also, in the aforesaid decision at page 369, at paragraph 22, it is held as follows:

22. Here, however, the learned Magistrate had taken cognizance. He had applied his mind. He refused to exercise his jurisdiction under Section 156(3) of the Code. He arrived at a conclusion that the dispute is a private dispute in relation to an immovable property and, thus, police investigation is not necessary. It was only with that intent in view, he directed examination of the complainant and his witnesses so as to initiate and complete the procedure laid down under Chapter XV of the Code.

8. The Learned Senior Counsel for the Petitioner cites the decision of the Hon'ble Supreme Court in Mohit Alias Sonu and another V. State of Uttar Pradesh and another, (2013) 7 Supreme Court Cases 789, at special page 807, whereby and whereunder, at paragraph 33, it is observed and held as follows:

33. The second question that needs consideration is as to whether the High Court exercising its revisional jurisdiction or inherent jurisdiction under Section 482 Cr PC, while considering the legality and propriety of the order passed under Section 319 Cr PC is required to give notice and opportunity of hearing to the person in whose favour some right accrued by virtue of the order passed by the trial Court. In other words, whether it would be justified for the High Court to entertain a petition under Section 482 Cr PC and pass order to the prejudice of the accused or other person (the appellants herein) without giving notice and opportunity of hearing to them.

9. Continuing further, the Learned Senior Counsel for the Petitioner relies on the decision of this Court Sathyavani Ponrani V. Samuel Raj and another, 2010 (4)

CTC 833, wherein it is observed that 'Section 301 is not a bar for entertaining an Application to intervene in an Application filed under Section 437 or 438, Cr.P.C.' Further, it is held that 'Victim has every right to take part in prosecution and that the Procedure law will have to provide a method for dispensation of justice by which truth emerges etc.'

10. That apart, the Learned Senior Counsel for the Petitioner cites the decision of the Hon'ble Supreme Court in *J.K. International V. State (Govt. of NCT of Delhi)* and others, (2001) 3 Supreme Court Cases 462, at special page 463, wherein it is laid down as follows:

If the court thinks that the cause of justice would be served better by granting such permission the court would generally grant such permission. Of course, this wider amplitude is limited to Magistrates' Courts, as the right of such private individual to participate in the conduct of prosecution in the Sessions Court is very much restricted and is made subject to the control of the Public Prosecutor.

11. Further, the Learned Senior Counsel for the Petitioner refers to the decision of this Court in *A. Meenakshi Sundaram V. Additional Superintendent of Police, Special Police Establishment, Anti Corruption Branch, Chennai*, (2014) 4 MLJ (Crl) 410, wherein it is held as follows:

This Court pertinently points out that at the stage of Section 239 of Cr.P.C., viz., framing of charge against the accused, it is not permissible for a Court of Law to weigh the pros and cons of all the implication of materials, not for shifting the materials produced by the prosecution. (Para 58)

In short, at the time of framing of charge, it is enough, if the material on records supports triable issues. In fact, a Court of Law at the time of framing of charge is not required to evaluate every material placed before it by the police along with the charge sheet. As such, the resultant position is that an in-depth appreciation of evidence at the time of framing of charge is not permissible in the eye of law, as opined by this Court. (Para 65)

After framing of 'charge', there cannot be a discharge and further, this Court opines that at the time of framing of charge, a Court of Law is to look into the records of the case (including the documents filed by the prosecution under Section 173 Cr.P.C) and oral hearing of an accused but nothing beyond that. In the present case, necessary charges were framed against the Petitioner / A3 and other accused and when the main case in C.C.No.35 of 2012 on the file of the trial Court is pending at Part-Heard stage, this Court holds that the trial of the main case should reach its logical conclusion.(Para 70).

Submissions of Respondents 1 and 2:

12. Conversely, it is the contention of the Learned Senior Counsel for the Respondents 1 and 2 that the main Criminal Revision Petition is not admitted by this Court and further that, notice is also not ordered to the Respondent/State and that be the fact situation, the present Petition praying permission of this Court to implead the Petitioner as 2nd Respondent in the main Criminal Revision Petition is a premature one.

13. The Learned Senior Counsel for the Respondents 1 and 2 draws the attention of this Court that relating to High Court's power of Revision under Section 401 Cr.P.C. which speaks of to the effect that 'In case of any proceeding the record of which has been called for by itself or which otherwise comes to its the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 etc.' and in the instant case, this Court has not called for the record of any proceeding from the trial Court at the pre-decision stage etc., in a pending Criminal Revision Petition and as such, at the threshold the Petitioner cannot be heard to say that the present CrI.M.P.No.5232 of 2016 is to be allowed by this Court.

14. Expatiating his submission, the Learned Senior Counsel for the Respondents 1 and 2 projects an argument that even at the pre-decision stage in Criminal Revision Petition, the Petitioner in CrI.M.P.No.5232 of 2016 cannot seek for his impleadment in main Criminal Revision Petition because of the reason that 'A Cause' is not pending. Even otherwise, the Petitioner/Defacto Complainant cannot come as an intervenor, when the main Criminal Revision Petition is not yet admitted and the said petition is pending at a pre-decision stage.

Discussions:

15. At the outset, it is to be pointed out that when the Criminal Revision Petition came up for admission before this Court on 26.04.2016, this Court had observed and passed the following order:

The Learned Counsel for the Revision Petitioners as well as the Learned Govt. Advocate (Crl.Side) are ready. At this stage, it is represented before this Court that P.W.1/de-facto complainant wants to be heard in the Revision Petition filed by the Petitioners. For filing vakalat/ memo of appearance on behalf of P.W.1/ de-facto complainant, the matter is adjourned to 27.04.2016 under the same caption.

16. Further, on 27.04.2016, this Court had granted time for filing of counter in Crl.M.P.No.5232 of 2016 and adjourned the matter to 28.04.2016.

17. This Court, on 28.04.2016, while reserving orders in Crl.M.P.No.5232 of 2016, had observed the following:

Heard both sides. Orders reserved.

The learned counsel for the respondents 1 and 2/Revision Petitioners is directed to bring it to the notice of the learned XI Metropolitan Magistrate, Saidapet, Chennai about the factum of reservation of orders in Crl.M.P.No.5232 of 2016, by this Court. Till orders are passed by this Court, the learned XI Metropolitan Magistrate, Saidapet, Chennai shall defer the further proceedings in C.C.No.3546 of 2014.

18. In this connection, it is relevant for this Court to point out that in a Revision Petition, there is no right showered on a party to be heard either personally or through pleader. However, to advance the cause of Justice and to prevent an aberration of Justice, any person interested in a given matter or the concerned party or even any other individual, if a Court of Law opines that he would render assistance to the Court in arriving at a fair and just conclusion, then, it is empowered to hear him.

19. It is to be borne in mind that the Revisional Jurisdiction under Section 401 of the Criminal Procedure Code is to confer power on a superior Criminal Court, a supervisory jurisdiction with a view to correct any miscarriage of Justice that had occasioned either based on misconception of Law or an irregularity of procedure etc. In fact, the power of the High Court is one of discretionary in character, in the considered opinion of this Court.

20. Added further, the ingredients of Section 397 and 401 Cr.P.C. do not create any rights in a party but only preserve the power of the High Court to ensure Justice is delivered in accordance with the well established principles of Criminal Jurisprudence. Moreover, the power of High Court has to see that the subordinate Courts do not act beyond their jurisdiction by abusing the powers or to prevent an abuse of process of inferior Criminal Court as the case may be.

21. Also, this Court significantly points out that in a case which has proceeded on a Police Report, a private party has no locus standi other than few exceptions in criminal matters, the affected litigant is 'State' and it is for it to take necessary steps in bringing a person to book who had acted against the community/societal interest.

22. It is to be remembered that the scheme enshrined in Criminal Procedure Code latently and patently indicates that a person affected by the commission of an offence by someone else is not in entirety erased/wiped out from the scenario of trial, just because of the fact that the investigation was undertaken by the Police and charge sheet was filed by them. Also, it cannot be gainsaid that even the factum of a Court of Law taking cognizance of an offence it would not suffice to prevent him from seeking the arms of Court for redressal of his grievance.

23. It is to be pointed out that the term 'Cause' includes any action, suit or other original proceeding between the concerned parties. The word 'Cause' and 'Case' are employed as synonyms in statutes and judicial decisions each meaning a proceeding in Court, a suit, action [20.L. Ed.638]. Moreover, 'Cause' is not a technical word signifying one kind or another, it is causa jurisdictionis, any suit, action, matter, or other similar proceeding competently brought before, and litigated in a Court.

24. One cannot ignore a primordial fact that in respect of a case instituted on a Police Report, an Advocate appointed by the Complainant can act only under the direction of Public Prosecutor. Further, the word 'Conduct' appearing in Section 301(2) of the Criminal Procedure Code conveys the idea of leading and guiding and if the Public Prosecutor guides the conduct of criminal proceedings before the concerned Court of Law, then, an Advocate for the private party may not have any objection whatsoever.

25. Furthermore, it is clear from the tenor and spirit of Section 24 and 301 of the Criminal Procedure Code that a pleader privately engaged cannot plead although he can act under the directions of the Public Prosecutor.

26. It is an axiomatic principle in Law that a 'Revision' is not a vested right and as per Section 403 Cr.P.C., there is no right of hearing as per decision in *Malti V. State of U.P.*, 2000 CRI.L.J. 4170 (All). In short, in Revisional Jurisdiction, a litigant cannot insist upon being heard by a Court of Law. Undoubtedly, the Court has a discretion to hear a litigant and this rule squarely applies to an accused as well as the complainant.

27. At this stage, this Court aptly points out the decision of the Hon'ble Supreme Court in *Shiv Kumar V. Hukam Chand and another*, (1999) 7 Supreme Court Cases 467, at special page 468, it is observed as follows:

Unlike Section 302 Cr.P.C., the application of which is confined to Magistrate Courts, Section 301 Cr.P.C 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.

28. Further, in the decision *B.Janakiramaiah Chetty V. A.K.Parthasarathi and others*, 2002 CRI.L.J. 4062, it is held that 'No private advocate can be permitted to prosecute a criminal case by excluding participation of public prosecutor'.

29. Also, in the decision *In Re, Rakhan Ojha alias Rakhal Chandra*, 1988 CRI.L.J. 278 at page 279, wherein it is held that 'When S.301(2) specifically says that the lawyer engaged by the private person can submit written arguments there is no scope for going behind the letters of the law to hold that such a lawyer can address the Court orally also.'

30. At this juncture, this Court worth recalls and recollects the decision in *Dattaraj V. State of Karnataka and another*, 2003 CRI.L.J.3212, at page 3213, it is held that 'the scope and the relief provided under sub-sec (2) of S.301 of Cr.P.C., gives an ample opportunity and sufficient role to the private person interested in the cause to submit his case through the agency of the public prosecutor. The participation provided to the private person under sub-sec(2) is not an illusory right. It is impermissible to cynically contend that the public prosecutor may ignore the assistance of the private party or his assisting counsel. The public prosecutor is a public servant, he cannot arbitrarily reject the relevant and the authentic material useful to the case else he would risk his career. Although, a limited secondary role to the victim participation is envisaged under S.301 of Cr.P.C., it imbibes necessary checks and balance providing sufficient scope and opportunity for victim's participation and to check the arbitrariness of the prosecution agency, if any. Hence, order permitting the petitioner under S.301(2) of Cr.P.C., to assist the prosecution is just and proper.'

31. Besides the above, this Court points out the decision in *Shankar Dhondiba Hambheer, Janabai and another*, 1978 CRI.L.J.888 at page 889, it is held as follows:

It would depend on the facts of each case as to whether the Sessions Judge should call for the record and proceedings before the inferior court. If the Sessions Judge is able to get the necessary and relevant facts from the judgment of the

Magistrate, there may not be any need to peruse the record and proceedings of the Magistrate. In such a case, it would be open to him to reject the revision application if he finds on perusal of the judgment or any other records that is produced before him that there is no need for the interference with the order passed by the Magistrate. (1941) 42 Cri. LJ 52 (Bom) Followed.

32. Be that as it may, this Court very pertinently points out that the right of a litigant cannot be whittled down into a straight jacket cast iron formula which is alien to criminal jurisprudence. Besides this, one has to keep in mind that the Principles of Natural Justice cannot substitute the Law. Generally, the concept of 'right of audience' cannot be either befitted or compartmentalised within the ambit of procedural Law of the Criminal Procedure Code, in the considered opinion of this Court.

CONCLUSION

33. In the upshot of detailed qualitative and quantitative discussions and this Court taking into consideration of the respective contentions and also bearing in mind of the fact that although the main Criminal Revision Petition is not yet admitted, yet, this Court, by exercising its judicial discretion with utmost care, caution and circumspection, is of the considered view that the Learned Counsel for the Petitioner/Complainant/1st Informant in Crl.M.P.No. 5232 of 2016 can assist the Learned Government Advocate (Criminal Side) appearing for the 3rd Respondent/State, by way of filing of a Written Argument only [without there being any impleadment] at the time of conclusion of hearing on the side of the Respondent/State in Crl.R.C.No.679 of 2016, if he so desires/advised.

34. With the aforesaid observation, the Crl.M.P.No.5232 of 2016 stands disposed of.

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