

IN THE COURT OF SUCHIT BAJPAI, J.M. I CLASS,

SHERGHATI (GAYA)

Imamganj P.S. Case No. 162/2013

G.R. No.1708/2013

State Vs Madan Singh & Others

Date	Order with initials of the Presiding Officer	Remarks for office
19-09-2022	Petition dated 28/06/2022 has been filed by the accused/petitioner lawyer to debar the Rajendra Singh (aggrieved) to appear or move as a prosecution in this case. The learned counsel on behalf of the petitioner has submitted that petitioner being quite innocent person has been made an accused in this case who is in bail as per order of the Hon'ble Court passed in Cr.Misc No.23936/2014 and he begs to submit that on 24/12/2014 a petition for cancelation of bail has been filed by one Rajendra Prasad Singh in private capacity praying to cancel bail bond of the petitioner with making false and baseless allegation against the petitioner claiming to be himself as a aggrieved person of this case. Further it is submitted that so-called Rajendra Singh is neither aggrieved nor has any authority or locus standi to file or move any such type of petition of cancellation before this learned court. However it is clear provision in the settled principal of law as laid down in sec 301 cr.p.c. that any private person or his pleader can only assist the public prosecutors or submit written arguments after the evidence is closed in this case. As such taking such view the aforesaid Rajendra Singh is not a lawful person or authority to file the petition in question. It is further submitted that Rajendra Singh is an uncle of petitioner who is a most litigant person always used to involve an innocent persons in false criminal cases and thereafter used to fulfil his grudge as being done by him in this case against the petitioner. However in several cases has been recommended by the prosecution agency to prosecute him U/s 182/211 Cr.P.C. like Imamganj P.S. no. 228/2016. Moreover that it would be pertinent to mention here that prior to lodging the present case when petitioner was receiving threats at the hands of aforesaid Rajendra Singh and his other persons then petitioner himself lodged an informatory petition no. 217/13 before the learned court of S.D.J.M. Sherghati. Not even that the petitioner's mother namely Late Lalbadan Devi has also been made an	

	accused of this case in the year of 2013 whereas she has already been died on 28/07/2008. Copy of death certificate is annexed so, motive of present case would also be clear which has appear to be lodged without going real facts of the case. The learned counsel for aggrieved (Rajendra Singh) has filed the rejoinder dated 27-07-2022 and submitted that the petition dated 28-06-2022 filed by the accused Madan Singh S/o Late Uma Shankar is not maintainable either in law as well as on fact and the same is filed with a view to linger the case and also trying to mislead the actual matter. The accused want to freedom to handle the case they want and in the aforesaid the petition the matter relates to the petitioner but the copy of the petition was served to the learned A.S.D.P.O. Sherghati and on objection raised by the petitioner before your honour the copy of the said petition was supplied to him. Further it is submitted that it is true that accused Madan Singh and his wife Gayatri Devi @ Kanti Devi were allowed anticipatory bail by the order of the honourable High Court. These accused were submitted before the honorable high court that entire money has already been paid and they carry no criminal antecedent except Madan Singh Carries two cases bearing Imamganj P.S. Case no. 1/2013 and 2/2013 wherein he is on bail and that on 24-12-2014 the petitioner filed before your honour stating therein that the accused Madan Singh anf Gayatri Devi succeeded to get bail on false submission submitted before the honourable high court and made prayer before this court to cancel their bail bond. Thereafter the accused tried to misguide the court by filing objection in ambit of section 439 Cr.p.c and also filed authority in the light of aforesaid section439 Cr.pc. It is further submitted thereafter the accused again maid objection and submitted before the court that the petitioner having no locus standi and then an authority of full bench was filed which reported in Eastern India Criminal Case Report 2014 (4) page 369 (jh.). Thereafter in the light of petition dated 24-12-2014 your honour was pleased to issue Show- Cause notice to accused filed Show-Cause on 27-05-2015 but the same has not yet accepted. These accused intensely disobeyed your honour's order and direction to present physically and also disobey the condition imposed by the honourable high court at the time of granting anticipatory bail. It is also relevant that in the light of the petition dated 24-12-2014 your honour was pleased to call for reports from the banks and the banks submitted their reports that there are dues against accused Madan Singh abd Gayatri Devi. Moreover the averment made in paragraph number 2 to 4 of the petition dated 28-06-2022 are repeated version which was earlier made objection after filing petition dated 24-12-2014, so it need not to reply and paragraph no.5 to 6 are not relevant matter to reply it and it would be pertinent to mention here that on 19-04-2022 accused Madan Singh and accused Praveen kumar @ Pankaj and Ajit Kumar @ Anish Kumar were abuses and tried to assault the petition in the court room and then the petitioner filed before	
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your honour which on record and the petition dated 28-06-2022 filed by the accused Madan Singh having no merit, either in law as well as fact and the same is fit to be dismissed and further be pleased to cancel the bail bond of the accused Madan Singh and Gayatri Devi @ Kanti devi.

Points of determination :-

- Whether Rajendra Singh having locus standi in this case as an private person/aggrieved/Victim ?
- Whether petitioner Counsel can pray to the court on behalf of the prosecution for cancelling bail bond of the accused Madan Singh and Gayatri Devi @ Kanti devi ?

Considering the aforesaid discussion, facts, circumstances and nature of this case and finding force in the submission of Id. counsel for the petitioners, the accused persons the legal position is well settled by apex court by Hon'ble the Apex Court in the case of **Rekha Murarka Vs. State of West Bengal and Another [2020 (2) SCC 474]** that *"The use of the term "assist" in the proviso to section 24(8) is crucial, 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 use the words "coordinate with the prosecution". However, a change was later proposed and in the finally adopted version, the words "coordinate 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 be in consonance with the limited role envisaged for pleaders instructed by private person 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 parallel prosecution proceeding by itself. Given the primacy accorded to the Public Prosecutor in conducting trial, as evident from sec 225 and 301(2) Cr.p.c, permitting such a free hand would go against the scheme envisaged under the Cr.p.c. and the observations made by the the Tripura High Court in Smt. Uma Saha v. State of Tripura, 2014 SCC OnLine Tri 859 that victims's counsel has a limited right of assisting the prosecution to the court, which may extend to suggesting questions to the court or the prosecution, but not putting them by himself. Further Dhariwal Industries Ltd. vs Kishore Wadhvani Crim. Appeal No. 859 of 2016, while quoting Shiv kumar (1999) 7 SCC 467, 1999 SCC (Cri) 1277, the court was dealing with the ambit and sweep of sections 301 Cr.P.C. and in that context observed that section 302 Cr.P.C is intended only for*

the Magistrate's Courts. In J.K. International (2001) 3 SCC 462, 2001 SCC (Cri) 547 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.

In the present cases, Rajendra Singh has filed the document no. 2 in the record, which is one of the basis of FIR as endorsed by the DCLR, which is admitting the fact that the petitioner is aggrieved, hence he has a locus standi in the case but subject to Sec 301 Cr.P.C.

Further, petitioner counsel cannot pray for cancellation of bail as his right accrues after the prosecution evidence is closed.

ORDER

Accordingly, the petition is disposed off.

Sd/-

JM I Class
Sherghati (Gaya)