

IN THE COURT OF III ADDITIONAL CHIEF JUDICIAL
MAGISTRATE, AT BENGALURU

PRESENT
SRI.SIDDARAMA .S. M.A., LL.M.
III ACJM, BENGALURU.

CC No.521/2018

THIS IS THE 11th DAY OF MARCH, 2025

Complainant: State by Koramangala Police Station,
Bengaluru.

(By Learned Sr. APP)

V/s

Accused : Mr.Sandeep Ray and Others.

PARTIES IN THE APPLICATION

De facto complainant/ : Sri.Ramesh Nanjunda Shastri,
First informant S/o Mr.Nanjunda Appaji Shastri,
Aged about 57 years,
Residing at No.790/A, 15th Main,
BTM Layout, 2nd Stage,
Bangalore – 560 076.

(Rep. By G.H., Advocate)

ORDER ON APPLICATION UNDER SECTION 302 OF Cr.P.C

The learned counsel for the complainant has filed the application under section 302 of Cr.P.C., seeking to permit him to prosecute the case in the interest of justice.

2. In the application it is contended that the complainant has filed a private complaint in PCR No.4020/2015 against the accused persons for the offences punishable under section 120(B), 403, 406, 420 read with section 34 of IPC. On 21.01.2016 the Hon'ble Court referred the matter to Koramangala Police Station for investigation and the said Police station was registered the FIR in Crime No.117/2016. The accused No.3 challenged the order of reference dated 21.06.2016 before the Hon'ble High Court of Karnataka under section 482 of Cr.PC in CrI.P.No.7034/2016. Upon hearing both sides the Hon'ble High Court of Karnataka allowed the criminal petition vide its order dated 02.06.2017 and remanded the matter for fresh consideration. Thereafter, the matter was again referred to Koramangala PS, Bengaluru and once again registered FIR in Crime No.347/2017 and commenced its investigation. Once again challenged the order dated 08.08.2017 by filing criminal petition in CrI.Pet.No.8636/2017 before the Hon'ble High Court of Karnataka. During the pendency of the said criminal petition, the charge sheet filed before the court. On 05.03.2018 the Hon'ble High Court of Karnataka dismissed the said criminal petition and granting liberty to accused No.3 to challenge the charge sheet filed by the Koramangala PS. Accordingly, the accused No.3 again filed CrI.P.No.3842/2018 challenging the charge sheet filed against him. During the course of investigation, the investigation officer has collected voluminous evidence which indicates the commission of the offences under

section 406, 420, 120(B) read with section 34 of IPC. The case is now pending for trial. In the charge sheet the IO has cited as many as 10 witnesses. The IO has also placed on record many documents to substantiate the charges levelled against the accused persons. The accused were enjoying the benefit of bail. The Hon'ble is assigned with innumerable cases, in which the present matter is one among them. It may not be possible for the Assistant/Public Prosecutor who is attached to this Hon'ble Court, to concentrate on this particular case exclusively in view of the pressure of work he has, and he may not be in a position to make a thorough study of the facts of the case and the law involved in the matter in view of the sheer volume of the documents. He may also not be able to advise the witnesses who are examined in the case effectively and thereafter, lead evidence effectively in support of the case of the prosecution. He has completely thorough with the matter and it is just and necessary to permit him to prosecute the case and prayed to allow the application.

3. The learned Sr. APP filed the objection to the application U/Sec.302 of Cr.P.C. In the application it is contended the application filed by the applicant is not maintainable in the eye of law. There are no reasons to said application for allowing the application. Even the reason quoted in his application is negligible and is not tenable in the eye of law. Engaging private counsel to conduct prosecution in this kind of state case is impermissible and order required from the Government. Hence, prays to dismiss the application.

4. The learned advocate for accused No.1 filed the objection to the application U/Sec.302 of Cr.P.C. It is contended in the objection that the application is not maintainable in law or on facts more so when there is no prayer known to law made in the application. The accused No.1 has no personal knowledge of any proceedings in the High Court of Karnataka. The entire charge sheet documents including witness statements, FIR, Mahazar and documents run to a total of 138 pages. They are not voluminous as claimed in the application. The offences alleged, falsely at that, are not grave in nature. None of the offences is punishable with imprisonment beyond 7 years and are triable by this Court. There is no voluminous evidence to be adduced. Now the accused were on bail is fact enough that the offences are not grave in nature. The prosecution has cited only 6 witnesses in the charge sheet and not 10 as stated in the application. The imaginary thought of the signatory to the application that it may not be possible for the public prosecutor to concentrate on this case in view of the pressure of work and may nor be in a position to make thorough study cannot be countenanced more so when the public prosecutor has not expressed it. It is not a reason to allow the application and permit the signatory to prosecute the case as he claims that he has completely thorough the matter, as allowing him to prosecute would prejudice the fundamental rights of accused No.1 and it is not in consonance with the established principles of law as laid down by the Superior Courts. The applicant has not averred

that there has been a dereliction of the duty on the part of the public prosecutor and such criminal prosecution cannot be allowed to be conducted by the applicant as a tool to take revenge. There are no exceptional circumstances in this case. The application is a frivolous and vexatious one only to harass and twist the arms of accused No.1 and to wreak vengeance and prays to dismiss the application.

5. After hearing the parties and on perusal of records, the following points arose for my consideration.

1. Whether the complainant/first informant filed application under section 302 of Cr.P.C is deserves to be allowed ?

2. What order?

6. Heard the arguments both side and perused the written argument and the materials available on records.

7. My findings to the above points are as follows:

POINT No.1: In the Affirmative.

POINT No.2: As per final order for the following:-

REASONS

8. Point No 1 : The Investigation Officer of Koramangala police station has filed the charge sheet against the accused

persons for the offenses punishable under section 406, 420, 120(B) read with section 34 of IPC.

Section 302 of Cr.PC reads as follows:-

Sec;-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 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.

9. The Hon'ble Apex Court in the case of Dhariwal Industries Ltd., Vs Kishore Wadhwani and Others arising

out of S.L.P (Criminal) No.5717/2012, wherein it is held that ;

In Paragraph-5 it is held that;

“Undoubtedly the first informant now enjoys a role higher than earlier as already seen in the preceding paragraphs. In fact perusal of the petition shows that the petitioners also not wish to deny participation of the first informant altogether. They only want his role to be limited as under Section 301 Cr.P.C. An application for discharge can result into putting an end to the prosecution either partly or fully. This stage is in that respect similar to the stage of consideration of the police report by the Magistrate under Section 173(2) Cr.P.C and the proceedings for quashing of the complaint filed by the accused person. The first informant, therefore, is likely to be interested in seeing that the matter reaches the stage of trial and is disposed off after recording of evidence. If by judicial pronouncements, he is now granted hearing at the earlier two stages, he

can be granted hearing at the stage of discharge also, though the Criminal Procedure Code does not make provision for hearing to him at that stage. If the first informant appears before the Court and desires to participate in the application, opportunity cannot be refused to him. Now the next question would be about the nature of the hearing to be given to the first informant. Should the hearing be independent to the hearing to the Public Prosecutor or it be through the Public Prosecutor. In my opinion, his role will have to be limited as under [Section 301 Cr.P.C.](#) for the same reasons, as given in Anthony D'Souza's 1 case and keeping in focus the role of the Public Prosecutor. He cannot be allowed to take over the control of prosecution by allowing to address the court directly. Therefore, the petition is partly allowed. The impugned order is modified to the extent that the Counsel engaged by respondent No. 2 shall act under the

directions of the Assistant Public Prosecutor in-charge of the case.”

In Paragraph-14 it is held that;

“Having carefully perused both the decisions, we do not perceive any kind of anomaly either in the analysis or ultimate conclusion arrived by the Court. We may note with profit that in Shiv Kumar (supra), the Court was dealing with the ambit and sweep of Section 301 Cr.PC and in that context observed that Section 302 Cr.PC is intended only for the Magistrate’s Court. In J.K.International (supra) from the passage we have quoted hereinbefore 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 Paragraph-18 it is held that;

“We have already explained the distinction between sections 301 and 302 Cr.PC. The role of the informant or the private party is limited during the prosecution of a case in a Court of Session. The counsel engaged by him is required to act under the directions of public prosecutor. As far as Section 302 Cr.PC is concerned, power is conferred on the Magistrate to grant permission to the complainant to conduct the prosecution independently”.

By considering all the facts and circumstances of the case and in view of the above discussion this court answered **Point No.1 in the Affirmative.**

10. Point No.2: For the reasons stated and finding given to point No.1 the following is made.

ORDER

The application filed by the learned advocate for the complainant/first informant under section 302 of Cr.P.C is here by allowed.

Further permitted to the complainant to conduct the prosecution personally or by his advocate.

(Directly dictated to the stenographer on computer, revised by me and after corrections, pronounced in the open court on this the 11th day of March, 2025.)

(SIDDARAMA.S.)
III ACJM, Bengaluru.