



IN THE COURT OF PRL. CIVIL JUDGE & JMFC.,
MUDIGERE

PRESENT: Sri. Sachin.D. BA.,LL.B.,
Prl. Civil Judge & JMFC.,
Mudigere.

DATED THIS THE 04th DAY OF SEPTEMBER 2023

CC.No.475/2014

BETWEEN :

State, Represented by
Mudigere Police Station. *....Complainant*
(By learned APP,)

AND :

1. Kumararaju S/o Gopalaraju,
Aged about:48 years,
R/o Bilagula Village,
Mudigere Taluk.
2. Late Ganesh,
Retired Secretary,
Hesgal Grama Panchayath,
Mudigere Taluk. *... Accused*

(A1-By Sri.K.S.Adithya, Adv.,)
(Accused No.2-abated)

PARTIES TO PRESENT APPLICATION

BETWEEN :

Sri.C.M.Gopala *... Applicant*
S/o late Manjegowda

AND :

Sri.Kumararaju S/o Gopalaraju *...Opponent*



1	Provisions under which the application is filed	302(2) of Cr.P.C
2	Relief sought for	Permission to the GPA holder of the complainant to appear through his counsel and to assist the prosecution
3	The date on which the application is filed	12.06.2023
4	Number of the application	--
5	The date on which the objection filed by opponents	19.06.2023 and 27.06.2023
6	The date on which the order was passed on the said application	04.09.2023

(Sri. Sachin. D)
Prl. Civil Judge & JMFC.,
Mudigere.

ORDER ON APPLICATION FILED UNDER SECTION 302(2) OF Cr.P.C FILED BY THE APPLICANT

The present application is filed by the complainant by name Sri.C.M.Gopalagowda S/o late Manjegowda, as he is the GPA holder of the complainant by name Sri.H.G.Prasanna Kumar, when the case was set-down for examination of the prosecution witnesses, seeking an order



of this court grant permission him to appear through his counsel and to assist to the prosecution.

2. It is stated in the application that applicant is the complainant and he has filed the private complaint before the court which referred to the police. After the investigation, the concerned police have filed the charge sheet against the accused for the offences punishable under sections 409, 420, 465, 471 and 477 R/w section 34 of IPC, which are non-bailable in nature and punishable with imprisonment for life. The applicant wants to conduct the prosecution by participating in the proceedings and engaging the private complaint. Therefore, it is necessary to grant permission to appear through his counsel.

3. The above application has been resisted by the learned APP as well as the learned defence counsel. The learned APP has contended in the objection statement that if a private person wants to prosecute the case through his counsel, the counsel appointed can only file written argument upon the instruction of the prosecutor. Therefore, the present application is not maintainable and hence, prayed for reject the same.

4. The learned defence counsel has contended that the police have filed charge sheet and as such, case become the State case, therefore, State can only prosecute the case. It is



further contended that the complainant intends to prosecute through his GPA holder. But the criminal case can't be prosecute through GPA holder and he has no right. It is further contended that the charge sheet filed against the accused alleging that during the year 2000-01, he got up the false document and on the basis of the same, obtained the khatha of the site. According to the prosecution, the said site belongs to one Nanjappa, but he has not filed complaint in this case. Further, witness No.2-Prasanna Kumar has been put to hardship having purchased the disputed site during the year 2010-11 and he has also not given vakalath to prosecute. It is alleged in the charge sheet against the accused that the saguvali chit was standing in the name of one Shekhar. He has also not given complaint or he has not been named as a witness in the said charge sheet. Aggrieved person can only be permitted to appear through private counsel. Therefore, sought for rejection of the application.

5. In view of the above contentions, the following points arise for consideration:

- 1) Whether the complainant has made out sufficient grounds to allow the present application as prayed for?**
- 2) What order?**



6. Having heard both side, the court scrutinized application, objection statement and other materials made available on record. Now, the findings of the court on above points are as follows:

Point No.1 : In the **Negative**,

Point No.2 : As per final order
for the following

REASONS

7. **Point No.1**:- The complainant by name H.G.Prasanna Kumar S/o Gopala, who is the CW1 in this case has filed the private complaint against the accused under section 200 of Cr.P.C. The same has been referred to Mudigere Police Station by invoking power under section 156(3) of Cr.P.C. Thereafter, Mudigere police have filed the charge sheet against the accused No.1 and 2. Accused No.2 was died at the time of filing the charge sheet. Now the present application is filed by Sri.C.M.Gopala S/o late Manjegowda, as he is the GPA holder of the complainant i.e., HG.Prasanna Kumar. It is his contention that he wants to participate in the proceedings in engaging the private counsel. Hence, prayed for grant permission.

8. The applicant has constrained the present application under section 302(2) of Cr.P.C. Before going to discussion merits of the application, it is proper to look into the provision of section 302 of Cr.P.C., which reads as



follows:

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 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 decision JK International V/s State (Government of NCT of Delhi) & Ors., reported in (2001) 3 SCC 462, while considering the provisions of sub-section (2) of Section 301 and Section 302, held as under:

"9. The scheme envisaged in the Code of Criminal Procedure indicates that a person who is aggrieved by the offence committed, is not altogether wiped out from the scenario of the trial merely because the investigation was taken over by the police and the charge-sheet was laid by them. Even the fact that the court had taken cognizance of the offence is not sufficient to debar him from reaching the court for ventilating his grievance. Even in the Sessions Court, where the Public Prosecutor is the only authority empowered to conduct the prosecution as per Section 225 of the Code, a private person who is aggrieved by the offence involved in the case is not altogether debarred from participating in the trial. This can be discerned from Section 301(2) of the Code which reads thus:



“301. (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 public prosecutor or assistant prosecutor, and may, with the permission of the court, submit written arguments after the evidence is closed in the case”.

10. *The said provision falls within the Chapter titled “General Provisions as to Inquiries and Trials”. When such a role is permitted to be played by a private person, though it is a limited role, even in the Sessions Courts, that is enough to show that the private person, if he is aggrieved, is not wiped off from the proceedings in the criminal court merely because the case was charge-sheeted by the police. It has to be stated further, that the court is given power to permit even such private person to submit his written arguments in the court including the Sessions Court. If he submits any such written arguments the court has a duty to consider such arguments before taking a decision.*

11. *In view of such a scheme as delineated above how can it be said that the aggrieved private person must keep himself outside the corridors of the court when the case involving his grievance regarding the offence alleged to have been committed by the persons arrayed as accused is tried or considered by the court. In this context it is appropriate to mention that when the trial is before a Magistrate’s Court the scope of any other private person intending to participate in the conduct of the prosecution is still wider...*



12. The private person who is permitted to conduct prosecution in the Magistrate's Court can engage a counsel to do the needful in the court in his behalf. It further amplifies the position that if a private person is aggrieved by the offence committed against him or against anyone in whom he is interested he can approach the Magistrate and seek permission to conduct the prosecution by himself. It is open to the court to consider his request. 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. The limited role which a private person can be permitted to play for prosecution in the Sessions Court has been adverted to above. All these would show that an aggrieved private person is not altogether to be eclipsed from the scenario when the criminal court takes cognizance of the offences based on the report submitted by the police. The reality cannot be overlooked that the genesis in almost all such cases is the grievance of one or more individual that they were wronged by the accused by committing offences against them."

10. On perusal of the above decision, it is clear to the court that the aggrieved private person can't be eclipsed from the scenario when the criminal court takes cognizance of the offences. Herein this case, in the cause title of the application, the applicant has stated that he is the GPA holder of the complainant i.e., CW1. Whereas, in the first part of his application, he has stated that he is the complainant. Admittedly, applicant has not produced GPA



executed in favour of him by the complainant. Since the complainant is the aggrieved person, he can only apply under section 301 or 302 to prosecute the case. Just because, the applicant was the GPA holder at the time of lodging the private complaint against the accused persons can't be considered that he is still GPA holder of the complainant and he is the aggrieved person.

11. As rightly contended by the defence counsel that the criminal prosecution can't be conduct through the GPA holder by appointing a private counsel. The aggrieved person are only can be permitted to appear through the private counsel. Therefore, at the outset itself, the application filed by the applicant is not maintainable. It is very pertinent to note that if the aggrieved person wants to instruct a pleader to prosecute the case, he has to file application under section 301(2) of Cr.P.C., which provides that a private person i.e., aggrieved person can appear through his pleader and the said pleader of the aggrieved person may act upon direction of the public prosecutor or assistant public prosecutor. But herein this case, the applicant is not aggrieved person and he has also filed application under section 302(2) of Cr.P.C., to conduct the prosecution of the case through private counsel. Therefore, such person can't be accorded for the reasons as observed above. Hence, this court answer the point No.1 in the **Negative.**



12. Point No.2: In view of the above findings on point No.1, this court proceed to pass the following.

ORDER

The application filed by the applicant by name C.M.Gopala S/o late Manjegowda under section 302(2) of Cr.P.C., is hereby rejected.

No order as to costs.

*(Directly dictated to the Stenographer, directly typed by him on computer, corrected and then pronounced by me in the open court on **04th day of SEPTEMBER 2023, at Mudigere**)*

(Sachin.D)

Prl. Civil Judge & JMFC.,
Mudigere.

Visit ecourts.gov.in for updates or download mobile app “eCourts Services” from Android or iOS