

**ORDERS ON IA-1 FILED UNDER SEC.302 OF Cr.PC.**

This is an application filed First Informant u/s 302 of Cr.P.C through counsel. Wherein, the counsel submitted that, the present criminal case registered by the CW1 against the accused persons punishable under Sec.323, 504, 506 of IPC. The present case being conducted by the Assistant Public Prosecutor in compliance with the Cr.P.C.-1973. In view of the complexity and sensitivity of the case, the complainant/victim believes that additional legal representation is required to ensure to robust presentation of facts and legal arguments before the court. Thus, the present application filed to assist the learned Assistant Public Prosecutor in conducting the prosecution case by filing joint vakalath as the applicant act under the directions and supervision of the prosecution and will not interfere with the prosecution work independently and usurp the statutory role of the Assistant Public Prosecutor. He also ready to act in accordance with the directions of Assistant Public Prosecutor and adhere to the guidelines set forth by the court. Thus, prays to allow the application.

Learned Assistant Public Prosecutor filed statement of objections stating that, the applicant is the complainant witness. The present case was earlier posted for issuance of summons to accused, at that said stage the applicant has preferred the present application. The present provision

referred by the applicant enshrined to permit the complainant to engaged private counsel of his choice only to assist the prosecution. The reason assigned by the applicant in the application needs to be properly examined by the court. On perusal of Sec.302 of Cr.P.C it would aptly stated that,

**“if in any case any private person instructs 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, and may with the permission of the court submit written arguments after the evidence is closed in case.”**

Hence, the reasons stated by the applicant in para No.5 of the application that, he needs the assistance, and proper legal guidance from legal experts i.e., by an independent advocate who helps to participate in the criminal trial in the above case along with and under the consultation and direction from the assistant public prosecutor on record is to be carefully read within the parameters of the provision of law, and kind observation of this court. The present application filed by the applicant may be allowed only for assist the prosecution.

Heard from both sides parties.

The counsel for complainant filed this application seeking permission of the court to assist the Assistant Public

Prosecutor in conducting the case. Before considering the application it is necessary to refer the provision of law referred by the counsel for applicant in application.

***“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.”*

Having taken note of the above said provision quoted by the applicant, he sought order of the court to assist the prosecution to conduct case. The said relief is provided in Cr.P.C. under Sec.301(2). The same is extracted for better understanding.

***“301. Appearance by Public Prosecutors.- (1) The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court***

***in which that case is under inquiry, trial or appeal.***

***(2) If 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.”***

It is well settled law that, mentioning wrong provision is not the criteria to decide the application on hand. In the instant case also the applicant preferred the I.A.No.1 by mentioning wrong provision of law as per under Sec.302 of Cr.P.C. instead of mentioning Sec.301 of Cr.P.C.

On perusal of the above said provision of law it is clear that, the pleader of the choice of complainant may be permitted to assist the prosecution in conducting the case and that pleader so instructed shall act therein under the directions of the prosecution. The pleader may also submit written arguments with the permission of the court after completion of trial. Therefore, private counsel can assist L/ APP in conducting the case. Hence, I proceed to pass the following:

**ORDER**

The application filed under Sec.301 of Cr.P.C., by the counsel for de-facto complainant dated 17.12.2024 is hereby allowed. Counsel for de-facto complainant is hereby permitted to assist the Prosecution in conducting the case.

Reissue B/W to CW.1 to 4.

Call on 03/07/2025.

**I Addl. Civil Judge & JMFC,  
Channagiri.**