

ORDERS ON APPLICATION
U/S 302 OF Cr.P.C

C. C. No. 102/2025

KAUK910002482025



IN THE COURT OF THE CIVIL JUDGE & J.M.F.C.

AT SIDDAPUR

Dated this 27th day of July, 2026.

**Present : Sri HARISHKUMAR. MssB.Com. LL.B.
Civil Judge and JMFC, Siddapur**

C.C. NO. 102/2025

Complainant:

State by Siddapur Police Station,
Siddapur Taluk,
(By Sri. A.P.P., Siddapur)

V/s

Accused/s:

Asif Ahammad Abbas,
R/at, House NO.11,
Ward No.17,
Near Kalpataru Society,
Holy Cross Chapal Akem,
Baiksho Naveliyam.
Margao, South Goa, Goa,
(Rep. by Sri. R.R.H., Advocate)

**ORDERS ON APPLICATION UNDER SECTION 18(8) READ
WITH 302 OF CODE OF CRIMINAL PROCEDURE FILED BY
THE COMPLAINANT:**

1. This is an application filed by complainant by name Sri. Mohammed Rafiq under Section 302 of Cr.P.C. seeking to engage private counsel in the present prosecution case to assist the prosecution in the present proceedings.



2. It is stated in the application that, the complainant herein initiated a proceedings as against the accused and the Crime No.98/2024 has been registered before the Siddapur Police Station, the prosecution is being conducted by the learned public prosecutor on behalf of the state, it is necessary to protect the rights, interest and effective adjudication of this case, the appointment of advocate is necessary. The complainant herein further stated that, in order to safeguard the applicants rights, it is necessary to assist the prosecution for effective adjudication of this case. On these grounds the complainant herein prays to permit him to engage the Mr. Rahul Sharma, Advocate as his private counsel to assist the prosecution in the present proceedings.
3. On the other hand, the learned APP filed objections to said application and contended that, the IO has submitted final report against the accused for the offence punishable under section 504 and 506 of IPC. Now, the matter is set out for evidence of prosecution and the prosecution has taken all measures for effective adjudication of this case.
4. The learned APP further contended that, it is the duty of the Government to prosecute the case, if the application is allowed it would impact on the adjudication of the case and the complainant herein filed this application with an intention to obstruct the prosecution.



5. The learned APP further contended that, as per Criminal Procedure Code the complainant can assist the public prosecutor, but he cannot take the entire case and the complainant has not assigned proper reasons and it would leads to delay in proceedings. On these grounds the learned APP herein prays to dismiss the said application.
6. Heard arguments of both sides on application and this court perused materials available on record.
7. The following points that arise for consideration of this court:
 1. **Whether the complainant has made out grounds to allow the application under section 302 of Cr.P.C?**
 2. **What order?**
8. Findings of this Court on these points are as follows:
 - Point No.1 : - In the Affirmative.**
 - Point No.2 :- As per the final order for the following:**

REASONS

9. **Point No.1**: It is the case of the prosecution is that, the accused herein abused the complainant and he has threatened the complainant with dare consequences, accordingly, the complainant herein lodged the complaint before the Siddapur police station.



10. Based on the said complaint, the complainant police registered a crime FIR No.98/2024, thereafter, the IO has filed a charge-sheet against the accused for the offences punishable under section 504 and 506 of IPC. Thereafter, this court taken the cognizance for the alleged offences and the accused herein appeared before the court and he has enlarged on bail.
11. Thereafter, the substance of the accusation read over and explained to the accused in vernacular and he pleaded not guilty and he claimed to be tried by this court. Thereafter the matter was posted for issuance of summons to CW-1. In the meantime, Sri. B.L.N., Advocate has filed vakalath along with application under section 302 of Cr.P.C seeking permission to assist the prosecution on behalf of the complainant on the ground that, the rights and interest of the complainant must be protected and certain aspects must be proved in the present case. Hence, it is necessary to appoint a private counsel for effective adjudication of this case and prays to allow the said application.
12. On the other hand, the learned APP has filed objections and contented that, the IO has submitted final report against the accused for the offence punishable under section 504 and 506 of IPC. Now, the matter is set out for evidence of prosecution and the prosecution has taken all measures for



effective adjudication of this case. If the application is allowed it would impact on the adjudication of the case and the complainant herein filed this application with an intention to obstruct the prosecution and prays to dismiss the application.

13. At this stage, it is profitable to refer the provision of section 302 of Cr.P.C as here under:

Section 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.

14. At this stage it is pertinent to mention that, it is quite clear from the above section that the court has the power to permit the prosecution to be conducted by any person other



than a police officer below the rank of Inspector. And such “any person” would definitely include the heirs of the complainant.

15. The learned counsel for the accused herein addressed his arguments and he has reiterated the facts mentioned in the application and he has relied upon one Judgment passed by the Hon’ble Apex court in the case of **Dhariwal Industries Ltd., Vs Kishore Wadhwani and others** and the same has reported in **2016(3) ACR 2706**. The Hon’ble Court pleased to held that, **“The counsel engaged by him is required to act under the directions of public prosecutor. As far as section 302 of Cr.P.C is concerned, power is conferred on the Magistrate to grant permission to the complainant to conduct the prosecution in the independently”**.
16. The learned counsel for the complainant herein relied another Judgment passed by the Hon’ble High Court of Karnataka in the case of **Yadhu Kumar R Vs State of Karnataka** in the same has been reported in **2024-0-Supreme(KAR)-341**. The Hon’ble court pleased to held that, **“Wherefore, no fault can be with the order of the learned Magistrate permitting the complainant to engage a private counsel or a Special Public Prosecutor. A caveat, this would not become applicable to applications under**



section 301 of Cr.P.C, which is applicable to the issue being tried before the court of sessions. The subject matter of the order is limited to section 302 of Cr.P.C.”

On careful reading of above judgments, it is directly applicable in the present case on hand.

17. At this stage, it is to be noted that, the learned advocate for complainant herein filed this application under Section 302 of Criminal Procedure Code read with Section 18(8) of BNSS. But this Court has no power to appoint to special APP as per Section 18 (8) of BNSS. But the provisions of Section 302 of Criminal Procedure Code can be considered while adjudication of this application.
18. By applying the above principles and as per section 302 of Cr.P.C and based on the above observations, there is no legal impediment to appoint a counsel to assist the learned APP. Under such circumstances. The applicant herein made out grounds to allow the said application. Hence, this Court answers point No.1 in the Affirmative.
19. **Point No.2:** For the reasons stated above, this court proceed to pass the following:



ORDER

**The application filed by
complainant under section 302 of Cr.P.C
is hereby allowed.**

**Accordingly, Mr. Rahul Sharma,
Advocate is hereby appointed as a
private counsel on behalf of the
complainant to assist the prosecution.**

(Typed by me directly on the computer, transcript is corrected and signed by me and then pronounced by me in the open court on this 27th day of July, 2026.)

**27.07.2026
Civil Judge & JMFC.,
Siddapur.**

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