

In the Court of the Chief Judicial Magistrate, Nagercoil.

Present:- Thiru M.K.MAYAKRISHNAN, B.B.A., B.L.,
Chief Judicial Magistrate.

Wednesday, the 22nd day of February, 2023.

Crl.M.P No. 2212/2023

in

CC No.1512/2022

K.M.H. Habeeb Najjar,
S/o.Hameed.

.. Petitioner/ Defacto complainant

And

1) The State of Tamil Nadu,
Represented by the Inspector of Police,
Economic Offence Wing,
Nagercoil.

.. Respondent / Complainant

2) K.M. Hameed, (A1) (Died)
S/o. Mohaitheen Meera Sahib.

3) A.M. Latheeb, (A2) (Died)
S/o.K.L.Ahamed Kabeer.

4) K.M. Kadhar Rahamathulla, (A3)
S/o. K.M. Hameed.

5) K.M. Yoosuf Ali, (A4) (Died)
S/o. K.M. Hameed.

.. Respondent / Accused

This petition coming on 15th day of February 2023 before me for final hearing, in the presence of learned Counsel Thiru.C.Devasundaram, for the Petitioner/ Defacto complainant and Tmt.Jeba Jeeva Raja, the Learned Additional Public Prosecutor, for the Respondent/Complainant and upon hearing the both side arguments and having stood over for consideration till this day, this court delivered the following:

ORDER

1. Petitioner/ Defacto complainant filed this petition U/S.301(2) of Cr.PC. seeking permission to conduct the case through his Counsel and to assist the Public Prosecutor.

2. The learned Public Prosecutor filed objection stating that the case has been followed, represented and conducted correctly before this Court and that there will be no omission on the prosecution side. The management of the case remains on the Public Prosecutor. Since the State represented by the Public Prosecutor in a proper and correct way permission to engage private Counsel is not necessary.

3. Heard both sides. Records perused.

4. The learned Counsel for the petitioner/defacto complainant has relied the decision of the Honorable Apex Court in "**Jagjeet Singh & Ors -Vs.- Ashish Mishra @ Monu & Anr. [Crl.Appeal No.632 of 2022]**" and submit that the petitioner/defacto complainant has right to engage Advocate of his choice. At the outset, that the decision relied by the learned Counsel is relating to the objection during the trial proceedings and as a matter of fact not applicable to this case.

5. As per the ratio in the decision of the Honorable Apex Court in "**J.K. International v. State (Govt. of NCT of Delhi) and others (2001) 3 SCC 462**" it is settled law 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 Honorable Apex Court observed that it is open to the court to consider request of the private person and if the court thinks that the cause of justice would be served better by granting such permission the court would generally grant such permission. Clarifying further, it has been held that the said wider amplitude is limited to Magistrate's Court, 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.

6. Therefore, it is clear that, as per Section 301(2) of CrPC, 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 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.

7. This case was transferred to this court as per the Order of the Honorable High Court of Madras and the learned additional PP is appearing for the prosecution. Admittedly, the Petitioner/defacto complainant did not

raised any allegation of bias or other against the Public Prosecutor. Therefore, there is no material or necessity to permit the learned counsel for the Petitioner/defacto complainant to conduct the prosecution and this petition is deserves to be dismissed.

8. However, it is made clear that the prayer for permission to conduct the case is rejected. However, the learned counsel for the Petitioner/defacto complainant is permitted to participate in the conduct of prosecution under the directions of the learned Public Prosecutor and also the learned Counsel for the Petitioner/ Defacto complainant may submit written arguments after the evidence is closed, with the permission of the Court.

9. In the result, this petition is dismissed.

Dictated to the steno-typist and directly typed by her in computer and after making necessary corrections, pronounced by me in open court, on this 22nd day of February, 2023.

Chief Judicial Magistrate,
Nagercoil.