

GR-1882/2015**Order dated 04.02.2020:**

Today is fixed for framing of charge.

Sole Accused on CB files hazira.

The defacto complainant/Sujoy Chakraborty in person at this juncture filed two applications- One for conducting the prosecution in person independently and the another application is in connection to Section 173(8) CrPC .

The defacto complainant in person was found to hesitant and showed his unwillingness to serve the copies of both the applications to his other side and even get the same seen by Learned APP .

The defacto complainant/Sujoy Chakraborty in person had as per directions of this Court served the copies to Ld. advocate on behalf of accused persons.

Later

1.10 P.M

Ld. APP in charge is present .Ld. Defense Counsel is present.

Both the applications were seen by Ld. APP in charge.

For sake of proper adjudication, as of today , the petition for appearing party in person is taken up for hearing. Ld. Defense Counsel files one case ruling. Let the same be kept with record.

Heard the submission of all sides at length.

Fix 12.02.2020 for passing order.

Dictated and corrected by me

Judicial Magistrate

3rd Court, Serampore, Hooghly

Order dated 12.02.2020

Today is fixed for passing order.

Defacto complainant takes step in person.

Accused files hazira.

Record is now taken up for passing the order.

At the very outset, on the earlier occasion , when the matter was posted for hearing, the defacto complainant in person had submitted verbally on the strength of the instant petition , that being a practising lawyer of Hon'ble High Court himself , is first of all , is equipped with the knowledge to appear in person. In the course of his arguments , the defacto complainant in person relied the observations of Apex Court in *J.K International vs State (Govt vs NCT ,Delhi)*(2001) 3SCC 462, where the settled position that stands is the private person can be permitted to conduct the prosecution in the Magistrate Court , after following prescribed procedure . The defacto complainant stressed on the fact that it was his basic fundamental right to litigate his own case under Section 32 of Advocates Act, 1961 and being completely acquaintance with the facts and circumstances of this case ,be kindly permitted to represent himself in the instant case

Ld APP in Charge orally presented her submission as against the arguments advanced by the defacto complainant by specifically bringing attention to the Court , in this GR case , where Ld. APP usually represents the defacto complainant , acting on behalf of State, from the four corners of the instant application apart from stating the complainant himself is a qualified legal practitioner himself , no specific as well convincing ground been stated by the complainant that he has no faith in the Ld. Assistant public Prosecutor who herself is in charge of this case . Neither any prayer been made for appointment of Special APP. Therefore, considering the factual backdrop, without any proper reasoning , the defacto complainant has no locus standi to directly and independently without any assistance of APP can conduct the case, thereby praying for rejection of the instant application.

Thereafter , Ld. Defense Counsel had submitted that defacto complainant has a very restricted role in state cases , the defacto complainant can well only assist the public prosecutor, acting on behalf of the State, at the most. Ld advocate also raised the plea that simulatenously if the defacto complainant in person alongside with Ld. APP is allowed to conduct the case, it would invariably result into chaos in the criminal administration of justice. Henceforth, prayed for rejection of the in person prayer of the defacto complainant in person in limini. Ld. Defense Counsel relied on the observation of Single Bench of Hon'ble High Court, Calcutta in *Rekha Murarka vs State of West Bengal* and another 2019 CRLJ 3986 and filed the same before Court. Let the same be kept with the record.

Considering at length submission of both sides , first and foremost, it is pertinent to take note that the Code of Criminal Procedure, 1973 specifically enables private persons and their pleaders to conduct or assist in conducting prosecutions with the permission of the court. Section 301 of the Code puts the responsibility on the Public Prosecutor or the Assistant Public Prosecutor in charge of a criminal case to conduct the prosecution.

The Supreme Court considered in its earlier decision in ***Shiv Kumar v. Hukam Chand and another* (1999) 7 SCC 467** and subsequently in ***J.K. International v. State (Govt. of NCT of Delhi) and other* (2001) 3 SCC 462** and had clarified the purport of Sections 301 and 302 of the Code. Undoubtedly , while presenting his arguments , the defacto complainant relied heavily on the observations of the latter decision, wherein it was upheld , stating that the original Complainant must make a written application to the Magistrate seeking permission for conducting the prosecution independently. If such an application is made, the Magistrate has to form an opinion on whether the cause of justice would best be subserved if permission is granted, in which case it would be better to grant such permission. Once permission is granted, the original Complainant or his lawyer can prosecute the case.

In this relevance , attention may well be drawn to the provision of **Section 32 of Advocates Act, 1961**, wherein it is specified that Notwithstanding anything contained in this Chapter, any court, authority, or person may permit any person, not enrolled as an advocate under this Act, to appear before it or him in any particular case.

Upon perusal of the citation provided by Ld Defense Counsel, this Court finds the case ruling is relevant in case of limited scope of participation of private persons only in the sessions triable cases and not magistrate triable ones.

No doubt , the settled judicial position that emerges stands on the footing that private complainant in case of cases instituted on basis of Court Complaint can well prosecute himself but , it is pertinent to state that in cases of magistrate triable police cases, the Statute has clearly prescribed its own limits under the scope of Section **301(2) of Criminal Procedure Code** and by no means , it can be overridden. In this juncture, the bare perusal of the provision is necessitated as follows:-

“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 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.”

As per our State Amendment WB Act 26 of 1990 it is stated clearly that 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 or trial.

Henceforth, owing to present statutory limitations , I am of the view that the defacto complainant is disallowed to be permitted to conduct this case proceedings in-person as there is readily available Ld. APP , who being already in charge of the case and conducting the prosecution.

Henceforth, the instant application dated 04.0.2020 is rejected on contest without any costs.

Fix 12.06.2020 for hearing of application u/s 173(8) CrPC dated 04.02.2020 in presence of regular Ld. APP.

Dictated and corrected by me

Judicial Magistrate

3rd Court, Serampore, Hooghly