

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

Before:

The Hon'ble Mr. Justice Madhumati Mitra

C.R.R. 2357 of 2018

Rekha Murarka

Vs.

The State of West Bengal & Anr.

For the Petitioners	:	Mr. Ayan Bhattacharyee Mr. Sharequl Haque
For the State	:	Mr. Sudip Ghosh Mr. Apurba Kumar Datta
For the Opposite Party No.2	:	Mr. Malay Bhattacharya Mr. Subhrojyoti Ghosh
Judgement delivered on	:	29.07.2019

Madhumati Mitra, J. :

This is an application under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 filed by the present petitioner Rekha Murarka, widow of Gyan Prakash Murarka praying for setting aside the order no.70 dated 25th July, 2018 passed by the learned Additional District and Sessions Judge, Fast Track Court, Calcutta in Sessions Case No.43 of 2014 corresponding to GR Case No.86 of

2014 arising out of Bowbazar Police Station Case No.19 of 2014 dated 16th January, 2014 under Sections 302/ 326 of the Indian Penal Code.

The facts which are necessary to dispose of the present revisional application are as follows:-

The petitioner before this Court is the widow of deceased Gyan Prakash Murarka. The said husband of the petitioner was alleged to have been brutally murdered with knife by opposite party no.2 and the petitioner was also sustained serious bleeding injuries when she had tried to save her husband. The alleged incident occurred on 16.1.2014. A specific case being Bowbazar Police Station Case No.19 of 2014 dated 16.2.2014 under sections 302/326 of the Indian Penal Code was initiated against the present opposite party no.2. Charge sheet was submitted against the opposite party no.2 for commission of alleged offences under Sections 302/326 of the Indian Penal Code. On 18.12.2015, charge was framed against the accused/opposite party no.2 for commission of alleged offences punishable under Sections 302/326 of the Indian Penal Code. Opposite party no.2 pleaded not guilty and claimed to be tried. Thereafter, learned Trial Judge proceeded to record the evidence of prosecution witnesses. In the meantime, the present petitioner approached before this Court for expeditious trial of the case. On 9.3.2016 in CRR 833 of 2016, the learned Trial Judge was directed to conduct the trial as expeditiously as possible in terms of the provision of Section 309 of the Code of Criminal Procedure and conclude the same as early as possible.

On 10.7.2018, the de facto complainant filed an application under Section 301 read with Section 24(8) of the Code of Criminal Procedure praying for following reliefs as appeared in the said petition filed before the learned Court below:-

- (a) To advance oral argument in support of question of law and fact only after the Learned Public Prosecutor, if so required;
- (b) To raise objection in case any irrelevant question is put to any prosecution witness, if so required;
- (c) To examine the prosecution witnesses only after the Learned Public Prosecutor, if so required;
- (d) To cross-examine the defence witnesses, if adduced, only after the Learned Public Prosecutor, if so required;
- (e) To assist the process of justice in accordance with law;
- (f) Pass such further or other order/orders and/or direction or directions as it may deem fit and proper.”

Learned Trial Judge after affording opportunity of being heard to all the parties to the case has rejected the said prayer of the present petitioner on the ground that the right of the victim/private individual to participate in the prosecution of the Sessions trial is very much restricted and prosecution is subjected to the control of the Public Prosecutor. Learned Judge in support of his decision has placed reliance on a decision reported in 2001 SCC (CRI) 547.

At the time of passing the impugned order the learned Trial Judge has given permission to the de facto complainant to furnish written argument only after the completion of argument from the prosecution side.

The said order of the learned Trial Judge is under challenge.

The impugned order has been assailed by the learned Advocate for the petitioner on several grounds. He has contended that the learned Trial Judge has failed to appreciate that the petitioner is not only the de facto complainant but she is also the victim of the crime within the meaning of Section 2(wa) of the Code of Criminal Procedure. According to his contention the concept of victimology has been recognised by way of statutory amendment in the year 2009 and the right of the victim to engage an advocate of his or her own choice to assist the prosecution has been incorporated in the statute under the proviso to sub-Section 8 of Section 24 of the Code of Criminal Procedure. Learned Advocate for the petitioner has forcefully contended that the right of the victim to prefer an appeal against an order of acquittal of an accused has got statutory support in the proviso to Section 372 of the Code of Criminal Procedure. He has further contended that the present petitioner who is also the victim of the crime and the right of the victim to take part in trial has been recognised by the Parliament by way of amendment of the Code of Criminal Procedure. According to his contention that the amended provision of the Code of Criminal Procedure recognising the right of the victim should be interpreted in such a manner so that the purpose and object of the amendment can appropriately be

fulfilled and the victim should take active role during trial and the victim should protect his/her interest whenever it is necessary.

Learned Advocate for the petitioner has invited the attention of the Court to the reliefs sought for by the petitioner before the learned Trial Court and contended that those reliefs are very much essential to protect the interest of the victim as well as fair trial of the case otherwise her right as recognised by the statute would be meaningless.

On the other hand, learned Advocate appearing for the State has vigorously argued that the learned Trial Judge has rightly refused the prayer of the petitioner. He has contended that in view of the provision as contended in the proviso to Sub-section 8 of Section 24 of the Code of Criminal Procedure trial Court may permit the victim to engage an advocate of his/her choice to assist the prosecution. According to his contention the victim has the right to assist the prosecution through his/her advocate and he/she has no right to take active part in the Sessions trial. He has also contended that in view of Sub-section 2 of Section 301 of the Code of Criminal Procedure the Public Prosecutor or the Assistant Public Prosecutor in charge of the case shall conduct the prosecution and if any such case, any private person instructs a pleader to prosecute any person in any Court and the pleader so instructed shall act therein under the direction of the Public Prosecutor or the Assistant Public Prosecutor and may, with the permission of the Court, submit written argument after the evidence is closed in the case.

Learned Advocate Mr. Ayan Bhattacharjee appearing for the petitioner took much pain and advanced his eloquent argument and cited a series of decisions to justify the prayer of the petitioner made before the learned Trial Judge.

The decision cited by the Learned Counsel for the petitioner are as follows:

- 1) ***Debasish Bose and Another Versus the State of West Bengal and Another*** reported in 2015 Cri.L.J.2252;
- 2) ***Lokesh Singh Versus State of Uttar Pradesh*** reported in MANU/UP/1019/2013;
- 3) ***Khumukcham Nikita Devi Versus State of Manipur and Another*** reported in 2018 Cri.L.J.1557;
- 4) ***Ajay Kumar Ghoshal and Others Versus State of Bihar and Another*** reported in (2017)12 SCC 699;
- 5) ***Bhagwant Singh Versus Commissioner of Police and Another*** reported in (1985) 2 SCC 537;
- 6) ***Sundeeep Kumar Bafna Versus State of Maharashtra and Another*** reported in (2014) 16 SCC 623;
- 7) ***Kanaka Rekha Naik Versus Manoj Kumar Pradhan and Another*** reported in (2011) 4 SCC 596;
- 8) ***Puran Versus Rambilas and Another*** reported in (2001) 6 SCC 338;
- 9) ***J.K.International Versus State (Govt. of NCT of Delhi) and Others*** reported in (2001) 3 SCC 462;

- 10) ***Mosiruddin Munshi Versus Mohd. Siraj and Others*** reported in (2008) 8 SCC 434;
- 11) ***Mina Lalita Baruwa Versus State of Orissa and Others*** reported in (2013)16 SCC 173;
- 12) ***Anant Prakash Sinha @ Anant Sinha Versus State of Haryana and Another*** reported in (2016) 6 SCC 105;
- 13) ***Sarada Prasanna Dalai Versus Inspector General of Police, Crime Branch, Odisha and Others*** reported in (2017) 5 SCC 381;
- 14) ***Gian Singh Versus State of Punjab and Another*** reported in (2012) 10 SCC 303;
- 15) ***Behari Majhi Versus Hari Majhi*** reported in AIR 1932 Cal 61;
- 16) ***Mallikarjun Kodagali (Dead) through Lrs. Versus State of Karnataka and Others*** reported in AIR 2018 Supreme Court 5206.

I have gone through the decisions so cited by the Learned Advocate for the petitioner. The decisions as referred by the Learned Counsel for the petitioner relate to the general right of victim in inquiry or investigation, right of victim in sessions trial, right of informant on closure report; right of victim during bail proceedings; right of the victim in connection with appeal; right of informant in cancellation of bail; right of informant in petition under Section 482 of the Code of Criminal Procedure; right of informant/victim under Section 311 of Code of Criminal Procedure; right of victim or informant in connection with framing of charge; right of victim in compounding cases and right of informant in appeal proceeding.

I have carefully examined the submission and counter-submission made by the learned Counsel for the parties.

Before proceedings further in the matter it would be reasonable to deal with the relevant provisions of law.

Section 225 of the Code of Criminal Procedure has clearly stated that every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor. Section 2(u) of the Code of Criminal Procedure has defined the term 'Public Prosecutor'. Public Prosecutor means any person appointed under Section 24 and includes any persons acting under the direction of a Public Prosecutor. In Sub-section 3 of Section 24 of the Code says that for every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutor for the district.

Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor as the case may be for another district. Section 24(8) of the Code of Criminal Procedure, says that the Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than 10 years as a Special Public Prosecutor. Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under the Sub-section.

Section 225 of the Code of Criminal Procedure has clearly mentioned that only the Public Prosecutor can conduct the trial before the Court of Session. Admittedly, the trial in question is being held in connection with a session case. Trial of a session case commences with the framing of charge against the accused. During the course of hearing this Bench asked a specific question to the Learned Advocates appearing for the parties as to whether the petitioner had any grievance regarding the competency of the Learned Public Prosecutor who is conducting the case before the learned Court below. In this connection, Mr. Bhattacharjee, learned Advocate appearing for the petitioner has submitted that the petitioner has no grievance against the Public Prosecutor who is conducting the trial before the Learned Court below. That means the petitioner has no grievance regarding the competency of the Learned Public Prosecutor who is conducting the case before the learned Trial Court.

The learned Advocate appearing for the petitioner has tried to impress upon the Court regarding the right of the victim and he has explained the concept of victimology by referring several provisions as incorporated in the Code of Criminal Procedure by way of amendment in the year 2009 and 2013. It is true that several provisions have been incorporated in the Code of Criminal Procedure regarding the right of the victim or de facto complainant to prefer an appeal against the order of acquittal of the accused. The right of the victim or the de facto complainant has been recognised to challenge the final order passed by the Trial Court after conclusion of

trial. Right to challenge the order before the higher forum is one thing and right to conduct session trial is another thing. The Code of Criminal Procedure so far as the trial of session case is concerned, has given only the right to the victim/de facto complainant to assist the prosecution not to conduct the prosecution. This is a restricted right. There is a basic difference in between right to assist the prosecution and right to conduct the prosecution. So far conduct of prosecution is concerned, this right or power is given only to the Public Prosecutor appointed either by the State Government or the Central Government as the case may be. Legislature in its wisdom has given the authority to the Public Prosecutor/or the special public prosecutor as the case may be, to conduct the Session cases. This authority is not subject to any condition or restriction so far as the language used in Section 225 of Cr.P.C. is concerned. The right of the victim to assist the prosecution by engaging his or her lawyer in no way curtails the said right of the Public Prosecutor to conduct the prosecution. Moreover, the victim or complainant can engage his/her advocate with the permission of the Court. Engagement of the Advocate by the victim or de facto complainant is not mandatory. Engagement of the Advocate by the victim is optional and that option can be exercised by the victim/complainant with the permission of the Court.

The role of the Public Prosecutor is of great importance in criminal administration of justice and the said role has been explained by our Apex Court and various High Courts on several occasions. Public Prosecution has an important role to play in criminal administration of justice. He is the representative of the State and

he is appointed by the State. It is his duty to place the entire material before the Court on behalf of the prosecution. An offence is generally considered to be a crime against the State and every session case is conducted in the name of the State. It is not the only duty of the public prosecutor to obtain conviction of the accused by any means. His primary responsibility is to place the entire material so that the actual fact may be unfolded during trial and truth may be unearthed. There is a basic difference in between the Public Prosecutor and the investigating agency. He is not an Advocate engaged by the Government. He is an Officer of the Court and his primary duty is to assist the Court and he is not the mouth piece of investigating agency. Public Prosecutor while conducting prosecution must be fair in all respect. In this connection a decision of our Apex Court in ***Shiv Kumar Vs. Hukam Chand*** reported in (1999) SCC (Cri.) 1277 may be cited:-

“The expected attitude of the Public Prosecutor while conducting prosecution must be couched in fairness not only to the Court and to the investigating agencies but to the accused as well as. If an accused is entitled to any legitimate benefit during trial the Public Prosecutor should not scuttle/conceal it. On the contrary, it is the duty of the Public Prosecutor to winch it to the fore and make it available to the accused. Even if the defence Counsel overlooked it, the Public Prosecutor has the added responsibility to bring it to the notice of the Court, if it comes to his knowledge.”

Section 225 of the Code has made it clear that only the Public Prosecutor can conduct the sessions trial. The Public Prosecutor is expected to act independently and impartially in criminal administration of justice. The most important duty of the Public Prosecutor is to ensure fair play in criminal proceeding. All relevant facts should be placed before the Court which are essential for determination of truth and to assist the Court to come to a just decision of the case. At the same time to ensure proper justice to the victims including complainant and accused.

If a private party is allowed to conduct sessions case through his/her Advocate then the basic purpose of criminal administration of justice is bound to be affected.

A complainant or a victim has always the tendency to place or bring on record only those evidence and documents which support his/her case. If a pleader engaged by the victim or the complainant is allowed to conduct the session trial then there is every possibility that all relevant facts/evidence may not be brought on record to unearth the truth or actual incident. Private pleader may have an obligation towards his client as his remuneration is paid by private party. A pleader engaged by the victim or the complainant generally may not have responsibility to ensure fair play in the criminal proceeding as he is not engaged by the State or is not representing the State. Whereas, the Public Prosecutor has the responsibility to protect the public interest.

In this connection, I would like to refer another decision of our Hon'ble Apex Court in ***Deepak Aggarwal Vs. Keshav Kaushik and Others*** reported in (2013) 2 SCC(Cri) 978. Our Apex Court was pleased to observe as under:

“Even though Public Prosecutor/Assistant Public Prosecutor is a full-time employment with the Government and is subject to disciplinary control of the employer, but once he appears in the Court for conduct of a case or prosecution, he is guided by the norms consistent with the interest of justice. His acts always remain to serve and protect the public interest. He has to discharge his functions fairly, objectively and within the framework of the legal provisions.”

Moreover, participation of the Advocate of the complainant or the victim in the trial of session case may not be free from bias. The object of fair play in the criminal proceeding may be hampered as the Advocate engaged by the complainant or the victim has no responsibility to place before the Court all the relevant documents/evidence which are necessary for the Court to come to a just decision. Possibility of miscarriage of justice cannot be ruled out.

A conjoint reading of proviso to sub-Section 8 of Section 24, Section 301 and Section 225 of the Code of Criminal Procedure, makes clear that our legislature has clearly demarcated the role of the public prosecution and the lawyer engaged by the victim or de facto complainant. The language used in Section 225 of the Code of Criminal Procedure is unequivocal, unambiguous and Section 225 of the Code does

not suffer from any ambiguity. This Section leaves us no doubt that the only the public prosecutor has the authority to conduct session trial. This section is based on the principle of fair play of criminal trial and public prosecutor is expected to maintain the sanctity of impartial trial. That is why, our legislature in its wisdom makes provision in proviso to sub-Section 8 of Section 24 that the victim with the permission of the Court may engage an Advocate to assist the prosecution. This right of the victim also depends upon the discretion of the Court.

The petitioner has sought for permission to put question to defence witness after cross-examination of the Public Prosecutor. An offence is a crime against the State. Public prosecutor is conducting the case on behalf of the State. If the Advocate of the de facto complainant or victim is allowed to cross-examine the defence witness after the cross-examination of the prosecution, then there is every possibility of conflicting answers which may damage the prosecution case. During examination and cross-examination of prosecution and defence witnesses, the Advocate engaged by victim or de facto complainant may assist the public prosecutor. That is why the legislature has used the term to assist the prosecution not to conduct the prosecution. The relief sought for by the petitioner before the learned Trial Court cannot be granted to her as it is contrary to the statutory provision. The right of the victim to engage private pleader to assist the prosecution is based on the principle that the public prosecutor who is conducting the trial of the session case may get proper assistance from the Advocate engaged by victim/de facto complainant both on facts and law, if so required. This does not mean that the

lawyer engaged by the private party will examine the prosecution witnesses or cross-examine the defence witnesses.

The decisions as cited by the Learned Advocate for the petitioner have no bearing with the present matter in issue.

The above discussion and observations lead me to hold that the Learned Trial Judge has rightly rejected to the prayer of the present petitioner.

I do not find any reason to interfere with the impugned order passed by the Learned Court below. The present Revisional Application being CRR.2357 of 2018 is devoid of merit and stands dismissed.

Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, upon compliance with all necessary formalities.

(Madhumati Mitra, J.)