

Paper presentation by

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on:

Extent of interference of third parties including defacto complainant in criminal trial

The role of the public prosecutor is very important in criminal trial, he works u/s 24 of Code of Criminal Procedure, for conducting prosecution, appeal or other proceeding on behalf of the Government, as the case may be u/s 301 Cr.P.C. the public prosecutor or the A.P.P. in charge may appeal and plead without any written authority before any court in which that case is under inquiry, trial or appeal, it further states that if in any such case any private person instructs a pleader to prosecute any person in any court, the pleader so instructed shall act under the directions of the public prosecutor or Asst. Public Prosecutor and may with the permission of the court, submit written arguments after the evidence is closed in the case.

Section 302 of Code of Criminal Procedure empowers the Magistrate inquiring into or trying a case to permit the prosecution to be conducted by any person other than a police officer below the rank of Inspector. It further states that no person other than the Advocate General or Government Advocate or a Public Prosecutor or Asst. Public Prosecutor shall be entitled to do so without such permission, any person conducting the prosecution may do so personally or through his pleader.

Sections 301 and 302 of Cr.P.C clearly indicate that there is ample scope in the code for interference of third party including defacto complainant in criminal trial. In most the decisions so far have taken the view that third party intervention in criminal cases is not desirable and that it is the duty of the Public Prosecutor to conduct the prosecution.

Section 301 of Cr.P.C. interpreted in number of cases:

In **Thakur Ram Vs. State of Bihar AIR 1966 SC 911**, the Hon'ble Supreme Court ruled that in a case which has proceeded on a police report, a private party has no locus standi. It further ruled that, barring a few exceptions, in criminal matters, the aggrieved party is the state, which is the custodian of the social interests of the community at large, and so it is necessary for the state to take all steps necessary for bringing the person who has acted against the social interests of the community to book.

In another decision **Shiv Kumar Vs. Hukam Chand (1999) 7 SCC 467** the Hon'ble Supreme Court attempting to explain the rationale behind section 301, stated that the reason behind the provision is to provide fairness to the accused, during the trial.

It further stated that the duty of the Public Prosecutor is to ensure that justice is done. It stated that if there is some issue that the defence could have raised, but has failed to do so, then that should be brought to the attention of the court by the Public Prosecutor. Hence, he function as an officer of the court and not as the counsel of the State, with the intention of obtaining a conviction. It stated that if the victim or the informant is allowed to have her own counsel, then the situation would not be the same, since the aim of such a counsel would be to obtain a conviction. It stated that the role of the advocate appointed by the third party to the proceeding would be similar to a junior counsel, the Hon'ble court cited the decision of *Queen Empress Vs. Durga ILR (1894) 16 All 84*, where the Hon'ble Allahabad High Court had ruled that it is the duty of the Public Prosecutor to see that justice is vindicated, and he should not obtain an unrighteous conviction. It also quoted the case of *Medichetty Ramakristiah Vs. State of A.P., AIR 1959 AP 659*, where the Hon'ble High Court of Andhra Pradesh had ruled that prosecution should not mean presecution, and the prosecutor should be scrupulously fair to the accused and should not strive for conviction in all these cases. It further stated that the courts should be zealous to see that the prosecution of an offender should be given to a private party. The court also said that if there is no one to control the situation, there was a possibility if things going wrong. It would amount to a legalized manner of causing vengeance.

But the above view has been changed in *Delhi Domestic working women's Forum Vs. Union of India (1995) 1 SCC 14*, gave parameters with respect to assisting victims of rape, the Hon'ble Supreme Court, inter alia held that the complainants in sexual assault cases would be provided with legal representation. The Hon'ble court said that it is important to have someone who is well acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim, the nature of the proceedings, prepare her for the case and to assist her in the police station and in court, but also to provide her with guidance as to how she might obtain help of a different nature. The Hon'ble Court said that it is important to secure continuity of assistance, by ensuring that the same person, who looked after the complainant's interest in the police station, represent her till the end of the case. This could be interpreted to mean, that an intervener be allowed, to assist the victim.

In *J.K. International Vs. State (Govt. Of NCT of Delhi) (2001) 3 SCC 462*, where it was seized of a matter that involved the interpretation of section 301. In this case, the accused had moved the Hon'ble High Court seeking quashing of the charges framed. The petitioner, who was the complainant sought to intervene in the case. The Hon'ble Court ruled that a reading of section 301 makes it clear that the fact that the police have investigated the case, based on the information given by the informant and filed a charge sheet, on the basis of which cognizance is taken, does not in any way mean that the informant is wiped out from the scenario of the trial. The Hon'ble Court referred to section 301 and stated that in the case of a trial before a Court of Session, one needs to read the said section with section 225, which states that only a public prosecutor is

empowered to argue the case before the court. Even in such a situation, a third party is allowed to present written arguments to the court, albeit with the permission of the court. Once such arguments are presented, the Supreme Court ruled that the Sessions Court has a duty to consider the same before deciding the case. The court then went on to interpret section 302 and stated that the power under section 302 was much wider, it empowers the Magistrate to permit a private person to carry on the prosecution, hence the court stated that a third party's role is not negated by Code of Criminal Procedure.

Both sections 301 and 302 cover two different situations, section 301 envisages a situation where the public prosecutor is in charge of a case and a private person instructs his pleader to intervene. In such cases, as has been rightly said, it is the public prosecutor under whose overall conduct and supervision the prosecution is carried on. However, section 302 is concerned with a situation where any person not being a police officer below the rank of inspector, can prosecute a case, with the permission of the court, either himself or through his pleader. Two levels of intervention of private persons are envisaged under the Code of Criminal Procedure: one is under the supervision and control of the public prosecutor and the other independent of the prosecution.

Section 302 of code has been interpreted in many cases;

In *Dhariwal Industriess Limited Hon'ble Supreme Court, AIR 2016 SC 4369* explained the distinction between section 301 and 302 Cr.P.C. the role of the informant or the private party is limited during the prosecution of a case in a court of session. The counsel engaged by him is required to act under the directions of the 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 independently.

Prior to the Criminal Law Amendment Act, 2009, the situation was different with regard to interference of third parties in criminal trial, the private person or private counsel can be permitted to assist the prosecution u/s. 301 Cr.P.C. in cases triable by Court of Session.

Section 24 (8) proviso amended in Code of Criminal Procedure Amendment Act, 2009 and allowed the third parties including defacto complainant to prosecute their own case.

In *Delta Car Private Limited Vs. Sanjeev Shah Hon'ble court* held that defacto complainant a victim even in bail application can be permitted to come on record as co-respondent either to assist the court or to assist the PP as the case may be and even from the wording of section 24(8) proviso of Cr.P.C. Amendment Act 2009.

In *Smt. Mahabunnisa Begum Vs. State of Telangana and 2 ors. 2017* in criminal petition no. 7108 of 2017 by Hon'ble Sri Justice B. Siva Sankara Rao gave order by citing the decisions AIR 2016 SC 4369, AIR 2001 SC 1102, 2015 (2) ALT (Cr.) 216, AIR 1959 SC 375 and CrI.Pno.5674 of 2015 dt. 26.06.2015 allowed the criminal petition

moved by the defacto complainant in a case crime registered under section 498A of IPC and sections 3 and 4 of DP Act, in this case the Magistrate dismissed the petition u/s 302 read with section 24(8) of Cr.P.C. to permit her to prosecute through private advocate. The order of the Magistrate dismissed and allowed the petition of complainant saying section 302 Cr.P.C. is not applicable to the Magistrate is unsustainable so also in ignoring section 24(8) r/w section 2(wa) of the amended cr.p.c. which further recognizes the right of the victim and in ignoring the scope of section 301 of Cr.P.C., is only limited when compared to scope of section 302 and section 24(8) proviso r/w sec. 2(wa) of cr.p.c.

Hon'ble Justice cited decision of Hon'ble High Court in ***Gude Bhavani Sujatha vs. Muggulla Srinivasa Rao***, it was held that either u/s 302 cr.p.c. or even u/s24(8)proviso of amended cr.p.c. magistrate court got power to permit tthe victim or the defacto complainant to conduct prosecution by participating in the proceeding by engaging private advocate.

Conclusion :

State being custodian of society safeguards the interest of the public, but the situation arises in cases relating to women i.e. cruelty against women cases u/s 498A, and cases with regard to sexual assault, the victim or private person on her behalf be permitted to prosecute her case or assist her in criminal trial in Magistrate court or in the Hon'ble court of session, the petition can be moved at any stage of the case seeking permission u/s302 or u/s 24(8) proviso of Cr.P.C.