
(2014) 07 AP CK 0076

In the Andhra Pradesh High Court

Case No : Crl. P.M.P. No. 4382 of 2014 in Crl. P. No. 4546 of 2014 and Crl. P.M.P. No. 4383 of 2014 in Crl. P. No. 4547 of 2014

Delta Car Pvt. Ltd.

APPELLANT

Vs

Sanjiv Shah and Others

RESPONDENT

Date of Decision : 17-07-2014

Acts Referred:

Advocates Act, 1961 — Section 35
Constitution of India, 1950 — Article 20 20(2)
Criminal Procedure Code, 1973 (CrPC) — Section 156(3) 173(2) 2(w) 200 224
Penal Code, 1860 (IPC) — Section 120-A 301 302 304-B 405

Citation : (2015) 2 ALT(Cri) 216

Hon'ble Judges : B. Siva Sankara Rao, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dr. B. Siva Sankara Rao, J.

1. The Crl. P. No. 4546 of 2014 and 4547 of 2014 are filed under Section 438 of Cr.P.C. seeking anticipatory bail by the A.3 and A.4 respectively of the Cr. No. 94 of 2010 on the file of the Trimulgherry Police Station for the offences under Section 120-A (mistakenly might have mentioned for 120-B), 405, 415, 418, 420, 463 and 464 of I.P.C. it is the State represented by the Public Prosecutor as respondent in the two bail applications before the High Court opposing the same and pending said applications, the defacto-complainant through advocate wanting to come on record filed applications vide Crl. M.P. Nos. 4382 in Crl. P. No. 4546 of 2014 and 4383 of 2014 in Crl. P. No. 4547 of 2014 (two bail applications), invoking Section 482 of Cr.P.C. with a prayer that he may be permitted to be impleaded as 2nd respondent to the bail applications and further permitted to assist the Court as well as the Public Prosecutor in hearing of the bail applications. The learned Counsel for the accused persons supra opposed these applications by filing their counter and further requested that the permission petition has to be disposed of on merits, before taking the hearing of

the two bail applications. Hence, these petitions are heard for deciding first.

2. The averments in the affidavit common in the two applications of the defacto-complainant representing by its Managing Director in nutshell are that having filed the quash proceedings by the accused persons in this Court (before another Bench) and the defacto-complainant also came on record and contesting the same, from its dismissal by order dated 22.03.2012, the same was impugned by the bail applicants before the Apex Court by special leave and those were also ended in dismissal and they filed the applications for anticipatory bail before the learned VI Additional Metropolitan Sessions. Judge at Hyderabad where also the defacto-complainant came on record and contested and the bail applications were ended in dismissal for no grounds to grant anticipatory bail and further submits that the present case involves complex facts and also voluminous record that is required to be considered and the petition filed by the accused persons substantially deals with the proceedings before the High Court in the quash proceedings that also went before the Apex Court where the defacto-complaint having participated, that the defacto-complainant being the affected person, will be in a better position to assist the Court by providing details and pointing out factual aspects of the case. Hence, prayed to implead as 2nd respondent for effective adjudication.

3. Counter (common in both the petitions) filed by the learned counsel for the respondents-accused persons reads that they raised a civil dispute and invoked Arbitration Clause (in the dealer Agreement) on 29.12.2009 and the matter is heard by Arbitrary Tribunal consisting of three retired High Court Judges and the said arbitration includes subject matter of the FIR, that a consent order was recorded by the Arbitral Tribunal on 17.03.2010 and the same is being heard and parties agreed the following terms:

"1. The claimant will return the unpaid stock consisting of 13 cars in 22.03.2010 and pay the price of 14th car assessed at ` 39 lacs by the same date,

2. Respondent will buy back all paid stock consisting of five cars at the value at which they were supplied to Delta, subject to inspection, and claim in damages of any,

3. The claimant will not hereafter use respondent's trade mark or logo,

4. BMW will be at liberty to approach the landlord or erstwhile showroom of Delta for removal of log of BMW,

5. The claimant is directed to request M/s. Tata Capital to release to BMW amount with respect to five cars sold on 08.01.2010. On receipt of the amount from Tata Capital, BMW shall immediately refund the amount of ` 1.2 crores in lieu of invoked Bank guarantee to Delta.

The unpaid stocks referred to in the above order are the cars allegedly "dumped".

It is further averred that on 13.05.2010, i.e. after four months after expiry of the contractual relationship between the parties on 31.12.2009, the petitioner (defacto-complainant) filed a private complaint against the BMW India and its four officials before the learned XI Additional Chief Metropolitan Magistrate, Secunderabad for the above referred crime and the learned Magistrate referred the same on 17.05.2010 under Section 156(3) Cr.P.C. to the police Station Trimulgherry for investigation and the FIR was registered by the police on that day against the accused persons of whom they were figured as A.3 and A.4 (bail applicants) respectively, that on 24.09.2010, a petition under Section 482 of Cr.P.C. was filed by the accused and others, in this Court (another Bench) to quash the FIR on the ground that it does not state any overt acts nor necessary ingredients for the alleged offences made out and on 08.10.2010, the Court granted stay of arrest and the said stay was vacated by order dated 23.11.2010, while kept pending the stay of arrest that continue till dismissal of the quash proceedings and the accused persons preferred SLP before the Apex Court against the said order impugning the same and that was also ended in dismissal on 04.03.2014. The accused filed petition for anticipatory bail before the VI Additional Metropolitan Sessions Judge and the same is ended in dismissal on 02.04.2014 with the observation that the Court reserve liberty to the SLP petitioners (Accused) to make proper application under Section 239 of the Code of Criminal Procedure, 1973 for discharge before the Trial Court in case they are charged and such application is filed, the Trial Court will consider the same in accordance with law without being influenced by observations made by the High Court, while disposing of the petition filed under Section 482 of Cr.P.C. and all the contentions of both the parties are left open.

4. The accused filed petition for anticipatory bail before the learned VI Metropolitan Sessions Judge, and the same is dismissed on 02.04.2014 on the ground that there are serious allegations against them and there are no grounds to release them on anticipatory bail, that the matter is in fact a pure civil dispute arising out of the alleged Dealership Agreement dated 13.06.2007 and the deferred payment agreement dated 14.06.2007 and the defacto-complainant deliberately is trying to give a criminal overtone to the said matter with motive to pressurise and arm twist BMW India Limited to meet unjust demands of the defacto-complainant to enter into settlement by abusing the process of law and in spite of a private complaint filed on 17.5.2010 no charge sheet is filed by the police so far and the defacto-complainant is influencing the State from preparing and filing charge sheet in the matter and taking strategy for the purpose of forcing BMW to pay 40 crores which the petitioner herein claims damages for unlawful termination of deferred payment agreement dated 14.06.2007 and the arbitration has also been invoked in this regard, that it is with a oblique motive or arm twisting BMW India Limited, the defacto-complainant connived with the State (Investigating Officer) and totally subverted the investigation process and the Investigating Officer is repeatedly asking the same questions to the BMW India Limited and not filing charge sheet even after a gap of more than four

years out of the stay of investigation granted by the Apex Court a period only for two years out of four years and they can freely file a charge sheet in the remaining period, that the oblique motive is to harass the BMW and after dismissal of SLP, the defacto-complainant impleaded in the bail applications while pending before the learned Sessions Judge for anticipatory bail filed by the accused persons to see that they may not be enlarged on anticipatory bail and to arrest to ensure to bring them to settlement of the present criminal petition to come on record is for the sole purpose of ensuring that the petition for anticipatory bail by the accused somehow be dismissed to ensure a threat of arrest to be kept alive and to see that the matter be settled to their expectation and it is not intended anyway to aid the investigation process but for subverted the same with oblique gain to cause arrest the accused persons and tarnish their reputation including of BMW, to force them to go for settlement, hence to dismiss the petition.

5. Heard both sides i.e. learned counsel for the accused persons as well as the counsel representing the petitioner-defacto-complainant to come on record and also learned Public Prosecutor.

6. Perused the material on record.

7. Now the points that arise for determination are:

"(1) Whether the petitioner/defacto complainant in the two bail applications can be permitted to come on record as 2nd respondent either to assist Court or to assist the learned Public Prosecutor as the case may be, either under Section 24(8) proviso Cr.P.C. (as per amended Act 5 of 2009) or any other specific provision of Cr.P.C. and if not even under Section 482 Cr.P.C.?

(2) To what relief?"

8. As a common question of fact of law involved in both the applications seeking impleadment those are taken up together for common disposal.

Point No. 1:

9. Coming to the contention of the learned counsel for the petitioner in support of the application filed with bunch of material not required to refer as indexed items 3 to 7 for the purpose of this application, it is mainly the contention by placing reliance upon Section 482 of Cr.P.C. under which the petition is filed in saying the inherent power of the Court which inheres from the very Constitution to exercise to meet the ends of justice or to prevent any abuse of justice and to Section 2(w) the definition of victim Section 24 (8) proviso which enables the Court to permit, in its discretion, the victim to engage advocate of his choice to assist prosecution. Under sub-section 8 of Section 24 where there is no Special Public Prosecutor appointed by the State, also placed reliance upon decisions. The Lecture by Dr. Justice A.S. Anand on topic "Victims of Crime-the unseen side" that is reported in the journal 1998 (1) SCC - Journal Section pages 3 to 13, speak so far as the relevant observations either from decisions or extracts of

authors or from the opinions expressed concerned of 1) Giving the victim of crime his rightful place and taking a serious note of his existence, his feelings and his rights with a view to offer redress to him for his "injuries" may in the long run help check the rising graph of crime. 2) His interest in getting the offender punished cannot be ignored or completely subordinated to the interest of the State. Otherwise, the victim will remain discontented and may develop a tendency to take the law into his own hands in order to seek revenge. 3) The United Nations General Assembly in November, 1985 adopted the declaration of "Basic Principles of Justice for Victims of Crime and Abuse of Power", among those clauses therein particularly on clause-D "Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected without prejudice to the accused and consistent with the relevant national criminal justice system."

9-a. A judgment of another Bench of this Court in C.S.Y. Sankar Rao Vs. State of Andhra Pradesh, with the observations at para-7 referring to the expression of the Apex Court in M/s. J.K. International Vs. State, Govt of NCT of Delhi and Others, (outcome in a quash proceedings under Section 482 of Cr.P.C.) that "It is predominantly the concern of the State to continue the prosecution, But when the complainant wishes to be heard when the criminal proceedings are sought to be quashed, it would be negation of justice to him if he is foreclosed from being heard even after he makes a request to the Court in that behalf." And the other expression of the Apex Court referred is in R. Rathinam Vs. State by DSP, District Crime Branch Madurai District, Madurai and Another, and another expression referred is Puran Vs. Rambilas and Another etc. etc., in dealing with the cancellation of bail with observation that it need not be by the prosecution agency but also by victim or any witnesses of the prosecution and even any other public party or persons, want it is to be brought to the notice of the Court any circumstance, it is for the Court, if necessary, to make use of the remedy for cancellation of the bail subject to notice of hearing of accused and referring to these expressions hold that mainly para-18 that "the very criminal justice delivery system may fail and ultimately justice may not be done in serious and heinous criminal offences if the witnesses are not allowed to depose freely without any fear or favour. In view of the same, though there is a limited scope, I feel the victims and the defacto complainants can be heard at the stage of considering the bail applications or cancellation of bail with the permission of the Court and as supplementary to the arguments advanced by the Public Prosecutor. Whatever the defacto-complainant or the victim has to say initially, they must act as per the directions and under the instructions of the Public Prosecutor, But, however, the Court may in appropriate cases if comes to a conclusion that in the interest of justice, it is necessary to hear the defacto-complainant or the victim they may be heard". It is also in dealing with the application to come on record by defacto-complainant said observations made.

9-b. The other decision relied upon is of Kerala High Court in Kunhiraman Vs. State of Kerala, in dealing with the anticipatory bail, when the defacto-

complainant-bank filed application to come on record in opposing the bail application while allowing the same, the Kerala High Court by referring to expression of the Madras High Court in P.S. Saravanabhavanandam and Another Vs. S. Murugaiyyan and Another--> -wherein on scope of Section 301 Cr.P.C. referring to it and of the Apex Court's expression in Dharmendra Chandulal Patel Vs. State of Gujarat, that "the Supreme Court heard and considered the apprehensions of the widow of the deceased in a murder case that the accused in that case hurls threats to her and her children. Her objection was considered and acted upon". With that reference at para-17, the learned Judge of the Kerala High Court held that "There is no legal bar for hearing the defacto-complainant in an application for anticipatory bail. Theoretically of course, there is no provision in the Code for impleading a party, but nothing prevents the Court from hearing the defacto complainant or aggrieved in an application for anticipatory bail. In fit cases, the Court can afford to the aggrieved or the defacto complainant an opportunity of hearing". The other expression of the Bombay High Court single Judge in Vinay Poddar Vs. The State of Maharashtra, which is also an application for anticipatory bail, the defacto complainant was permitted to come on record where it referred the Apex Court's expression in Puran (supra) Bhagwant Singh Vs. Commissioner of Police and Another, on the protest petitions against the referred report filed under Section 173(2) Cr.P.C of a right of hearing to the protest petitioner/complainant; another Bombay High Court expression in Chandrakant Chandulal Bhansali Vs. Shrikant Shrikrishna Joshi and Another, . International (supra), P.S. Saravanabhavanandam (supra) of the Apex Court and Section 302 Cr.P.C. referred in relation thereto at paras-12 and 13 concluded with the observations that the Apex Court has recognized from what is discussed supra to right of the defacto-complainant to challenge the order granting bail and observed that even in a case of enquiry or trial before Court of Sessions, the defacto complainant has right of filing written submissions which the Court is duty bound to consider and the complainant has a right to be heard that the learned Magistrate considers police report while recording of opinion that of no offence has been made out, that "when an application for anticipatory bail is considered, the police may not place all factual details before the Court as the investigation in most of such cases is at a preliminary stage. Therefore, some role can be played by the complainant by pointing out factual aspects. In the circumstances, it is not possible to hold that the first informant or the complainant cannot be heard in an application for anticipatory bail. When the complainant appears before the Court in the course of hearing of an application for grant of anticipatory bail, the Court is bound to hear him".

10. Whereas, it is the contention of learned counsel for the bail applicants in opposing the impleadment of the defacto-complainant, went by referring to the Apex Court's expressions on the scope of Section 301 and 302 of Cr.P.C. and Sections 224 and 225 of Cr.P.C. on the right of the private counsel to conduct prosecution in a Sessions Court, in Shiv Kumar Vs. Hukam Chand and Another, - where the offences committed are Section 301, 302, 304-B of I.P.C., it was

observed that the scope of the Section 301 Cr.P.C. enables the Public Prosecutor to represent the State being in-charge to appear and plead without even written authority whereas for a private person to instruct a pleader to prosecute any person in the Court, the Public Prosecutor in-charge of the case shall conduct prosecution and pleaders so instructed shall act therein under the directions of the said Public Prosecutor and may with permission of Court submit written arguments after evidence is closed. In this case, Section 302 Cr.P.C. is the provision before the Magistrate Court on enquiry or trial to permit the prosecution to conduct by any person other than Police Officer below the rank of Inspector with permission of the Court, if not, by the Advocate General or Government Advocate or Public Prosecutor or Addl. Public Prosecutor and no police officer shall be permitted to conduct prosecution, if he has taken part in such investigation in the offence and any person conducting prosecution made it so personally or by pleader from these provisions, the above laxity of Section 302 cannot be extended to other Courts other than before Magistrate and so far as the Sessions trial concerned, the trial to be conducted by the Public Prosecutor as per Section 225 and it is at par with old Cr.P.C Section 270 that is being appointed under Section 24 Cr.P.C. and so far as Section 301 Cr.P.C. from what is discussed supra, the private individual has no role but for the role limited under Section 301(2) Cr.P.C., to assist the Public Prosecutor who got the right to conduct Prosecution under Section 301(1) Cr.P.C., and that was the conclusion in the discussion by the Apex Court in its observations in paras 12 to 14 respectively.

10-a. The other decision placed reliance on by the bail applicants is, In Re: Rakhan Ojha alias Rakhal Chandra Ojha, on the scope of Section 301 of Cr.P.C. and Section 225 of Cr.P.C. The lawyer engaged by a private person has no right of audience in-charge of Public Prosecutor and he can only submit written statements (Arguments) with a permission of the Court from a plain reading of the wording of Section 301 of Cr.P.C. including from the Section 225 of Cr.P.C. in a sessions case also from Section 234 of Cr.P.C.

10-b. The other decision placed reliance upon is of Delhi High Court in Smt. Indu Bala and Others Vs. Delhi Administration and Others, where in an anticipatory bail application on the role of private Counsel for the party, at para-7 it was observed that, the Counsel for the Complainant has no right to be heard in opposing the anticipatory bail but for he can brief the State Counsel (Public Prosecutor) and it is only the State Counsel that can be heard in opposing the application for anticipatory bail.

10-c. The other decision relied upon is C.S.Y. Shankar Rao (supra) of this Court in saying from para-10 that "there is no specific bar in hearing the defacto-complainant or victim at the stage of considering the application for bail or cancellation of bail. Normally, it is the duty of the State and Public Prosecutor to prosecute the accused without any bias. If the private parties are allowed, there is every possibility of making biased representations" and it may be difficult to

find out the truth or otherwise of the allegations and counter allegations." and also places reliance on some observations in para-12 that "the law makers in their wisdom have given opportunities to the defacto complainants and the victims." and also placed reliance on observations in para-13 that "Even though there is a danger of biased representation, the victims cannot be prevented from knocking the doors of the Court and making their submissions. It should not be forgotten that it is the victim who is put to injury, physical or mental suffering. The victim is the ultimate loser. He is put to pain, trouble, damage as a result of an offence. The victims are predominantly deprived of their near and dear. In fact, no amount of compensation can bring back the lost life or limb. They are permanently deprived of their enjoyment and happiness of the company of the deceased." At para-18 observed that "the victims are not totally barred in approaching the Court in appropriate cases and to represent their grievances." Even in the Cr.P.C. and under the public policy though it is the primary duty of the State to conduct the prosecution. "I feel that the victims and defacto-complainant can be heard at the stage of considering the bail applications and cancellation of bail, with the permission of the Court and supplementary arguments advanced by the Public Prosecutor. However, the discretion has to be exercised judiciously with reasonable care and caution."

10-d. The other decision placed reliance upon is unreported judgment of the Delhi High Court of Single Judge in bail application No. 825 of 2009 dated 12.08.2009 particularly upon paras 8, 9, 12 and 13. In para-8, it is observed that the petitioner vehemently opposed impleadment of the intervener/applicant as a party on the ground contending that in a bail application the intervener/applicant has no locus-standi to be impleaded as a party and placed reliance upon two earlier expressions in Praveen Malhotra Vs. State, and Indu Bala (supra). In para-9 it is observed that after careful observation of the respective submissions of the learned counsel held that "No doubt the Supreme Court over the years relaxed the concept the locus-standi even in criminal cases but that does not give a carte blanche to complainant or any other person to come and join any or every proceeding at will" and the observation in para-12 by referring to J.K. International (supra) in quash proceedings of the right of the defacto-complainant to be heard. In para-13 it was observed by placing reliance upon Praveen Malhotra and Indu Bala (supra) that "Therefore, I am of the considered opinion that a co-accused or even a third party cannot be permitted to oppose the bail application of any other co-accused. If this is permitted to be done, it will result in multiplicity of litigation and such applications would also result in side tracking the focus of the Court from the main issue which will be the question of grant of bail to the accused, be that anticipatory or custodial and take the Court into the field of apportionment of blame and trading of charges and counter charges between the co-accused as is sought to be done in the instant case." In fact, on perusal of the expressions so co-accused impleadment was opposed referring to the expressions.

10-e. The other decision placed reliance upon is the 5 Judge Bench expression of

the Apex Court in *Thomas Dana Vs. The State of Punjab*, in interpreting the word "prosecuted" used in Article 20(2) of the Constitution of India on the principle of Double-Jeopardy and at para-10, the Apex Court observed as follows:-

"It is, therefore, necessary first to consider whether the petitioners had really been prosecuted before the Collector of Customs, within the meaning of Art. 20(2). To "prosecute ", in the special sense of law, means, according to Webster's Dictionary,

"..(a) to seek to obtain, enforce, or the like, by legal process; as, to prosecute a right or a claim in a court of law. (b) to pursue (a person) by legal proceedings for redress or punishment; to proceed against judicially; espy., to accuse of some crime or breach of law, or to pursue for redress or punishment of a crime or violation of law, in due legal form before a legal tribunal; as, to prosecute a man for trespass, or for a riot."

According to Wharton's Law Lexicon, 14th Edn., P.810, "prosecution" means a proceeding either by way of indictment or information., in the criminal courts, in order to put an offender upon his trial. In all criminal prosecutions the King is nominally the prosecutor. This very question was discussed by this court in the case of *Maqbool Hussain v. The State of Bombay* (in the year, 1953), with of reference to the context in which the word "prosecution" occurred in the Art. 20. In the course of discussion in the judgment, the following observations, which apply with full force to the present case, were made:

".....and the prosecution in this context would mean an initiation or starting of proceedings of a criminal nature before a court of law or a judicial tribunal in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure."

In that case, this court discussed in detail the provisions of the Sea Customs Act, with particular reference to Ch. XVI, headed "Offences and Penalties". After examining those provisions, this court came to the following conclusion:

"We are of the opinion that the Sea Customs Authorities are not a judicial tribunal a the adjudging of confiscation, increased rate of duty or penalty under the provisions of the Sea Customs Act do not constitute a judgment or order of a court or judicial tribunal necessary for the purpose of supporting a plea of double jeopardy."

11. From the above rival contentions with reference to the provisions and the propositions supra, it is important to note that in the Cr.P C. amended by Act, 2009; there are certain changes made, more particularly, in taking into consideration of the concept of victimology. As a part of the concept of victimology introduced by the provisions by amending the Cr.P.C. in giving due recognition to the victims of crime; Victim is defined in Section 2W(a) Cr.P.C. which speak, victim means a person who has suffered any loss or injury caused by reason of an act or omission for which the accused person has been charged

and the expression victim includes his or her guardian or legal heir.

12. Section 24 Cr.P.C. which deals with Public Prosecutors is also amended by introduction of proviso to subsection 8 with effect from 31.12.2009 by the Act 5 of 2009.

13. Before coming to the proviso, it is important to mention very Section 24 which reads as follows:-

"24. Public Prosecutors:

(1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more. Additional Public Prosecutor, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be,

(2) The Central Government may appoint one or more Public Prosecutors for the purpose of conducting any case or class of cases in any district, or local area,

(3) For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors 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,

(4) The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion fit to be appointed as Public Prosecutor or Additional Public Prosecutors for the district,

(5) No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under sub-section (4),

(6) Notwithstanding anything contained in sub-section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre:

Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under Sub-section (4).

Explanation: For the purposes of this subsection,

(a), "regular Cadre of Prosecuting Officers" means a cadre of Cadre of Prosecuting Officers which includes therein the post of a Public Prosecutor, by

whatever name called, and which provides for promotion of Assistant Public Prosecutors, by whatever name called, to the post;

(b). "Prosecuting Officer" means a person, by whatever name called, appointed to perform the functions of a Public Prosecutor or an Assistant Public Prosecutor under this code.

(7) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (6), only if he has been in practice as an advocate for not less than seven years,

(8) 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 ten 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 this subsection.

(9) For the purposes of sub-section (7) and sub-section (8), the period during which a person has been in practice as a pleader, or has rendered (whether before or after the commencement of this Code) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an advocate."

There is practically no other change in the above provisions of Section 24 amended in 1978 by Act, 45 with 9 subsections, either prior to or at the time of or after introduction of the proviso to sub-section 8 by the Cr.P.C amended Act, 5 of 2009, but for to say the explanation to sub-section 6 was added by the Cr.P.C amended Act, 25 of 2005."

14. From the above, it is to be seen what the intention of the legislature is. The intention of the Legislature shows that, it is based on Government of India, report (which is based mostly on the Law Commission of India 154th report Chapter-15): Committee on draft National policy on Criminal Justice (Ministry of Home Affairs, 2007)-which recommended for empowering the victim with the right to plead themselves as a party, right to be represented by the counsel, right to produce independent evidence and cross-examine witnesses with leave of the Court, right to be heard in the matter of bail, right to continue with the case if the prosecution sought withdrawal, the right to advance arguments and to prefer an appeal against an adverse order.

15. It is an undisputed fact that "Statutes operate through interpretation by courts. The Judge is an essential constituent of Court, to examine and decide truth, declare law and administer justice from his erudite pen. Law is a letter and the spirit lies on the person (Judge) who administers it (No doubt it must be purposive).

"(a) The general rule from the well-known dictum of Parke. v. is that the statutes should be literally interpreted.

(b) The general difficulty however is that the drafting of statutes is very often far from being clear and definite rather ambiguous".

(c) Lord Champbell commented that "An ill-penned enactment, like too many others, putting judges in embracing situation of being bound to make a sense and reconcile what is reconcilable".

(d) On the other side what A.G. Gardiner in his educative essay "with the bus conductor "stated is that" society requires law, but also requires persons to handle the same with imagination, commitment to do justice and beneficial out look towards men and matters (purposive construction).

(e) No doubt, language, like other things human, is imperfect; and how great so ever be the precision with which it is chosen, however superior be the skill of the draftsman, the language of every code needs to be supplemented by the knowledge just described, and the mind of the reader to be trained by this study thereof.

(f) In Shri Sarwan Singh and Another Vs. Shri Kasturi Lal, , it was held that these statutory interpretations have no conventional protocol. The object and purpose of a legislation assumes greater relevance if the language is obscure and ambiguous.

(g) Austin said that "The end purpose of statute must not only be ascertained but must be interpreted as reasonably as possible" i.e. when the words are of doubtful significance, the intention of the legislature must be interpreted.

(h) The leading principles on sure and true interpretation of statutes summarized in Haydon's case 1524-76 English Reports 637 says that four things are to be considered 1) What was the law before making of the Act, (2) What was the mischief or defect for which the law did not provide previously, (3) What remedy the parliament has resolved, to prevent the mischief or to cure the defect, (4) the true reason of the remedy, and then the Courts have to construct the statute to prevent the mischief or to cure the defects and add force and life to the cure and remedy according to the time, the intent of the makers of the Act pro bono publico.

(i) In interpreting an Act the proper course is in the first instance to examine the language of the statute and to ask what is the natural meaning influenced by the consideration derived from the previous state of the law and, not to start with enquiry how the law previously stood, and then assuming that it was probably intended to leave it unaltered to see if the words of the enactment will bear an interpretation in conformity with the law.

(j). No doubt, as held in Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another, , speaking for the majority of the Court, held that the Statement of

Objects and Reasons appended to the Bill should be ruled out as an aid to the construction of a Statute. This view was reiterated by the Supreme Court in *The State of West Bengal Vs. Subodh Gopal Bose and Others*, and *The Central Bank of India Vs. Their Workmen*, .

(k). However, later to it, in *State of West Bengal Vs. Union of India*, , the Supreme Court held that: "It is, however, well-settled that the Statement of Objects and Reasons accompanying a Bill, when introduced in Parliament, though cannot be used to determine the true meaning and effect of the substantive provisions of the Statute they can be used for the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation".

(l). Thus, reference to the Statement of Objects and Reasons and the Preamble of the Act is meant to appreciate the background and purpose of the legislation.

(m). In this context it may refer with profit to the dictum in *The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others*, , where the majority observed as follows:-"Statements of Objects and Reasons of a Statute may and do often furnish valuable historical material in ascertaining the reasons which induced the Legislature to enact a Statute, but in interpreting the Statute they must be ignored."

(n). The well known rule of construction is to make the section or law workable (i.e. purposive interpretation) (24) *Smt. Shyam Kishori Devi Vs. Patna Municipal Corporation and Another*, .

(o). In this context and to the conclusion it is apt to state here the famous quote of Lord Denning in the book *Land Marks in the Law* page 62 that "The Judges may Judge after the mind of the makers, so far as the later may suffer. A Judge must not alter the material of which it is woven, but he can and should iron out the creases.

(p). In *Shashikant Laxman Kale and Another Vs. Union of India (UOI) and Another*, , a three-Judge Bench of this Court has expressed that:-

"For determining the purpose or object of the legislation, it is permissible to look into the circumstances which prevailed at the time when the law was passed and which necessitated the passing of that law. For the limited purpose of appreciating the background and the antecedent factual matrix leading to the legislation, it is permissible to look into the Statement of Objects and Reasons of the Bill which actuated the step to provide a remedy for the then existing malady."

(q) The object and purpose of a legislation assume greater relevance if language of the law is obscure and ambiguous. In *Dental Council of India and Another Vs. Hari Parkash and Others*, it was held that "the intention of the legislature is primarily to be gathered from the language used in the Statute, thus paying attention to what has been said as also to what has not been said.

(r). From the above, the intention of the legislature is very clear that the 2009 amendments made are with intend to empower the victims with the right to plead themselves as a party, right to be represented by the counsel, right to produce independent evidence and cross-examine witnesses with leave of the Court, right to be heard in the matter of bail, right to continue with the case if the prosecution sought withdrawal, the right to advance arguments and to prefer an appeal against an adverse order. Needless to say the cardinal principle right from the Heydons (rule) case (supra), but for contextually that, while interpreting any particular provision or proviso, it is necessary to consider what was the lacunae which was prevalent before the amendment was made and what was the lacunae which was sought to be filled by said amendment. It is needless to say what is not provided by Section 301 Cr.P.C. is to provide by Section 24 Cr.P.C.; subject to the scope of the proviso added to Section 24(8) of Cr.P.C.

(s). A proviso added to Section or Rule of enactment may be to clarify or create an exception and/or to create a substantive right irrespective of what is in the main Section or Rule as held in *Shah Bhojraj Kuverji Oil Mills and Ginning Factory Vs. Subbash Chandra Yograj Sinha*, .

(t). It is from the above, the intendment of the legislature is very clear that this proviso is added to Section 24(8) as an independent section and not subordinate legislation and there is no conflict to say the amended proviso being independent section will prevail over the other and existing provisions to go into the area as to later legislation prevails over the earlier in case of conflict as per the distribution of the legislative powers under the Constitution of India-as laid down in the *Dharangadhara Chemical Works v. Dharangadhara Municipality* AIR 1985 SC 1789, but for to say if at all from no conflict it has to be read along with Section 24(1) and (8) if even to read with other sub-sections. Even from such reading, it is crystal clear that as per the sub section 8, it is the right of the Central Government or State Government to appoint Special Public Prosecutor whereas this proviso speaks the power of the Court in saying the Court may permit the victim to appoint the advocate of his choice to assist the prosecution under this sub Section. It is by virtue of the latest incorporation by Amended Act 5 of 2009 as an absolute statutory right conferred on the Court to permit the victim to appoint an advocate of his choice to assist the prosecution. Once that is the case, victim got a right to ask or to request the Court that the Court may consider to permit the victim to appoint by the victim an advocate of his choice to conduct the prosecution."

16. From this, it is relevant to answer that, whether the participation in the bail application by intruding in this regard by the defacto complainant is part of prosecution, if not the application has no legs to stand within the scope of either under Section 301 or 302 of Cr.P.C. or Section 24 of Cr.P.C. but for if at all to consider under Section 482 of Cr.P.C. in addition to what is discussed supra, it is to recollect that, legislative silence conveys signals and thus it is the duty of the interpreter to interpret the meaning and for that the interpretation and

construction have same effect by identifying the legislative intent as part of duty of the Court since the legislative authorities are functus officio after the legislation is passed. Justice Frankfurter of U.S. Supreme Court observed in his article published in (47 Columbia Law Reports 527) titled as some reflections on the reading of statutes that "legislation has an aim, it seeks to obviate some mischief, to supply an adequacy, to effect a change of policy, to formulate a plan of Government. That aim that policy is not drawn, like nitrogen, out of the air; it is evidenced in the language of the statute, as read in the light of other external manifestations of purpose. The meaning of the word LAW in the phrase DUE PROCESS OF LAW as "not the Law as it is, but the Law as it ought to be". As per Lord Denning of the United Kingdom - "if a defect appears, the Court cannot sit blaming the legislature and wait for the legislation to intervene, but for to interpret by iron of creases as the words are meant to serve and not govern." As per Plowden "the intent of statutes is more to be regarded and pursued than the precise letter of them..... and the best way to construe an act of Parliament is according to the intent rather than according to the words..... Each law contains of two parts viz., of BODY and SOUL, the letter of the Law is the body of the Law and the sense and reason of the Law is the Soul of Law". From this background, The legislative intention with its aims and objects in bringing the amended provisions detailed supra speak even to victim's right of say while hearing bail applications. What the proviso to Section 24(8) supra newly introduced speaks is - provided that the Court may permit a victim to engage an advocate on his choice to assist the prosecution under the sub-section. Here, it is significant to note that so far as the application of Section 301 is concerned, the area is very limited and the word prosecutor is used whereas in this proviso which is introduced the word prosecution is used. The word prosecution is having its extended horizon in the meaning and the area when compared to the word prosecutor used, in Section 301 of Cr.P.C. So far as this meaning of prosecution is concerned, from very para-10 of the Constitutional Bench expression in *Thomus Dana* (supra) placed reliance upon by the bail applicants, it clearly speaks as to what is the meaning of the word prosecution. No doubt in considering the same with reference to Article 20(2) of the Constitution, they referred to two dictionaries one is Webster's dictionary and the other is Wharton's Law Lexicon. So far as Wharton's Law Lexicon, 14th Edition, page 810 defined the meaning of the word prosecution concerned it is "a Proceeding either by way of indictment or information, in the criminal courts, in order to put an offender upon his trial." The prosecution occurred in the Article 20 from the expression in *Maqbool Hussain Vs. The State of Bombay*, referred also speaks the prosecution in this context would mean an initiation or starting of proceedings of a criminal nature before a Court of law or a judicial tribunal in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure. The learned counsel for the bail applicants drawn attention of the Court of the definition of prosecution from *Blacks Law Dictionary* which speaks: "In criminal law - a criminal action, a proceeding instituted and carried on by due course of law, before a competent tribunal, for the purpose of determining the

guilt or innocence of a person charged with crime." In fact, the expression of Maqbool Hussain(supra) that was relied upon by the constitutional bench in its expression in Thomus Dana (supra) is in saying that, prosecution means proceed either by way of indictment or information in the criminal courts and the judgment in Maqbool Hussain (supra) that it would mean initiation or starting of proceedings of a criminal nature before a Court of law.

17. Having regard to the above and from the concept of victimology in using of the word prosecution in Section 24(8) proviso, it could mean to include as it is introduced to protect the victimology of the prosecution to mean in commencement of proceeding or in a pending proceeding in any Court either by the pre-cognizance stage or at the post cognizance, to say undisputedly it includes enquiry or information also within its meaning and thus, initiation or starting of a proceeding of criminal nature is also included within the meaning of prosecution, to say the bail application hearing is also included within the meaning of prosecution. From this it is crystal clear of the word prosecution used in the Section 24(8) proviso enables the defacto-complainant or a victim to move the Court for consideration by the Court to permit in the event of such moving including to oppose any bail application or place any material available with the defacto-complainant subject to the relevancy to the consideration of the bail application to decide on merits.

18. In this regard, it is also important to refer the Single Judge expression of the Allahabad High Court, Lucknow Bench in CMP No. 3770 of 2013 under Section 482 of Cr.P.C. decided on 16.08.2013-holding that the word required to be considered within the concept of victimology from the amended provisions introduced by defining victim and to protect interests of the victim. It is also referred to Rathinam (supra), Tika Ram and Others Vs. State of U.P. and Others etc. etc., , Zameer Ahmed Latifur Rehman Sheikh Vs. State of Maharashtra and Others, , Nirmal Singh Kahlon Vs. State of Punjab and Others, , the meaning of Section 301, 302 and 24(8) and Section 372 and Section 200 Cr.P.C. including with reference to the Webster's dictionary on meaning of prosecution and the expression defined by the Apex Court in Union of India and others Vs. Major General Madan Lal Yadav (Retd.), , it means an act of proving or judicial examination or determination of the issues including its own jurisdiction or authority in accordance with law or adjudging guilt or innocence of the accused including all steps necessary thereto. Victim has direct nexus with the damage caused to him but society may have a remote effect. The legislature for the first time inserted the provisions for protection of the right of victim in the Criminal Procedure Code and specially keeping in view being the worst sufferer of crime. Thus, the victim should not be kept aloof from the juridical process in which the wrongdoer is undergoing the process of ascertainment of his guilt for wrong committed by him. In this judicial process, by means of amendment made by Act No. 5 of 2009, the status of the victim has been improved from a silent spectator of proceeding before the Court to a participant of the proceeding. Therefore the word used in the proviso added to Section 24(8) Cr.P.C. is to "assist the

prosecution" and not to assist the "Public Prosecutor". Therefore, there is a basic difference in between the proviso to Section 24(8) and Section 301 of Cr.P.C. At para-28, it is observed that, by insertion of proviso to Section 24(8) Cr.P.C., Court is now authorised to permit the victim to engage a lawyer of his choice to assist the prosecution. At para-30 referred Poonam v. Sumit Tiwari AIR 2010 SCC 1385 which discussed the importance of assistance of a lawyer in the light of Section 35 of Advocates Act and that unless the lawyer renders the proper assistance to the Court, the Court is not able to decide the case properly. In case, the counsel for a party is not able to render any assistance, the Court may decline to entertain the petition. At para-33 referred J.K. International (supra) holding right of defacto-complainant through a lawyer to be heard. Referred Bhagwant Singh Vs. Commissioner of Police and Another, holding that in case of submission of closure report/final report by investigating agency, right has been conferred upon the complainant of being heard before acceptance of the same and at para-36 observed that if the advocate of victim is allowed to advance oral arguments, it will not cause any prejudice to the accused. Fair trial does not mean only to protect the interest of the accused person but it also includes protecting the rights of the victim. At para-38 observed that the advocate appointed by the victim should be permitted to assist the Court by supplementing the arguments already advanced by Public Prosecutor by oral submissions in addition to written argument if any filed by him.

19. Having regard to the above by virtue of this enabling provision under Section 24(8) proviso, the victim got a right to seek the Court permission, to assist or place before the Court any material and as per the decisions supra if the defacto-complainant or victim is able to place any additional material that may be definitely considered by the Court.

20. It is needless to say apart from the said right; there is inherent power to the Court which inheres from the Constitution of the High Court having its roots with all its elasticity in breath and length to the necessity that is saved by Section 482 of Cr.P.C. to sub serve the ends of justice or to prevent abuse of process, that to be exercised irrespective of other provisions covered the area under Cr.P.C. which speak deciding of the bail on merits does not mean the Court cannot invoke inherent power. As per Section 482 of Cr.P.C. nothing in this code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this code, or to prevent abuse of the process of any court or otherwise to secure ends of justice. The apex Court in the latest expression in Surya Baksh Singh Vs. State of Uttar Pradesh, held so in saying even as per Section 386 Cr.P.C., an appeal is to be decided on merits even for absence of parties, the court by invoking Section 482 Cr.P.C can dismiss the (sic) It is held that Section 482 Cr.P.C stands in solitary splendour. It preserves inherent powers of the High Court. It would be an abuse of process of the Court to allow any action which would result in injustice and prevent promotion of justice. Here, once there is Section 24(8) proviso, the question of invoking Section 482 of Cr.P.C. does not arise. Apart from the

contention of the learned counsel for the bail petitioners of Section 24(8) practically has no application at the bail application stage is not tenable as it is also part of prosecution, even taken the same for arguments sake, that no way interdict the power of the Court under Section 482 of Cr.P.C. to permit the defacto complainant to represent through advocate for coming on record in the bail application of accused, for having his say.

21. Having regard above, the defacto-complainant being the victim of the crime within the meaning of Section 2(w) Cr.P.C. and under Section 24(8) proviso Cr.P.C. and also under Section 482 Cr.P.C. is permitted to come on record as co-respondent to the bail petitions of the accused respectively in assisting the prosecution and in bringing to the notice of the court any relevant facts that fall for consideration in deciding the bail applications on merits to sub serve the ends of justice. In the result, both the petitions are allowed permitting the defacto-complainant to be impleaded as 2nd respondent to the bail applications and further permitted to assist the Court as well as the Public Prosecutor in hearing of the bail applications.