
(1997) 10 MAD CK 0117
In the Madras High Court
Case No : Criminal R.C. No. 678 of 1994

Ismail	Vs	APPELLANT
State by SI of Police and Others		RESPONDENT

Date of Decision : 17-10-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 301(2), 311

Citation : (1997) 3 CTC 714

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : R. David, for Kurian and Associates, for the Appellant; N.R. Elango, Government Advocate for Respondent No. 1 and G. Saravanan, for K. Srinivasan, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Dinakaran, J.—The above revision is directed against the order dated 21.11.94 of the learned Judicial Magistrate, Thirkazhukunram, Chingleput, made in Crl.M.P.No. 2717 of 1994 u/s 32, I.P.C. for reopening the case and examining the witnesses on behalf of the petitioner herein.

2. The learned counsel for the petitioner contends that the petitioner, being a victim, filed a complaint in C.C.No.114 of 1991 and therefore filed the above Crl.M.P.No. 2717 of 1997 seeking permission to reopen the case and to examine the witnesses on behalf of the prosecution. He challenges the finding of the learned Magistrate that the Assistant Public Prosecutor alone is entitled to represent the case as erroneous and will land in miscarriage of justice.

3. Per contra, the learned Government Advocate appearing on behalf of the state contends in support of the order of the learned Judicial Magistrate that the prayer in the Crl.M.P.No. 2717 of 1994 is not maintainable in law and the same is outside the scope of Section 301 of the Criminal Procedure Code. The learned Government Advocate relies on the decision reported in Eswaramoorthy v. State

by Inspector of Police, Dowry Prohibition Cell, Nagercoil and 2 others 1992 L.W. (Crl.) 233.

4. In this context, it is relevant to refer Section 301, Cr.P.C. which reads as follows:

"Appearance to conduct prosecution: (I) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than the police officer below the rank of Inspector; but no person, other than the Advocate-General or Government Advocate or Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without any written authority before any Court in which that case is under inquiry, trial or appeal.

(2) 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 incharge 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."

5. A reading of Section 301, Cr.P.C. makes it clear that the role of a private pleader can be subjected only for the purpose of instructing the Public Prosecutor or Assistant Public Prosecutor or to the extent of submitting the argument after the evidence is closed, and that too, with the permission of the Court. That apart, u/s 311 of the Cr.P.C. the Magistrate is, of course, given a power and greater discretion to examine any person whose evidence appears to be essential to the court to render a just decision in the case. Such a power cannot be construed as a matter of right for any third party, much less, the complainant.

6. In fact, as rightly pointed out by the Government Advocate, this Court has held in *Eswaramoorthy v. State by Inspector of Police, Dowry Prohibition Cell, Nagercoil and 2 others* 1992 L.W. (Crl.) 233 as follows:

"If the Public Prosecutor is disabled and sick and is unable to carry on his business, it would be his plain duty to appoint a suitable person to act as Public Prosecutor for the case, it is extremely undesirable and quite improper that a Public Prosecutor should be allowed to sit back handing over the conduct of the case of a counsel, however eminent he may be, briefed by the complainant in the case, on the salutary principles that criminal law is not to be used as an instrument of wreaking private vengeance by an aggrieved party against the person, who according to that party, had caused injury to it."

7. Therefore, I do not agree with the submissions of the learned counsel for the petitioner, except to permit the petitioner to make an application before the learned Judicial Magistrate seeking permission to submit a written argument on behalf of the petitioner, if he is so advised, and the same shall be considered and appropriate orders be passed by the Judicial Magistrate by exercising power u/s 301(2), Cr.P.C

8. I, in the facts and circumstances of the case, do not find any good and sufficient reasons to interfere with the impugned order dated 21.11.94 in Crl.M.P.No. 2717 of 1994.

In the result, the revision is dismissed with the above observation. No costs.