
(1983) 09 AP CK 0011

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 751 and Criminal Revision Petition No. 743 of 1980

Kiker Karal

APPELLANT

Vs

Satyanarayana Murthy and Others

RESPONDENT

Date of Decision : 22-09-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190(1), 301, 301(2), 302, 302(2)

Citation : (1983) 09 AP CK 0011

Hon'ble Judges : P. Ramachandra Raju, J

Bench : Single Bench

Advocate : C. Padmanabha Reddy, for the Appellant; Addl. Public Prosecutor, C. Trivikrama Rao and C.R. Pratap Reddy, for the Respondent

Judgement

1. Pursuant to a search warrant issued by the III Metropolitan Magistrate, Hyderabad, the petitioner was produced before him. Some injuries were found on the person of the petitioner. The III Metropolitan Magistrate recorded his statement and sent the papers to the Chief Metropolitan Magistrate, on the perusal of which the Chief Metropolitan Magistrate took cognizance u/s 190(1) (c), Cr.P.C. for offences under Sections 186 201 347 365 and 368 read with 120B and 34, I.P.C. After taking such cognizance, the case was transferred to the IV Metropolitan Magistrate where it was numbered as C.C. No. 545 of 1980. The respondents are all police officers against whom something or other was said by the petitioner indicating their active involvement in the commission of the alleged offences. The petitioner applied in 1983 CrI.M.P. 793 for permission to conduct prosecution by his own advocates. The IV Metropolitan Magistrate declined to grant such permission sought u/s 302, Cr.P.C. but directed the petitioner's advocates to assist the Assistant Police Prosecuting Officer u/s 301(2) Cr.P.C.

2. It is submitted for the petitioner that as the respondents are highly placed police officers, it is not desirable that the prosecution should be conducted by the Assistant Police Prosecuting Officer, who is an administrative subordinate of the

Director General of Police. Section 301, Cr.P.C., provides that ordinarily the Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear before any Court in which that case is under trial. It also provides for the right of a private person to instruct his own pleader to Prosecute a person, but in such cases the pleader so instructed is required to act under the directions of the Public Prosecutor or Assistant Public Prosecutor. The only facility which Section 301, Cr.P.C. gives to the private advocate is that he may with permission of the Court submit written argument after closure of evidence in the case. Section 302, Cr.P.C. however, provides that any person conducting the prosecution may do so personally or by a pleader. The complaint in this case was taken cognizance of by the Chief Judicial Magistrate on the report of the III Metropolitan Magistrate. The Chief Metropolitan Magistrate cannot be equated to a person conducting the prosecution. The IV Metropolitan Magistrate to whose file the case was transferred for trial cannot also be equated to a person conducting the prosecution. In fact, the law abhors the concept of a Court conducting the prosecution of any person in his own Court.

3. Who then, should in the circumstances be in effective control of the prosecution is the question that arises for determination in this revision. If the Pleaders engaged by the petitioners are to act under the directions of the Public Prosecutor or Assistant Public Prosecutor, petitioners have their own sense of apprehension which cannot be said to be not justified keeping in view the fact that the respondents are highly placed police officials and the Assistant Police Prosecuting Officer may not feel himself free to conduct the prosecution against the respondents. One can visualise the situation where the Assistant Public Prosecutor takes a particular view point which cannot be shared by the private advocates who are to conduct the prosecution under the directions of the Assistant Public Prosecutor. Any trial has to give a sense of satisfaction to the party aggrieved. Section 302(2), Cr.P.C. provides for the right of a person to conduct the prosecution personally or by a pleader. I fail to see any justification why a party should not be allowed the right available to him u/s 302(2). Cr.P.C. Mr. Trivikrama Rao has relied upon the decision in *T. V. Sarma v. A. N. Koteswara Rao* (1979) 2 APLJ 350. That decision related to a Sessions Trial in respect of which the provisions of Section 302, Cr.P.C. are wholly inapplicable. The said decision cannot therefore be an authority to cover cases which are being conducted in a Magistrate's Court. The impugned order is accordingly set aside and the petitioner is permitted to have the prosecution conducted through his advocates.

4. Petition allowed.