

POTENTIALITY OF PRIVATE PROSECUTION IN INDIAN CRIMINAL JUSTICE SYSTEM: A LEGAL STUDY

P. K. PANDEY

Associate Professor, Department of Law, Brahmanand P.G. College, Kanpur (UP)

SHREYA PANDEY

BA-LL.B. Student, School of Law, Justice and Governance, Gautam Buddha University, Greater Noida (UP)

ABSTRACT

In general, the State has taken responsibility to protect the person and property of every individual. If any person commits any offence, it is not considered only against the respective victim rather against the State also. In such scenario, the State and its machineries, particularly the Executive and the Judiciary, are under legal obligations to quickly come forward to decide the innocence or guilt of an accused. The process and procedure of criminal justice system may vary as per existing legal system but it is correct that the State, in its sovereign power, has authority to institute and withdraw the criminal proceedings. The Indian criminal justice system is based on delivering justice to the victim as well as to the accused also. It has adopted the system of fair trial in which the prosecution and defense, both parties have been given proper opportunity to bring the correct facts of the matter before the court. To deliver effective justice to the parties and safeguard the societal interests, the system of public prosecution in case of cognizable offence has been accepted and introduced. But, there are some provisions also wherein the private prosecution may be allowed. In this paper an attempt has been made to discuss the situations in which private prosecution may be held.

Keywords: Prosecution, Crime, Justice System, Trial, Interest of justice.

“It is a weakness of our jurisprudence that the victims of the crime, and the distress of the dependents of the prisoner, do not attract the attention of the law. Indeed, victim reparation is still the vanishing point of our criminal law. This is a deficiency in the system which must be rectified by the Legislature.”

-Hon'ble V. R. Krishnaiyer, J.
in *Ratan Singh v. State of Punjab*

INTRODUCTION

In every country, the State, being the custodian of every person, has well-established prosecution system according to its existing legal system with the purpose of delivering justice to the person approaching it. For this purpose, all the arms of criminal justice system, police, courts, advocates, prisons, have been given different degrees of responsibilities and accordingly these all arms have been expected to discharge its obligations to achieve the highest goals of protecting the life, liberty and property of the people and to enforce the rule of law in addition to providing a conducive atmosphere in which all round growth of every individual may take place. The Indian criminal justice system, based on common law system has adopted the public prosecution system

for cognizable offences in which the prosecution is conducted by the Public Prosecutor, an officer appointed by the Government. This system is based on the notion that all the offences are presumed to be committed against State and if not controlled with strict hands have tendency to aggravate unrest in the society and trigger off repercussions on societal life. Hence, the State, under its sovereign power prevents the commission of offences and brings offenders to justice to establish a society respecting and protecting the interests of innocent persons and punishing the offenders in compliance of due process of law.

PROSECUTION SYSTEM IN INDIA

In India, the public prosecution system has been adopted in respect of cognizable offences in which the State and its agencies play vital role from the very beginning *i.e.* reporting of the case up to final disposal of the case *i.e.* punishing the offender unlike private prosecution in which the State and its agencies have very limited role in prosecuting the offenders. The public prosecution system is justified on the following grounds-

- (i) As the offences are presumed to be committed against the society, the State must prosecute the offenders as a common will of the society to protect the societal interests. It is supported by the Supreme Court views delivered in *Thakur Ram v. State of Bihar* as: 'Barring a few exceptions, in criminal matters the party who is treated as the aggrieved party is the State which is the custodian of the social interests of the community at large and so it is for the State to take all the steps necessary for bringing the person who has acted against the social interests of the community to book.'
- (ii) The private persons should not be allowed to bring into motion the criminal law 'as an instrument of wreaking private vengeance by an aggrieved party against the person who, according to that party, had caused injury to it' as held in *Thakur Ram v. State of Bihar*.

In public prosecution, the Public Prosecutor, called the Minister of Justice, is the in-charge of prosecution to prosecute the accused and bring the correct and true status of affairs before the court. For many times, this is general complain of the victims, who have no place in criminal proceedings except as a witness, that the Public Prosecutors do not prepare well in advance and thus, fail to convince the court regarding commission of offence by the accused resulting in acquittal/ discharge of the accused. In some cases, the Public Prosecutors have been found to favour the accused also which cannot be accepted in line of his duty of prosecution. In such cases, the victims ask for private prosecution so that they may effectively bring their matter before the court through engaging private legal practitioner so as to ensure conviction of the accused.

In *Mallikarjun Kodagali v. State of Karnataka*, the Supreme Court has correctly portrayed the status of victims role in prosecution system by saying that "the rights of victims of crime is a subject that has, unfortunately, only drawn sporadic attention of Parliament, the judiciary and civil society. Yet, it has made great progress over the years. It is our evolving and developing jurisprudence that has made this possible. But we still have a long way to go to bring the rights of victims of crime to the centre stage and to recognise them as human rights and an important component of social justice and the rule of law." In this case, the Court recognized the victim's right to participate in the criminal proceedings which includes right to be impleaded, right to know, right to be heard and right to assist the court in the pursuit of truth.

In case of non-cognizable offences, the respective victims are directed to pursue their case on their own resources including engaging private legal practitioners and thus, the State machinery is not involved in prosecuting the accused. Bombay High Court in *Central Bank of*

India Limited v. P.D. Shamdasani, has correctly mentioned that “there is a well-marked distinction between public prosecution and private prosecution. In the case of public prosecution, the police have to investigate and may have wider powers to ascertain the case of the prosecution. Where, however, a private prosecutor comes to the Court, he must be thoroughly prepared to make out his case from the materials available to him. He cannot hope to substantiate his case by inspection of other person's books. In any event he cannot have the right of inspection beyond that permitted by the Criminal Procedure Code.”

The provisions of private prosecution in respect of cognizable offences can be discussed as under:

Before a Magistrate Court- In respect of trial of cases before the Magistrate, the scope of private prosecution is wider. It means in addition to the Public Prosecutor, a complainant or any other person can assist the court and participate in the conduct of the trial. In this respect, the relevant provisions are contained in section 302 of the Code of Criminal Procedure, 1973 (Cr.P.C.) as under-

302. Permission to Conduct Prosecution.—(1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of inspector; but no person other than the Advocate-General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission:

Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

(2) Any person conducting the prosecution may do so personally or by a pleader.

Under Section 302 CrPC, the Magistrate is empowered to allow a person to appear before him personally or through a pleader. In this respect, it is important to note that the permission of the Court is necessary to conduct the prosecution by any person other than the Advocate-General or Government Advocate or Public Prosecutor or Assistant Public Prosecutor.

Supreme Court of India in *M/s. J.K. International v. State* observed that “if a private person is aggrieved by the offence committed against him or against any one in whom he is interested he can approach the Magistrate and seek permission to conduct the prosecution by himself. It is open to the Court to consider his request. If the court thinks that the cause of justice would be served better by granting such permission the courts would generally grant such permission.”

Supreme Court of India in *Amir Hamza Shaikh v. State of Maharashtra* observed that “though the Magistrate is not bound to grant permission at the mere asking but the victim has a right to assist the Court in a trial before the Magistrate. The Magistrate may consider as to whether the victim is in a position to assist the Court and as to whether the trial does not involve such complexities which cannot be handled by the victim. On satisfaction of such facts, the Magistrate would be within its jurisdiction to grant of permission to the victim to take over the inquiry of the pendency before the Magistrate.”

Before a Sessions Court- The Public Prosecutor, being in-charge of the case, has been strictly mandated to conduct every trial before a Court of Session as it has been provided in section 225 CrPC. The role of the Public Prosecutor has been elaborated by the Delhi High Court in *Ajay Kumar v. State*, mentioning that “the Public Prosecutor is a functionary of the State appointed to assist the Court in the conduct of a trial, the object of which is basically to find the truth and to

punish the accused if he is found guilty according to the known norms of law and procedure. It is no part of his obligation to secure conviction of an accused, in any event, or at all costs. Nor is he intended to play a partial role or become party to the prosecution of the accused or lends support, directly or indirectly, to a denial of justice or of fair trial to the accused. His plain task is to represent the State's point of view on the basis of the material which could be legitimately brought before the Court at the trial. If all State actions must be just, fair and reasonable, he would be under no less duty as a functionary of the State to discharge his functions as a Public Prosecutor in an equally just, fair and reasonable manner irrespective of the outcome of the trial. In that sense, he is part of the judicature system, and an upright Public Prosecutor has no friends and foes in Court. He has no prejudices, preconceived notions, bias, hostility or his own axe to grind. He represents public interest but is not a partisan in the narrow sense of the term.”

The right of private individuals to participate in the conduct of prosecution before the Sessions Court is very much limited and available subject to the control of the Public Prosecutor. But, it does not mean that a private person who is aggrieved by the offence involved in the case is completely debarred from participating in the trial. This can be discerned from Section 301(2) which reads as under-

301. *Appearance by Public Prosecutors.*-(1)...

(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 in charge 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.

Thus, it is evident from the above discussion that the private person or his pleader has to act under the complete direction of the Public Prosecutor. Supreme Court in *Dhariwal Industries Ltd. v. Kishore Wadhvani* said that “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 public prosecutor.”

In *Subbulakshmi v. State*, the Madras High Court has correctly said that “the Public Prosecutor or the Assistant Public Prosecutor in charge of the case alone can conduct the prosecution and address arguments and in case, a pleader is engaged privately by the third party to conduct such prosecution, he can act under the direct control and supervision of the Public Prosecutor or the Assistant Public Prosecutor, as the case may be, in the sense of rendering assistance and such assistance cannot be construed to give him an unfettered right of examination of witnesses, examination-in-chief, cross-examination and re-examination, depending upon the exigencies of the situation besides a right of audience and if at all any right is inhering in favour of such a private pleader, it is only to submit his written arguments.

Supreme Court of India in *M/s. J.K. International v. State*, also observed that “when such a role is permitted to be played by a private person, though it is a limited role, even in the Sessions Courts, that is enough to show that the private person, if he is aggrieved, is not wiped off from the proceedings in the criminal Court merely because the case was charge sheeted by the police. It has to be stated further, that the Court is given power to permit even such private person to submit his written arguments in the Court including the Sessions Court. If he submits any such written arguments the Court has a duty to consider such arguments before taking a decision.”

Thus, it may be stated that the victim's pleader is only intended to have a secondary role *qua* the Public Prosecutor as held by Supreme Court in *Rekha Murarka v. State of West Bengal*.

CONCLUSION

The criminal justice system is heavily burdened because of various causes. In such circumstance, for a Public Prosecutor appointed in any particular court it is very tough to go through all cases listed in that court and prepare well in advance. Because of this, the courts at many times also feel uncomfortable when the Public Prosecutor is not in condition to put forth the relevant materials before the court and in such cases the accused persons, taking the recourse of principle of benefit of doubt, generally, are benefitted, causing irreparable loss to the legitimate expectations of the victim and his family. For a victim, there is no respectable place in criminal justice system. He has to suffer from the time of occurrence of offence up to last leg of the criminal proceeding, frustrating his expectations. The miserable conditions of the victim in present system has been correctly pointed out by the Supreme Court in *Mallikarjun Kodagali v. State of Karnataka*, mentioning that “access to justice in terms of affordability, effective legal aid and advice as well as adequate and equal representation are also problems that the victim has to contend with and which impact on society, the rule of law and justice delivery.”

Allowing a private person personally or through a pleader does not abdicate the status and functions of the Public Prosecutor. If in any case, the private prosecution has been permitted, it does not mean that the Public Prosecutor will be sitting back, without having any interest in the case. Andhra Pradesh High Court in *In Re Bhupalli Malliah*, deprecated the practice of Public Prosecutors sitting back and permitting private counsel to conduct prosecution.

WORKS CITED

- Ajay Kumar v. State, 1986 CriLJ 932.
- Amir Hamza Shaikh v. State of Maharashtra, Criminal Appeal No. 1217 of 2019 decided on 7 August, 2019 (SC).
- Central Bank of India Limited v. P. D. Shamdasani, (1937) 39 BOMLR 1187.
- Dhariwal Industries Ltd. v. Kishore Wadhvani, Criminal Appeal No. 859 of 2016 decided on 6 September, 2016 (SC).
- In Re Bhupalli Malliah, AIR 1959 A.P. 477.
- M/s. J. K. International v. State, AIR 2001 SC 1142.
- Mallikarjun Kodagali v. State of Karnataka, (2019) 2 SCC 752.
- Ratan Singh v. State of Punjab, 1980 SCR (1) 846.
- Subbulakshmi v. State, 1992 MLJ (Cri.) 673.
- Thakur Ram v. State of Bihar, 1966 SCR (2) 740.
- Rekha Murarka v. State of West Bengal, Criminal Appeal No. 1727 of 2019 on 20 November, 2019 (SC).