

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 03RD DAY OF SEPTEMBER, 2022

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BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

CRIMINAL PETITION No.2778 OF 2020

BETWEEN:

1. SCANIA COMMERCIAL VEHICLES INDIA PVT. LTD.,
CIN U35999KA2011FTC056984,
PLOT NO.63, 64-66, 88-97,
NARASAPURA, KIADB INDUSTRIAL AREA,
ACHHATANAHALLI, NARASAPURA HOBLI,
KOLAR, KARNATAKA - 563 130,
REPRESENTED BY PETR NOVOTNY.
2. PETR NOVOTNY
S/O IVAN NOVOTNY,
AGED ABOUT 47 YEARS,
MANAGING DIRECTOR OF
SCANIA COMMERCIAL VEHICLES
INDIA PVT. LTD.,
PLOT NO.63, 64-66, 88-97,
NARASAPURA, KIADB INDUSTRIAL AREA,
ACHHATANAHALLI, NARASAPURA HOBLI,
KOLAR, KARNATAKA - 563 130.
3. SRINIVASA RAGHAVAN RAMASWAMY
S/O NARASHIMAN RAMASWAMY,
AGED ABOUT 52 YEARS,
SALES DIRECTOR OF
SCANIA COMMERCIAL VEHICLES INDIA PVT. LTD.
PLOT NO.63, 64-66, 88-97,
NARASAPURA, KIADB INDUSTRIAL AREA,
ACHHATANAHALLI, NARASAPURA,

KOLAR, KARNATAKA – 563 130.

4. RAFAEL DE SOUSA ALVARENGA
S/O JOSE HUMBERTO ALVARENGA,
AGED ABOUT 38 YEARS,
SERVICE DIRECTOR OF
SCANIA COMMERCIAL VEHICLES INDIA PVT. LTD.,
PLOT NO.63, 64-66, 88-97,
NARASAPURA, KIADB INDUSTRIAL AREA,
ACHHATANAHALLI, NARASAPURA,
KOLAR, KARNATAKA – 563 130.
5. PRATHAP SUBRAMANI
S/O SUBRAMANI,
AGED ABOUT 37 YEARS
SENIOR MANAGER OF
SCANIA COMMERCIAL VEHICLES INDIA PVT. LTD.
PLOT NO.63, 64-66, 88-97,
NARASAPURA, KIADB INDUSTRIAL AREA,
ACHHATANAHALLI, NARASAPURA,
KOLAR, KARNATAKA – 563 130.
6. JAHIR USSAIN M.,
S/O MOHAMMED ABDUL KADER,
AGED ABOUT 51 YEARS
RETAIL DIRECTOR OF
SCANIA COMMERCIAL VEHICLES INDIA PVT. LTD.
PLOT NO.63, 64-66, 88-97,
NARASAPURA, KIADB INDUSTRIAL AREA,
ACHHATANAHALLI, NARASAPURA,
KOLAR, KARNATAKA – 563 130.
7. GIRIJA HARSHA
D/O B.A.S. KOTRESI,
AGED ABOUT 36 YEARS,
DEPUTY SALES MANAGER OF
SCANIA COMMERCIAL VEHICLES INDIA PVT. LTD.,
PLOT NO.63, 64-65, 88-97,
NARASAPURA, KIADB INDUSTRIAL AREA,

ACHHATANAHALLI, NARASAPURA,
KOLAR, KARNATAKA – 563 130.

... PETITIONERS

(BY SRI C.V.NAGESH, SR.ADVOCATE A/W
SMT.SHWETHA RAVISHANKAR, ADVOCATE)

AND:

1. STATE OF KARNATAKA
THROUGH KALASIPALYA POLICE STATION,
REPRESENTED BY
PUBLIC PROSECUTOR OF STATE,
HIGH COURT BUILDING,
BENGALURU – 560 001.
2. K.T.RAJASHEKAR
PROPRIETOR OF SRS TRAVELS,
AGED ABOUT 76 YEARS,
NO.321, TSP ROAD,
KALASILPALYAM,
BENGALURU – 560 002.

... RESPONDENTS

(BY SMT.K.P.YASHODHA, HCGP FOR R1;
SRI SANDESH J.CHOUTA, SR.ADVOCATE FOR
SRI ISMAIL M.MUSBA, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF
CR.P.C., PRAYING TO QUASH THE FIR IN CR.NO.35/2020
REGISTERED AGAINST THE PETITIONER VIDE FIR DATED
06.04.2020 AT KALASIPALYA P.S., BANGALORE AND THE SAME IS
PENDING ON THE FILE OF IV A.C.M.M., BANGALORE FOR THE
OFFENCE P/U/S 406, 420, 120B, 34 OF IPC.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioners are before this Court seeking quashment of entire proceedings in Crime No.35 of 2020 arising out of a complaint registered on 06-04-2020 for offences punishable under Sections 406, 420, 120B and 34 of the IPC.

2. Brief facts that lead the petitioners to this Court in the subject petition, as borne out from the pleadings, are as follows:-

2nd respondent/Mr. K.T.Rajashekar is the complainant. The petitioners are accused Nos. 1, 2, 4, 5, 7, 8 and 9 in the aforesaid crime. M/s Scania Commercial Vehicles India Private Limited/petitioner No.1 a subsidiary of M/s Scania CV AB, a Sweden based holding Company belonging to Volkswagen group claims to have its presence in more than 100 countries and is also in the business of manufacturing commercial and luxury segment buses. Scania buses and coaches are said to have inspired people who travel throughout the country. As a part of many such sale deals

several reputed buses and truck dealers are customers of Scania vehicles. The customers include Karnataka State Road Transport Corporation, Kerala State Road Transport Corporation, Andhra Pradesh State Road Transport Corporation, Telangana State Road Transport Corporation and several other State run Corporations. Besides, the State Transport Undertakings there are many more private transport agencies and fleet operators also have been associated with Scania. Respondent No.2/complainant approaches the 1st petitioner in the capacity of Proprietor of SRS Travels, a business establishment in the field of tours and travels in the country and a fleet owner owning more than 4000 buses. The 2nd respondent appears to have evinced interest to procure Scania buses and by entering into an agreement purchases buses from the petitioners. The purchases take place in batches between 2014 and September 2018 and in a total of 77 buses were purchased by the 2nd respondent from Scania. After purchase of buses, the 2nd respondent, on the ground that the buses had some malfunctioning in them, registered a complaint on 5-04-2020 before the jurisdictional police on a further ground that the complainant was saddled with numerous problems in the operation

and maintenance of vehicles which led to huge financial losses and the goodwill of his customers. It was also alleged that due to non-delivery of one particular vehicle, the complainant had sustained huge loss of Rs.82,96,000/-. The registration of crime drives the petitioners to this Court in the subject petition. The petition having been entertained, an interim order of stay was granted by this Court on 26-06-2020. Therefore, the matter stood at the stage of investigation.

3. During the pendency of the subject petition, the 2nd respondent/complainant dies. An application is filed by the legal representative of the 2nd respondent, the daughter, to come on record and prosecute the case further. Objections are filed by the petitioners contending that the legal representative of an informant/complainant has no personal right to come on record. It is at that stage, the matter was taken up for its consideration. The only issue that falls for consideration at this juncture is, whether the legal heir of the 2nd respondent could be permitted to come on record stepping into the shoes of the complainant.

4. Heard Sri C.V.Nagesh, learned senior counsel appearing for the petitioners, Smt. K.P.Yashodha, learned High Court Government Pleader for respondent No.1 and Sri Sandesh J. Chouta, learned senior counsel appearing for respondent No.2.

5. The learned senior counsel representing the petitioners would contend that the complaint is registered by the 2nd respondent. The contract was entered into between the 2nd respondent and the 1st petitioner. SRS Travels was a proprietary concern and the alleged offences are privy only to the proprietor of SRS Travels; the applicant except producing the death certificate has not produced any document to show that she is the legal heir, assuming that she is the only daughter of respondent No.2; a person who claims to be a victim of an offence within the meaning of definition clause contemplated in the Cr.P.C. should clearly explain the relationship with the deceased; commercial transactions of the complainant cannot now be agitated by the legal representative of the complainant; the affidavit filed by the legal heir is contrary to law; the 2nd respondent had registered the complaint on his personal right; the moment the person dies the

action dies; therefore, there is no warrant to permit the legal representative of the complainant to come on record. He would seek dismissal of the application.

6. On the other hand, the learned senior counsel Sri Sandesh J.Chouta representing the 2nd respondent would vehemently refute the submissions to contend that the matter is at the stage of investigation and the informant or his legal heir is a necessary party to the proceedings; once the charge sheet is filed it may be that the State would take care of the prosecution, though not in every case; the concept of *locus standi* is alien to criminal jurisprudence and it is besides the issue that legal heirs are not permitted to prosecute cases on the death of the informant; he would seek that the concept of victim should be given a liberal meaning and permit legal heir of the 2nd respondent to come on record, more so, in the facts of this case, as the informant, when the complaint was filed, alleged that he has suffered huge losses due to the act of the petitioners; the losses suffered by the Company are carried over to the legal heir who now takes over the Company. Therefore, the legal heir of

the 2nd respondent has every right to step into the shoes of the informant in the facts of the case at hand.

7. I have given my anxious consideration to the submissions made by the respective learned senior counsel and perused the material on record.

8. The respective learned senior counsel were heard on this preliminary issue viz., whether the legal heir should be permitted to come on record and prosecute the case in place of the informant or with the death of the informant, the act initiated by the informant also dies? Therefore, the only issue presently to be answered is, whether the application filed by the legal heir of the complainant should be allowed or otherwise and not on merits of the matter, as existence of the complaint would depend on the said issue. To answer the said issue, the following issues arise for consideration:

- (1) *Whether the complainant is to be heard in a petition filed under Section 482 of the Cr.P.C.?*
- (2) *Whether locus is alien to criminal jurisprudence?*

- (3) *Whether the word 'victim' under Section 2(wa) of the Cr.P.C. needs to be given wide and liberal interpretation?*

9. I proceed to consider aforementioned issues in their seriatim.

Issue No.1:

- (1) *Whether the complainant is to be heard in a petition filed under Section 482 of the Cr.P.C.?*

This issue need not detain this Court for long or delve deep into the matter. The Apex Court in the case of **J.K. INTERNATIONAL v. STATE (GOVT.OF NCT OF DELHI) AND ANOTHER¹** has held as follows:

"2. The grievance of the appellant is simple and apparently innocuous that he too may be heard by the court. But the High Court rolled down the shutters before him saying he has no right to be heard and the court has no power to permit him to be heard. As his grievance was compounded by such denial he has filed this appeal by special leave.

3. A person accused of certain offences moved the High Court of Delhi for quashing the criminal proceedings pending against him in a Magistrate's Court. The appellant informed the High Court that the criminal proceedings were initiated at his behest and hence he too may be heard before the criminal proceedings are to be quashed. A learned Single Judge

¹ (2001) 3 SCC 462

of the High Court of Delhi, while foreclosing the appellant from doing so, observed that the court is "of the considered opinion that the right of the complainant to be heard ceases once cognizance is taken and he cannot thereafter continue to participate in the proceedings as if he were the aggrieved party who must have his say in proceedings".

...
 5. The police, after investigation, filed a charge-sheet against the respondents for offences under Sections 420, 406 and 120-B IPC and the court issued process to the respondents requiring them to appear before the court on 31-5-2000. At that stage the respondents filed the present petition before the High Court praying for quashing the criminal proceedings pending before the Magistrate's Court pursuant to the aforesaid charge-sheet filed by the police. In the writ petition the appellant was not made a party and therefore a petition was filed in the High Court for impleading the appellant as a party. The main plank of the appellant before the High Court was the decision of this Court in *Bhagwant Singh v. Commr. of Police* [(1985) 2 SCC 537: 1985 SCC (Cri) 267]. The learned Single Judge of the High Court of Delhi felt that the observations made by this Court in an earlier decision (*Thakur Ram v. State of Bihar* [AIR 1966 SC 911: 1966 Cri LJ 700]) are more appropriate to the fact-situation and basing on those observations the learned Single Judge rejected the petition filed by the appellant before the High Court.

...
 8. **But the situation here is different, as the accused approached the High Court for quashing the criminal proceedings initiated by the appellant. It may not be that the complainant should have been made a party by the accused himself in the petition for quashing the criminal proceedings, as the accused has no such obligation when the case was charge-sheeted by the police. 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 a negation of justice to him if he is foreclosed from being heard even after he makes a request to the court in that behalf. What is the advantage of the court in telling him that he would not**

be heard at all even at the risk of the criminal proceedings initiated by him being quashed. It is no solace to him to be told that if the criminal proceedings are quashed he may have the right to challenge it before the higher forums.

9. The scheme envisaged in the Code of Criminal Procedure (for short "the Code") indicates that a person who is aggrieved by the offence committed, is not altogether wiped out from the scenario of the trial merely because the investigation was taken over by the police and the charge-sheet was laid by them. Even the fact that the court had taken cognizance of the offence is not sufficient to debar him from reaching the court for ventilating his grievance. Even in the Sessions Court, where the Public Prosecutor is the only authority empowered to conduct the prosecution as per Section 225 of the Code, a private person who is aggrieved by the offence involved in the case is not altogether debarred from participating in the trial. This can be discerned from Section 301(2) of the Code which reads thus:

"301. (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."

10. The said provision falls within the Chapter titled "General Provisions as to Inquiries and Trials". 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.

11. In view of such a scheme as delineated above how can it be said that the aggrieved private person must keep himself outside the corridors of the court when the case involving his grievance regarding the offence alleged to have been committed by the persons arrayed as accused is tried or considered by the court. In this context it is appropriate to mention that when the trial is before a Magistrate's Court the scope of any other private person intending to participate in the conduct of the prosecution is still wider. This can be noticed from Section 302 of the Code which reads thus:

"302. (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."

... ..
 13. We may now proceed to point out the usefulness of the observations made by the three-Judge Bench in *Bhagwant Singh v. Commr. of Police* [(1985) 2 SCC 537: 1985 SCC (Cri) 267]. *Bhagwati, J.* (as he then was) who spoke for the Bench pointed out that the informant having taken the initiative in lodging the first information report, with a view to initiate investigation by the police, for the purpose of ascertaining whether any offence has been committed (if so by whom) is vitally interested in the result of the investigation and hence the law requires that the action taken by the officer in charge of the police station on such FIR should be communicated to him. The Bench said this with reference to Section 173(2)(i) of the Code."

(Emphasis supplied)

In a later judgment, the Apex Court in the case of **VAISHNO DHIMAN v. STATE (GOVT.OF NCT OF DELHI) AND OTHERS**² has held as follows:

"4. Mr. Sidharth Luthra, learned senior counsel appearing on behalf of the appellant submits that the order of the High Court is manifestly unsustainable for two reasons. First, it has been urged that in breach of the law which has been laid down by a three-judge Bench of this Court in J.K.International v. State (Govt. of NCT of Delhi) MANU/SC/0126/2001: (2001) 3 SCC 462, the appellant, at whose behest the FIR was registered was not impleaded as a party to the proceedings and ought to have been given an opportunity of being heard if the High Court proposed to make observations adverse to the conduct of the appellant. Second, it has been submitted that the second respondent, who is in the position of an accused, did not have a choice in law in regard to the agency which should conduct the investigation or the manner in which the investigation is to be carried out.

3. The High Court has proceeded to make adverse observations in regard to the conduct of the appellant. Those observations form the basis of the order for transfer of the investigation. Moreover, the appellant has a reasonable and legitimate apprehension that the observations made by the High Court (without hearing her) will impinge upon the proceedings arising out of the FIR. The appellant, who is the original complainant, at whose behest the FIR was registered, was not a party to the proceedings before the High Court and had no opportunity to controvert the submissions which were made against her or to answer the allegations. The High Court has acted in breach of the principles of natural justice and in a manner which is contrary to the settled principles of law, particularly, those enunciated in the decision in J.K. International (supra). We, therefore,

² MANU/SC/1024/2020

order and direct that the observations contained in the first two sentences of paragraph 10 and in paragraph 11 of the judgment of the High Court against the appellant shall stand expunged and shall not be utilized in any other court or proceeding.”

(Emphasis supplied)

The Apex Court in the afore-quoted judgments clearly holds that the appellant/complainant therein at whose behest the FIR was registered and was not impleaded as a party to the proceedings ought to have been given an opportunity of being heard, if the High Court proposed to make observations adverse to the conduct of the appellant and the respondent therein who was in a position of the accused did not have a chance in law in regard to the agency which should conduct the investigation or the manner in which the investigation is to be carried out. The Apex Court further holds that the High Court had acted in breach of principles of natural justice and contrary to the law enunciated by the Apex Court in the case of ***J.K. INTERNATIONAL*** (*supra*). It is the specific question that was answered by a three Judge Bench of the Apex Court in the case of ***J.K. INTERNATIONAL*** that whether the complainant should be heard at the time when the matter reaches the High Court for its quashment under Section 482 of the CrPC. Therefore, the issue

whether the complainant has to be heard or not being no longer *res integra*, I hold the issue in favour of the complainant or any complainant for that matter that they should be heard in a petition filed by the accused under Section 482 of the Cr.P.C., seeking quashment of the registration of Crime or the charge sheet, as the case would be.

Issues No.2 & 3:

- (2) *Whether locus is alien to criminal jurisprudence?*
- (3) *Whether the word 'victim' under Section 2(wa) of the Cr.P.C. needs to be given wide and liberal interpretation?*

10. Whether the word 'victim' would cover legal heir of the complainant in the case at hand? To consider this issue several provisions of the Cr.P.C. are required to be noticed. Section 2(wa) defines a 'victim' and reads as follows:

"2. *Definitions.—In this Code, unless the context otherwise requires,—*

- (wa) *"victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir;"*

A victim would mean a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression 'victim' includes his or her guardian or legal heir. Section 2(b) defines 'charge' and reads as follows:-

"(b) "charge" includes any head of charge when the charge contains more heads than one."

A Division Bench of the Allahabad High Court in a judgment reported in **SUNEEL KUMAR SINGH v. STATE OF U.P.**³ has held as follows:

*"44. In view of the aforesaid definition the 'end' for which a plan or project is carried out is called prosecution. In respect of proviso to Section 24(8) Cr.P.C. prosecution in respect of an offence begin with putting the law into motion by any individual or sufferer of crime. The 'end' in a prosecution within the meaning of proviso to sub-section 8 of section 24 Cr.P.C. would be adjudication of guilt of an offender who is charged with commission of an offence in accordance with procedure established by law in a court constituted under this code. So the prosecution starts with giving information of commission of crime and continued during investigation or inquiry, trial of offender and if any appeal is filed finally end by an order passed in appeal. This whole process is the part of fair trial inbuilt in Article 21 of our Constitution. The word prosecution is also used in different sense in different situation. When word 'prosecution' is used in defining the parties to criminal case it is used for the party who is siding the victim. When it used in respect of an accused means pending proceeding to ascertain the guilt of the accused. **When an offence is committed it certainly***

³ 2019 SCC OnLine All 957

committed against the society but the sufferer is called victim. Victim has direct nexus with the damage caused to him but society may have a remote effect. The legislature for the first time insert provision 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 judicial process in which the wrongdoers 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 2008, the status of the victim has been improved from a silent expectator 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 basic difference in between proviso to Section 24(8) and Section 301 Cr.P.C. It is true that section 301 Cr.P.C. has not been amended by Act No. 5 of 2008 but if the principals of harmonies construction is applied while interpreting the different provision of same statute like proviso to section 24(8) and Section 301 Cr.P.C., the letter and spirit inducted in proviso added to sub-Section 8 of Section 24 of the Cr.P.C. cannot be diluted by saying that no amendment has been incorporated in Section 301 Cr.P.C."

(Emphasis supplied)

Earlier to the judgment of the High Court of Allahabad, a learned single Judge of the High Court of Madras in the case of

SATHYAVANI PONRANI v. SAMUEL RAJ AND ANOTHER⁴ has

held as follows:

"1. The one and only issue which is of considerable public importance that arises in this case is as to whether a victim is entitled to be heard and take part in a Criminal proceeding or not.

... ..

⁴ **2010 SCC OnLine Mad 3758**

4. *Viscount Simon in Stirland v. Director of Public Prosecutor, 1944 (2) All. ER 13 has held as follows:*

"A Judge does not preside over a Criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. ... Both are public duties..."

... ..

8. *Keeping the above said principles coupled with the message conveyed by the Constitution under Articles 14, 21, 38 and 39A of the Constitution of India in view, this Court will have to examine the issue that has arisen for consideration.*

... ..

40. *It is a well settled principle of law that in order to interpret the provision in a given case, the statements and objects can also be looked into. In K.P. Varghese v. ITO, 1981 (4) SCC 173, the Hon'ble Apex Court has observed as follows:*

"36. In K.P. Varghese v. ITO, 1981 (4) SCC 173 this Court while rejecting the argument of the Revenue that Rule of Strict Construction should be applied for interpreting Section 52(2), referred to the Statement of Objects and Reasons contained in the Bill presented before Parliament, speech made by the Finance Minister and observed:(SCC p. 184, para 8)

"8. ...Now it is true that the speeches made by the Members of the Legislature on the floor of the House when a Bill for enacting a statutory provision is being debated are inadmissible for the purpose of interpreting the statutory provision but the speech made by the Mover of the Bill explaining the reason for the introduction of the Bill can certainly be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation is enacted. This is in accord with the recent trend in juristic thought not only in western countries but also in India that interpretation of a statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible."

... ..

56. A reading of the above said judgment would clearly show that in a given case even a third party could be permitted to file appropriate Application to cancel the bail. Therefore, the definition of victim would mean a person who represents the victim like a natural guardian or other guardian or a guardian of a person of unsound mind or even a third party, when the victim is so poor, illiterate and dependent to the extent of requiring support from others and not able to prosecute on his own.

... ..

62. The Hon'ble Apex Court in Gangadhar Janardan Mhatre v. State of Maharashtra, 2004 (7) SCC 768 has observed that on the basis of the police report the informant is entitled to get a notice from the Magistrate. Therefore when the informant is made to be heard at the stage of investigation then it cannot be said after the complaint has been taken on file the said informant cannot be allowed to take part in the prosecution.

... ..

65. The Public Prosecutor conducts the prosecution whereas a victim ventilates his grievance. A Public Prosecutor conducts the case with a sense of detachment whereas the victim is attached to the case. A decision made in a case does not impact a Public Prosecutor which is not the case with the victim who is the affected party.

Free and Fair Investigation and Trial and Article 14, 21 and 39 of the Constitution of India:

66. Free and Fair Investigation and Trial is enshrined in Article 14, 21 and 39-A of the Constitution of India. It is the duty of the state to ensure that every citizen of the country should have the free and fair investigation and trial. The Preamble and the Constitution are compulsive and not facultative, in that free access to the form of justice is integral to the core right to equality, regarded as a basic feature of our

Constitution. Therefore such a right is a constitutional right as well as a fundamental right. Such a right cannot be confined only to the accused but also to the victim depending upon the facts of the case. Therefore such a right is not only a constitutional right but also a human right. Any procedure which comes in a way of a party in getting a fair trial would in violation of Article 14 of the Constitution.

67. *The Hon'ble Apex Court in Zahira Habibulla H. Sheikh v. State of Gujarat, 2004 (4) SCC 158 has observed as follows:*

"36. The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the Courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all-comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a Criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial."

... ..

71. On a consideration of the above said principles and after analysing the provisions vis-a-vis the various judgments, the following conclusions are arrived at:

- i. Section 301, Cr.P.C. is not a bar for entertaining an Application to intervene in an Application filed under Section 437 or 438, Cr.P.C.**
- ii. Section 301 and Proviso under Section 24(8) are mutually complimentary and not conflicting with each other and therefore, there is no bar for engaging a lawyer to assist the prosecution.**
- iii. The discretion of the Court in invoking Proviso under Section 24(8) is a judicial discretion.**
- iv. The judicial discretion of the Court will have to be exercised keeping in mind the objects and reasons for the introduction of Proviso to Section 24(8) which is to provide an adequate opportunity to the victim to take part in the Criminal proceeding.**
- v. Engaging a lawyer in accordance with Proviso under Section 24(8) would mean permitting him to argue along with the Public Prosecutor and also in a given case even to examine a witness, of-course with the permission of the Court.**
- vi. The Court shall not allow any plea contrary to the case of the prosecution at the instance of the victim while assisting the prosecution.**
- vii. The Court can reject a request for engaging a lawyer by the victim if it is of the opinion that it lacks bona fides.**
- viii. While considering the Application, the Court has to keep in mind, the nature of the offence, the injuries suffered by the victim, the position of the victim as well as the accused and the circumstances under which the offence has been committed.**
- ix. The word 'victim' would also include a legitimate and genuine person representing a victim.**

- x. ***When an Application is filed by any other person other than the guardian seeking to represent the victim, the Court has to consider the bona fides, legitimacy and genuineness of the representative capacity while deciding such an application.***
- xi. ***In a given case the Trial Court can also call upon a victim to engage a lawyer if in its opinion the same is required for the proper conduct of the case.***
- xii. ***In a given case the Court can on its own appoint a lawyer if it is of the opinion the same is required for the proper conduct of case.***
- xiii. ***When an Application is made seeking permission under Proviso to Section 24(2) the same cannot be rejected without even numbering the same but should be considered on merits.***
- xiv. ***An order rejecting an Application seeking permission to assist the prosecution must be supported by reasons."***

(Emphasis supplied)

Aforesaid judgments of Allahabad High Court and Madras High Court would lead to an unmistakable inference that a genuine victim is to be permitted to come on record and the definition of 'victim' as found in Section 2(wa) of the Cr.P.C. cannot be rendered a restrictive meaning and has to be liberally construed. The Madras High Court in elaboration considered the entire spectrum of law with regard to the concept of 'victim' and has held that victim would

be necessary to be heard and has *locus* to step into the shoes of the informant.

11. The issue in the case at hand is, whether the legal heir of the 2nd respondent would be in the place of a victim. The complaint against the petitioners registered by the complainant initially was that due to acts of petitioners, proprietorship concern or SRS Travels had suffered huge losses. The legal representative who claims to be the only legal heir of the complainant and the losses suffered is transferred to the legal heir as well. Even on a restrictive meaning of the word 'victim', in the peculiar facts of this case, the legal heir of the complainant, has to be permitted to come on record, as the matter is still at the stage of investigation and the police have not yet filed the charge sheet.

12. The contention of the learned senior counsel appearing for the petitioners is that the cause is dead with the death of the complainant is unacceptable in the peculiar facts of this case, as the cause continues and the legal heir who has stepped into the shoes of the complainant is entitled to agitate the cause brought up by

the complainant. Therefore, I deem it appropriate to answer the main issue that has arisen in favour of the legal heir of the complainant by allowing the application and permitting her to come on record in place of the complainant as the legal heir and she has undoubtedly *locus* to continue the case, on the allegation that is initiated by her father particularly in the light of the offences being under Sections 406, 420 and 120B of the IPC owing to peculiar facts of the case.

13. Therefore, I.A.No.2/2022 stands allowed. The petitioners to amend the cause title impleading the legal heir of the complainant as a party respondent. The matter would be heard on its merits.

List the matter on 27.10.2022, at 2.30 p.m., for Further Hearing.

**Sd/-
JUDGE**

bkp
CT:MJ