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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 12th NOVEMBER, 2024

IN THE MATTER OF:

+ **CRL.M.C. 6489/2022 & CRL.M.A. 25263/2022**

SACHIN KUMAR AGGARWALPetitioner

Through: Mr. Kanhaiya Singhal and Ms.
Chandni Sharma, Advocates.

versus

STATE NCT OF DELHI & ORS.Respondents

Through: Mr. Yudhvir Singh Chauhan, APP for
the State.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner, who is the complainant and informant in FIR No.201/2022 registered at PS Tilak Nagar for offences under Sections 420/120B IPC, has approached this Court for setting aside the Order dated 05.11.2022 passed by Ld. Metropolitan Magistrate, West District, Tis Hazari Court, in Criminal Case No.8088/2022, rejecting the request of the Petitioner to lead oral arguments at the stage of arguments on charge. The learned Metropolitan Magistrate has held that the role of the victim is only to assist the prosecution and cannot be enlarged to permit addressing of oral arguments.

2. The short question which arises for consideration in the present Petition is as to whether the Petitioner herein should have been permitted to lead oral arguments at the stage of arguments on charge or not and the impugned Order be set aside and remanded back to the Court to permit the Petitioner to lead oral arguments.

3. Shorn of unnecessary details, the facts leading to the filing of the



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present petition are that:-

- a. On 24.07.2022, the Petitioner herein lodged an FIR bearing No.201/2022 registered under Section 420/120B IPC, PS Tilak Nagar. The gist of the complaint is that the Petitioner and one more person were approached by one Mr. Sudhir Arora S/o Desh Raj Arora, stating that a Property bearing C-21, Mukhram Park, New Delhi was available for sale. It is stated that the Petitioner was informed that the property was in a dilapidated condition and it has to be demolished and thereafter, new construction could be carried out. It is stated that the complainants were informed that Mrs. Varsha Gulati was the owner of the property and negotiations were held and meetings were attended by the accused namely; Sarita Gulati, Pooja Gulati, Devender Gulati & Sanjay Gulati. It is further stated that the sale consideration amount was arrived at Rs.70,00,000/-. It is stated that the entire sale consideration amount was paid through RTGS/cheque on following dates:-

“(Payments made by Sachin Aggarwal: Total Amount: Rs. 34,73,750/)

- i. Rs. 5 Lakhs Through RTGS dated 03/09/2020
- ii. Rs. 5 Lakhs through RTGS dated 04/09/2020
- iii. Rs. 2 Lakhs through RTGS dated 11/09/2020
- iv. Rs. 5 Lakhs through RTGS dated 28/09/2020
- v. Rs. 5 Lakhs through RTGS dated 29/09/2020
- vi. Rs. 3 Lakhs through RTGS dated 21/10/2020
- vii. Rs. 5 Lakhs through Cheque No. 030302 from ICICI Bank
- viii. Rs. 4,73,750/- through cheque no. 030304 from ICICI Bank

(Payments made by Prasanna Total Amount: Rs. 34,73,750/-)



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- i. Rs. 5 Lakhs Through RTGS dated 03/09/2020
 - ii. Rs. 5 Lakhs through RTGS dated 05/09/2020
 - iii. Rs. 5 Lakhs through RTGS dated 21/10/2020
 - iv. Rs. 5 Lakhs through RTGS dated 21/10/2020
 - v. Rs. 5 Lakhs through RTGS dated 21/10/2020
 - vi. Rs. 5 Lakhs through Cheque No. 759826 dated 21/10/2020 SBI Bank, Tis Hazari, Delhi
 - vii. Rs. 4,73,750/- through Cheque No. 759828 dated 21/10/2020 SBI Bank, Tis Hazari, Delhi
- Apart from the above payment, Rs. 26,250/- each by both complainants were paid towards TDS.”

- b. After payment of entire consideration amount, the sale deed was duly executed before the Sub Registrar. The sale deed dated 22.10.2020 was signed by Mrs. Varsha Gulati as seller and Mr. Sanjay Gulati & Mr. Devender Gulati as witnesses. The entire chain of documents were handed over to the Petitioner herein. It is stated that the Complainants handed over the possession of the property to Mr. Sudhir Arora for demolition of old structure and new construction. It is stated that sanction was obtained from the Municipal Corporation and after completion of civil work, the regularization was also done. It is stated that on 17.06.2021, accused Sarita Gulati & Pooja Gulati along with other persons, forcefully barged into the property by pushing the temporary iron doors and breaking the locks. It is the case of Sarita Gulati & Smt. Pooja Gulati that they were the owners of the property in question and they have purchased the property in the year 2005.
- c. It is stated that the Petitioner gave legal notice to Smt. Sarita Gulati, Smt. Pooja Gulati and Smt. Varsha Gulati stating that the Petitioners have purchased the property by way of sale



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deeds dated 26.04.2005 & 09.05.2005.

- d. The Complainants realised that they have been cheated and therefore, the present FIR was lodged.
- e. It is stated that the Petitioners were actively participating in the proceedings and have been regularly opposing the bail applications filed by the accused persons. It is stated that at the stage of arguments on charge, the Petitioners wanted to address the arguments, however the learned Metropolitan Magistrate, by order impugned herein, permitted the Petitioners to assist the learned Additional Public Prosecutor at the time of arguments on charge, however, denied them the right of being heard and addressing arguments on the point of framing of charges.
- f. It is this order, which is under challenge in this petition.

4. Learned Counsel appearing for the Petitioner places reliance on the judgment of the Apex Court in Jagjeet Singh v. Ashish Mishra, (2022) 9 SCC 321, to contend that there is an inherent right in the victim to participate in the criminal proceedings at all stages which includes the stage of bail. He, therefore, contends that the right of participation cannot be limited only to assisting the Prosecutor but would also extend to addressing arguments at the time of framing of charges.

5. Learned Counsel for the Petitioner also places reliance on a judgment of the Co-ordinate Bench of this Court in VLS Finance Ltd. v. State (NCT of Delhi), 2024 SCC OnLine Del 3908, wherein the Co-ordinate Bench has set aside an order passed by the trial Court, in that case wherein Complainant was not permitted to advance oral arguments and was only permitted to assist the Court through the learned APP.

6. *Per contra*, learned Counsel appearing for the Respondents states that



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the present issue is no longer *res integra* and is covered by the judgment of the Apex Court in Rekha Murarka v. State of West Bengal, (2020) 2 SCC 474, wherein the Apex Court has held that the victim's counsel cannot substitute itself as the Public Prosecutor and the role of the victim's counsel is only to assist the Public Prosecutor. He contends that the Apex Court has gone to the extent that even if there was a situation where the Public Prosecutor fails to highlight some issue of importance despite it having been suggested by the victim's counsel, the victim's counsel may still not be given the unbridled mantle of making oral arguments or examining witnesses and that the recourse is only by channelling the questions or arguments through the Judge first.

7. Heard the Counsels for the parties and perused the material on record.

8. The Apex Court in Rekha Murarka (*supra*) was dealing with the case where the trial Court was hearing an application for expeditious trial of the case and also while dealing with the application under Section 301(2) Cr.P.C., with the proviso to Section 24(8) of the Cr.P.C.. In the said case, the Apex Court held that the Counsel for the victim has the right to advance oral argument in support of question of law but only after the learned Public Prosecutor, if so required; to raise objection in case any irrelevant question is put to any prosecution witness, if so required; to examine the prosecution witnesses only after the learned Public Prosecutor, if so required; to cross-examine the defence witnesses, if adduced, only after the learned Public Prosecutor, if so required; to assist the process of justice in accordance with law; pass such further or other order(s) and/or direction(s) as it may deem fit and proper. In the said Judgment, the Apex Court has observed as under:

“11.1. The use of the term “assist” in the proviso to Section 24(8) is crucial, and implies that the victim's counsel is only intended to have a secondary role qua



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the Public Prosecutor. This is supported by the fact that the original Amendment Bill to CrPC had used the words “coordinate with the prosecution”. However, a change was later proposed and in the finally adopted version, the words “coordinate with” were substituted by “assist”. This change is reflective of an intention to only assign a supportive role to the victim's counsel, which would also be in consonance with the limited role envisaged for pleaders instructed by private persons under Section 301(2). In our considered opinion, a mandate that allows the victim's counsel to make oral arguments and cross-examine witnesses goes beyond a mere assistive role, and constitutes a parallel prosecution proceeding by itself. Given the primacy accorded to the Public Prosecutor in conducting a trial, as evident from Sections 225 and 301(2), permitting such a free hand would go against the scheme envisaged under CrPC.

11.2. *In some instances, such a wide array of functions may also have adverse consequences on the fairness of a trial. For instance, there may be a case where the Public Prosecutor may make a strategic call to examine some witnesses and leave out others. If the victim's counsel insists upon examining any of the left-out witnesses, it is possible that the evidence so brought forth may weaken the prosecution case. If given a free hand, in some instances, the trial may even end up becoming a vindictive battle between the victim's counsel and the accused, which may further impact the safeguards put in place for the accused in criminal trials. These lapses may be aggravated by a lack of advocacy experience on the part of the victim's counsel. In contrast, such dangers would not arise in the case of a Public Prosecutor, who is required to have considerable experience in the practice of law, and act as an independent officer of the court. Thus, it is important to appreciate why the role of a victim's counsel is made subject to the instructions of the Public Prosecutor, who occupies a prime position by*



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virtue of the increased responsibilities shouldered by him with respect to the conduct of a criminal trial.

11.3. At the same time, the realities of criminal prosecutions, as they are conducted today, cannot be ignored. There is no denying that Public Prosecutors are often overworked. In certain places, there may be a single Public Prosecutor conducting trials in over two-three courts. Thus, the possibility of them missing out on certain aspects of the case cannot be ignored or discounted. A victim-centric approach that allows for greater participation of the victim in the conduct of the trial can go a long way in plugging such gaps. To this extent, we agree with the submission made by the learned Senior Counsel for the appellant that the introduction of the proviso to Section 24(8) acts as a safety valve, inasmuch as the victim's counsel can make up for any oversights or deficiencies in the prosecution case. Further, to ensure that the right of appeal accorded to a victim under the proviso to Section 372 CrPC is not rendered meaningless due to the errors of the Public Prosecutor at the trial stage itself, we find that some significant role should be given to the victim's counsel while assisting the prosecution. However, while doing so, the balance inherent in the scheme of CrPC should not be tampered with, and the prime role accorded to the Public Prosecutor should not be diluted.

11.4. In this regard, given that the modalities of each case are different, we find that the extent of assistance and the manner of giving it would depend on the facts and circumstances of each case. Though we cannot detail and discuss all possible scenarios that may arise during a criminal prosecution, we find that a victim's counsel should ordinarily not be given the right to make oral arguments or examine and cross-examine witnesses. As stated in Section 301(2), the private party's pleader is subject to the directions of the Public Prosecutor. In our considered opinion, the same



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principle should apply to the victim's counsel under the proviso to Section 24(8), as it adequately ensures that the interests of the victim are represented. If the victim's counsel feels that a certain aspect has gone unaddressed in the examination of the witnesses or the arguments advanced by the Public Prosecutor, he may route any questions or points through the Public Prosecutor himself. This would not only preserve the paramount position of the Public Prosecutor under the scheme of CrPC, but also ensure that there is no inconsistency between the case advanced by the Public Prosecutor and the victim's counsel.

*11.5. However, even if there is a situation where the Public Prosecutor fails to highlight some issue of importance despite it having been suggested by the victim's counsel, the victim's counsel may still not be given the unbridled mantle of making oral arguments or examining witnesses. This is because in such cases, he still has a recourse by channelling his questions or arguments through the Judge first. For instance, if the victim's counsel finds that the Public Prosecutor has not examined a witness properly and not incorporated his suggestions either, he may bring certain questions to the notice of the court. If the Judge finds merit in them, he may take action accordingly by invoking his powers under Section 311 CrPC or Section 165 of the Evidence Act, 1872. In this regard, we agree with the observations made by the Tripura High Court in *Uma Saha v. State of Tripura* [*Uma Saha v. State of Tripura*, 2014 SCC OnLine Tri 859] that the victim's counsel has a limited right of assisting the prosecution, which may extend to suggesting questions to the court or the prosecution, but not putting them by himself.”*

The Apex Court has held that the term “assist” in the proviso to Section 24(8) is crucial, and implies that the victim’s counsel is only intended to have a secondary role *qua* the Public Prosecutor and that a mandate that



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allows the victim's counsel to make oral arguments and cross-examine witnesses goes beyond a mere assistive role, and constitutes a parallel prosecution proceeding by itself. The Apex Court was of the opinion that given the primacy accorded to the Public Prosecutor in conducting a trial, as evident from Section 225 and 301(2) Cr.P.C, permitting such a free hand would go against the scheme envisaged under Cr.P.C. The Apex Court was also of the opinion that given a free hand in some instances the trial may devolve into a vindictive battle between the Counsel of the victim and the accused which may further impact the safeguards put in place for the accused in criminal trials.

9. The Apex Court was of the opinion that if given a free hand in some instances the lack of advocacy experience on the part of the victim's counsel can endanger the rights of the accused and such dangers will not arise in case of Public Prosecutor who is required to have experience in the practice of law and act as an independent Officer of the Court. The Apex Court was, therefore, of the opinion that the role of the victim's counsel was always subject to the instructions of the Public Prosecutor who occupies a prime position by virtue of increased responsibilities shouldered by him with respect to the conduct of a criminal trial. The Apex Court also held that a victim Centric approach is also necessary for greater participation of the victim in conduct of the trial as Public Prosecutor are often overworked and conduct trial in two or three Courts, and therefore the possibility of them missing out on certain aspects of the case cannot be ignored or discounted and a victim-centric approach that allows for greater participation of the victim in the conduct of the trial can go a long way in plugging such gaps. The Apex Court, therefore, held that introduction of the proviso to Section 24(8) acts as a safety valve, inasmuch as the victim's counsel can make up



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for any oversights or deficiencies in the prosecution case.

10. The Division Bench of the High Court of Judicature at Jaipur, Bench Jaipur, Bench in Pooja Gurjar & Ors. v. State of Rajasthan, 2023 SCC **OnLine Raj** 4210, while dealing with the question as to whether the complainant/victim/first informant is always a necessary party and has to be impleaded, after placing reliance on the judgment of the Apex Court in Jagjeet Singh (supra), has held that the fact that the victim has right to participate does not mean that the victim must replace or substitute the State as a prosecuting agency or that the victim must be impleaded as a party to the proceedings so as to make the victim/complainant answerable in all aspects.

11. The Apex Court in Jagjeet Singh (supra), has emphasized on the role of the victim and has observed as under:-

*“22. It cannot be gainsaid that the rights of a victim under the amended CrPC are substantive, enforceable, and are another facet of human rights. The victim's right, therefore, cannot be termed or construed restrictively like a *brutum fulmen* [Ed. : The literal translation from the Latin approximates to “meaningless thunderbolt or lightning”, and is used to convey the idea of an “empty threat” or something which is ineffective.] . We reiterate that these rights are totally independent, incomparable, and are not accessory or auxiliary to those of the State under the CrPC. The presence of “State” in the proceedings, therefore, does not tantamount to according a hearing to a “victim” of the crime.*

23. A “victim” within the meaning of CrPC cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/She has a legally vested right to be heard at every step post the occurrence of an offence. Such a “victim” has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. We may hasten to



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clarify that “victim” and “complainant/informant” are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/informant is also a “victim”, for even a stranger to the act of crime can be an “informant”, and similarly, a “victim” need not be the complainant or informant of a felony.

24. The abovestated enunciations are not to be conflated with certain statutory provisions, such as those present in the Special Acts like the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, where there is a legal obligation to hear the victim at the time of granting bail. Instead, what must be taken note of is that:

24.1. First, the Indian jurisprudence is constantly evolving, whereby, the right of victims to be heard, especially in cases involving heinous crimes, is increasingly being acknowledged.

24.2. Second, where the victims themselves have come forward to participate in a criminal proceeding, they must be accorded with an opportunity of a fair and effective hearing. If the right to file an appeal against acquittal, is not accompanied with the right to be heard at the time of deciding a bail application, the same may result in grave miscarriage of justice. Victims certainly cannot be expected to be sitting on the fence and watching the proceedings from afar, especially when they may have legitimate grievances. It is the solemn duty of a court to deliver justice before the memory of an injustice eclipses.”

12. A co-ordinate Bench of this Court in VLS Finance Ltd. (supra) has observed as under:

“66. In the said case, the Supreme Court was considering a challenge to an order passed by the High Court enlarging the accused therein on Bail. It was inter alia argued by the complainant/appellant in the said case that during the course of the online proceedings before the High Court, the



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counsel for the complainant/victims/appellant was disconnected and was not heard by the High Court. The Supreme Court, answering the question as to whether a ‘victim’ as defined under Section 2(wa) of the Cr. P.C. is entitled to be heard at the stage of a bail application being filed by the accused, observed that the jurisprudence with respect to the right of the victim to be heard and to participate in criminal proceedings has begun to evolve positively. It was observed that the recent amendments to the Cr. P.C. have recognized the victim's rights in the Indian Criminal Justice System and, therefore, the rights of a victim cannot be construed restrictively; are totally independent, unbridled, and not accessory or auxiliary to those of the State under the Cr. P.C. The presence of the State in the criminal proceedings, therefore, does not tantamount to according a hearing to the ‘victim’ of a crime. The Supreme Court held as under:

“23. A “victim” within the meaning of CrPC cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/She has a legally vested right to be heard at every step post the occurrence of an offence. Such a “victim” has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. We may hasten to clarify that “victim” and “complainant/informant” are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/informant is also a “victim”, for even a stranger to the act of crime can be an “informant”, and similarly, a “victim” need not be the complainant or informant of a felony.

24. The above stated enunciations are not to be conflated with certain statutory provisions, such as those present in the Special Acts like the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, where there is a legal obligation to hear the victim at the time of granting bail. Instead, what must be taken note of is that:



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67. In view of the above, it can safely be concluded that the law has developed enough to a stage where the right of the victim to be heard in a criminal proceeding cannot be denied. If the victim wishes to participate in the criminal proceedings and to be heard, the doors of the court for a hearing cannot be shut to the victim. A victim has an equivalent right to see that justice is done and the accused is brought to book and to face his conviction and sentence. However, the Court shall regulate such hearing on a case to case basis and not allow the victim to hijack the trial and convert it into a battle to settle personal scores.

68. The learned counsel for the petitioner submits that affording a right of a fair and effective hearing would include and encompass within itself a right to be impleaded in a Revision Petition filed by the accused which challenges an Order refusing to discharge the said accused in the criminal trial. To answer the said question, Section 397 of the Cr. P.C. (revisional power of the Session court), Section 399 of the Cr. P.C. (Sessions Judge's Power of Revision), Section 401 of the Cr. P.C. (revisional power of the High Court), and Section 403 of the Cr. P.C. (power of the Court to grant hearing in revision petition) need to be considered. They are reproduced herein below:



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“397. Calling for records to exercise powers of revision.—(1) *The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself; to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on bail or on his own bond pending the examination of the record.*

Explanation.—All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

(2) *The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.*

(3) *If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.*

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399. Sessions Judge's powers of revision.—

(1) *In the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under sub-section (1) of section 401.*

(2) *Where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1), the provisions of subsections (2), (3), (4) and (5) of section 401 shall, so far as may be, apply to such*



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proceeding and references in the said subsections to the High Court shall be construed as references to the Sessions Judge.

(3) Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.

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401. High Court's powers of revision.—(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307, and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of Justice so to do, the High



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Court may treat the application for revision as a petition of appeal and deal with the same accordingly.

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403. Option of Court to hear parties.— Save as otherwise expressly provided by this Code, no party has any right to be heard either personally or by pleader before any Court exercising its powers of revision; but the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader.”

73. Keeping in view the above principles of law, derived from the provisions of the Cr. P.C. and precedents, it must be held that while the victim/complainant has a right to be heard in the revision proceedings, such right does not upscale itself to a right to be impleaded in the said criminal revision. The Court while affording a right to be heard to a complainant/victim, shall regulate the same depending on the facts and circumstances of each case. The Court should keep in mind that the criminal prosecution does not turn into a battle between the two private warring parties. However, at the same time, the Court should also keep in mind that it is eventually the victim who has suffered and has knocked at the doors of Criminal Justice System to seek justice against the alleged crime committed against it. Therefore, a balance has to be struck between the duty/responsibility of the State to conduct the criminal prosecution on behalf of the society as a whole, and the right of the victim/complainant to seek justice for the wrong done to it. In achieving this balance, though the victim/complainant may be heard, however, would not have a right to be impleaded, and such hearing shall be regulated by the Court depending on the facts and circumstances of each case.”

13. This Court is in agreement with the view taken by the Co-ordinate Bench of this Court in the abovementioned Judgment.



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14. The law, therefore, can be summarized that the victim has a right to participate in the proceedings, however, at the same time, the victim cannot override the Public Prosecutor who acts as an independent Officer of the Court. This Court is not in agreement with the trial Court that the victim has no right to be heard at all. Right of participation would always mean right to be heard but the victim's counsel cannot override an argument taken by the Public Prosecutor nor can the victim argue that the Public Prosecutor has made a wrong submission. The Public Prosecutor's role in a criminal proceeding is primary. The victim's Counsel can substantiate the arguments of the Public Prosecutor by bridging the gaps, if any, in the argument of the Public Prosecutor. The order of the trial Court inasmuch as denying the victim from making any arguments cannot be accepted. The trial Court will have to restrict the victim if it finds that the victim is overreaching the arguments or is arguing contrary to what the Public Prosecutor has argued.

15. Since the charges are yet to be framed, the trial Court is requested to hear the arguments of the victim as well giving primacy to the arguments of the Public Prosecutor and proceed as per law.

16. With these observations, the petition is disposed of, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

NOVEMBER 12, 2024

Rahul/RJ