

Powers & functions of Public Prosecutors

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1. **Public Prosecutor appointed u/s 24 CrPC is an officer of court** : A public prosecutor appointed u/s 24 CrPC is an officer of court. He has to act objectively and not according to dictates of the State Govt. See : **Captain Amarinder Singh Vs. Prakash Singh Badal, (2009) 6 SCC 260 (Three-Judge Bench)**.

2. **Appearance by Public Prosecutors (Section 301 CrPC)** : (1) The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead 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 in charge of the case shall conduct the prosecution, and the pleader to 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.

3. **Public Prosecutors : Their powers & functions** : In criminal matters, public prosecutors are appointed u/s 24 CrPC. Public Prosecutor is a statutory officer of high regard. See :
(i) **Sidharth Vashisth alias Manu sharma Vs. State of NCT of Delhi, AIR 2010 SC 2352**
(ii) **Shiv Kumar Vs. Hukam chand, (1999)7 SCC 467**

4. **Permission to conduct prosecution (Section 302 CrPC)** : (1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than 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.
(2) Any person conducting the prosecution may do so personally or by a pleader.

5. **Private counsel not to lead evidence on behalf of prosecution** : A privately engaged counsel may not have any liberty to lead prosecution evidence or to do the duties entrusted by law to a public prosecutor under Sections 301(1) & 301(2) CrPC or Section 225 CrPC. However, complainant can engage a private counsel but such counsel cannot get the status of a public prosecutor. Public prosecutor cannot abdicate his powers in favour of a person who is not a public prosecutor. See : **Rajesh Kumar Vs. State of UP, 1998 (37) ACC 867 (All)**.
6. **Only public prosecutor to conduct prosecution** : Where in a complaint case instituted by private complainant, offences are triable exclusively by court of sessions, in the sessions court, a public prosecutor alone can conduct prosecution. See : **Rosy Vs. State of Kerala, 2000 (40) ACC 444 (SC)**.
- 7.1. **A private counsel engaged by victim/ complainant cannot be allowed to examine or cross-examine witnesses and submit oral arguments on behalf of public prosecutor:** Explaining the provisions of Section 24(8) read with Sections 225, 301, 311 CrPC, it has been held by the Supreme Court that the extent of assistance by victim's counsel to the Public Prosecutor and the manner of its giving would depend on the facts and circumstances of each case. A victim's counsel should ordinarily be not given the right to make oral arguments or examine or cross-examine the witnesses. The balance inherent in the scheme of the CrPC should not be tampered with and the prime role accorded to the public prosecutor not diluted. Even if there is a situation where the public prosecutor fails to highlight some issues of importance despite the same 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. 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 these questions to the notice of the court. If the Judge finds merit in them, he may take action accordingly by invoking his powers u/ 311 CrPC or u/s 165 of the Evidence Act. See: **Rekha Murarka Vs. State of W.B., (2020) 2 SCC 474**.
- 7.2. **A private counsel engaged by complainant can act only under guidance of the public prosecutor** : A private counsel engaged by the complainant can act only under the guidance and instructions of the public prosecutor who is in-charge of the prosecution u/s 301, 302, 225 CrPC. See :
- (i) **Sidharth Vashisth alias Manu sharma Vs. State of NCT of Delhi, AIR 2010 SC 2352**
 - (ii) **Shiv Kumar Vs. Hukum Chand, 1999 (39) ACC 715 (SC)**
 - (iii) **Kartika Chandra Bhattacharya Vs. State of UP, 1993 (30) ACC 688 (All)**
 - (iv) **Suresh Chandra Sharma Vs. State of UP, 1986 (23) ACC 234 (All)**

- (v) **Iqbal Ahmed Vs. Ketki Devi, 1976 CrLJ 244 (All).**
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(2) Any person conducting the prosecution may do so personally or by a pleader.
12. **Distinction between Sections 301 & 302 CrPC regarding role of a private party or counsel engaged by private party or informant in a criminal trial before Magistrate and Sessions Court** : The question posed before the Supreme Court was whether an aggrieved person has a right to engage his own counsel to conduct the prosecution despite the presence of the Public Prosecutor. The Supreme Court ruled that the role of the Public Prosecutor was upholding the law and putting together a sound prosecution and that the presence of a private lawyer would inexorably undermine the fairness and impartiality which must be the hallmark, attribute and distinction of every proper prosecution. In the case of Shiv Kumar, the Advocate appointed by the aggrieved party ventured to conduct the cross-examination of the witness which was allowed by the trial court but was reversed in revision by the High Court and the High Court permitted only the submission of written argument after the closure of evidence. Upholding the view of the High Court, the Supreme Court observed that before the Magistrate any person (except a police officer below the rank of inspector) could conduct the prosecution but this laxity is impermissible in the Sessions by virtue of Section 225 CrPC which pointedly states that the prosecution shall be conducted by a Public Prosecutor. Role of informant or private party is limited during prosecution of a case in Sessions Court. Under Section 301 CrPC, a counsel engaged by informant or private party is required to act under the directions of the public prosecutor. Under Section 302 CrPC, power is conferred on Magistrate to grant permission to complainant to conduct the

prosecution independently. Proper mode of seeking permission u/s 302 CrPC is only by written application. Section 302 CrPC applies to every stage including the stage of framing charge in as much as complainant is permitted by Magistrate to conduct prosecution. See :

- (i) **Dhariwal Industries Limited Vs. Kishore Wadhvani & Others, (2016) 10 SCC 378 (para 14)**
- (ii) **Sundeep Kumar Bafna Vs. State of Maharashtra, (2014) 16 SCC 623 (para 30)**
- (iii) **Shiv Kumar Vs. Hukum Chand, (1999) 7 SCC 467 (Three-Judge Bench)**

13. **Role of a private counsel engaged in a criminal case is like a junior advocate conducting the case of his senior in court** : The role which a private counsel in a criminal case can play is, perhaps, comparable with that of a junior advocate conducting the case of his senior in a court. The private counsel is to act on behalf of the public prosecutor albeit the fact that he is engaged in the case by a private party. If the role of the public prosecutor is allowed to shrink to a mere supervisory role, the trial would become a combat between the private party and the accused which would render the legislative mandate in Section 225 CrPC a dead letter. See :

- (i) **Anant Prakash Sinha Vs. State of Haryana, (2016) 6 SCC 105 (paras 21 & 22).**
- (ii) **Shiv Kumar Vs. Hukam Chand, (1999) 7 SCC 467 (paras 13 & 14).**

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