

CONCEPT OF LOCUS STANDI IN RELATION TO CRIMINAL JURISPRUDENCE

BY

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1. GENERAL

A. It is a well settled principle that the concept of locus standi of the complainant is alien to criminal jurisprudence except when the statute specifically provides as held in various decisions including the Constitution Bench decision reported as 1984 (2) SCC 5:1988 AIR 1531 A.R. Antulay vs. Ramdass Srinivas Nayak & Anr.

B. The reason for this established principle of law is that since the crime is against the society, any person can set the criminal law into motion, except for offences like matrimonial

disputes, defamation etc. for which the exceptions are provided under Sections 198 and 199 Cr.P.C. Thus any member of the society as opposed to only the person who suffers harm can set the criminal law into motion.

C. As the offences are treated against the society, it is the duty of the State to punish the offender and hence, the concept of the State as the prosecuting party. Further maintenance of order and peaceful development is the requirement of the Society, the prosecution of offences is thus undertaken in the name of State representing the people, which would exclude any element of private vendetta or vengeance.

D. The term 'locus standi' is a Latin term, the general meaning of which is place of standing. Thus it is the right to bring in action or to be heard in a given forum or a right of appearance in a Court of justice.

E. Section 154 Cr.P.C. does not prescribe any qualification for a person to get registered FIR of a cognizable offence and under Section 190 Cr.P.C. cognizance can be taken on a complaint of facts which constitute such offence, filed by any person in writing and on an information of an offence received from any person other than a police officer or upon his own knowledge i.e. the Court may also take suo motu cognizance of the facts constituting an offence if he comes to know about the same.

Thus Section 190 Cr.P.C. permits anyone to approach the Magistrate with a complaint without prescribing any qualification of the complainant unless specifically contemplated by the provisions.

F. Supreme Court in the decision reported as (2012) 3 SCC 64 *Subramanian Swamy vs. Manmohan Singh and Anr.*, held that there is no restriction on a private citizen filing a private complaint against a public servant and the Court is also not barred from taking cognizance of offence by relying on incriminating material collected by private citizen. Locus standing of a private citizen is therefore not excluded. Hence he is also entitled to seek sanction for prosecution.

2. LOCUS STANDI OF VICTIM IN CRIMINAL PROCEEDINGS

A. Section 2(wa) of the Cr.P.C. which was introduced vide the Cr.P.C. (Amendment) Act, 2008 (dated 18th December, 2008) defines the expression 'Victim' as 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 heirs.

B. The term 'Victim' used in the proviso to Section 372 Cr.P.C. was interpreted by the High Court of Delhi in the decision reported as 221 (2015) DLT 1: 2015 (151) DRJ 562 Ram Phal vs. State & Ors. wherein it was held that the expression 'victim' includes his or her guardian or legal heir

besides the direct sufferer of the physical harm. As the guardian or legal heir would be a direct sufferer of the emotional harm, the Court held that what is sought to be included i.e. 'legal heirs' cannot result in excluding those relatives or loved ones of the victim simpliciter who actually fall within the ambit of victim.

C. Since the crime is against the society, the victim is generally a third party in a criminal trial and therefore has a limited say in the prosecution of the offence. Thus a victim cannot prosecute independently a State case however, a complaint case filed by the victim before the Magistrate can be prosecuted by the victim.

D. In a State case it is the duty of the State to prosecute, hence the prosecution/trial is conducted under Section 225 Cr.P.C. by Public Prosecutors appointed under Section 24 Cr.P.C. and the victim has a limited right to assist the Prosecutor.

E. To ensure a free and fair trial to the accused and as the offence is against the State the concept of the Public Prosecutor who is an independent person has been introduced in Cr.P.C. to conduct a trial. In the decision reported as 2000 (53) DRJ 707 the Division Bench of Delhi High Court quashed the Notification appointing a Special Public Prosecutor who was the counsel for the complainant/victim.

F. Supreme Court in the decision reported as (2020) 2 SCC 474 *Rekha Murarka Vs. State of West Bengal & Anr.* clarified the law in relation to the extent of assistance that can be rendered by the victim's counsel to the Public Prosecutor and the manner of giving the same. It was further held that 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 the Public Prosecutor. The legislative intention in finally adopting the word "assist", rather than "coordinate with" as per the original Bill, is 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) Cr.P.C.

Supreme Court held that though the same would depend on the facts and circumstances of the case, however a victim's counsel should ordinarily not be given the right to make oral arguments or examine and cross-examine witnesses. It was held that the balance inherent in the scheme of Cr.P.C. should not be tampered with, and the prime role accorded to the Public Prosecutor should not be diluted. Even if there is a situation where the Public Prosecutor fails to highlight some issue(s) of importance despite the same having been suggested by the victim's counsel, the victim's counsel may still not be given an 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 certain questions to the notice of the Court and if the Judge finds merit in them, he may take action accordingly by invoking his powers under Section 311 Cr.P.C. or Section 165 of the Evidence Act.

G. Section 302 Cr.P.C. empowers a Magistrate inquiring into or trying a case to permit the prosecution to be conducted by any person other than a police officer below the rank of Inspector however, no person other than the Advocate General or government advocate or a Public Prosecutor or Assistant Public Prosecutor is entitled to do so without such permission. Further Section 301 Cr.P.C. states that the Public Prosecutor or Assistant Public Prosecutor in-charge of a case may appear and plead without any written authority before any Court.

H. In the decision reported as 1966 AIR SC 911 Thakur Ram vs. State of Bihar the Supreme Court interpreting Section 301 Cr.P.C. held that in a prosecution on a police report, a private party has no locus standi except in few cases wherein the aggrieved party can prosecute as provided under Cr.P.C. under Sections 198/199 Cr.P.C.

I. In a State prosecution even though the victim is a third party however, it still has certain rights such as to lodge a first information report under Section 154 Cr.P.C. and file a complaint of a non-cognizable case before the Magistrate on whose direction an investigation can be carried out by the police under Section 155 Cr.P.C. In case no FIR is registered

for a cognizable offence the victim can make a representation/complaint to the superior authority under Section 154 (3) Cr.P.C. failing which a complaint under Section 156 (3) Cr.P.C./200 Cr.P.C. can also be filed before a jurisdictional Magistrate.

J. Further if on carrying out the investigation pursuant to registration of FIR police files a cancellation report, the same cannot be accepted by the learned Magistrate unless notice in writing is given to the complainant/victim and an opportunity is provided to the complainant/victim to file a protest petition and be heard.

K. Though during the course of trial the victim has a right to assist either in person or through the counsel the Public Prosecutor, the proviso to Section 372 Cr.P.C. introduced by the amendment vide Cr.P.C. (Amendment) Act, 2008 (dated 18th December, 2008) provides for a right of appeal in case of acquittal of the accused, conviction of the accused for a lesser offence or for imposing inadequate compensation. Thus though the victim has a right to appeal against the acquittal or for conviction of lesser offence, it has no right to appeal against inadequacy of the sentence which right to appeal vests with the State under Section 377 Cr.P.C.

L. Further though in the case of an acquittal of an accused, the State is required to seek a leave to appeal under Section 378 (i) Cr.P.C. however, a victim has a statutory right of an appeal without seeking leave to appeal under the proviso to Section 372 Cr.P.C. in case of acquittal or for conviction for a lesser offence or inadequate compensation as held by the Supreme Court in the decision reported as 2019 (2) SCC 752 Mallikarjun Kodagali Vs. State of Karnataka.

M. In *Mallikarjun Kodagali Vs. State of Karnataka & Ors.* (supra) Supreme Court held that proviso to Section 372 Cr.P.C. must be given a meaning that is realistic, liberal, progressive and beneficial to the victim of an offence. Referring to the declaration of basic principles of justice for victims of crime and abuse of power, adopted by the General Assembly of the United Nations on 29th November, 1985, the Court noted that one of the significant declarations made was in relation to access of justice for the victim of an offence through the justice delivery mechanisms, both formal and informal.

N. Though after a prosecution conducted by the Public Prosecutor the Court may on appreciation of evidence acquit the accused however, while exercising its power under Section 482 Cr.P.C. for quashing of the FIR and the proceedings pursuant thereto and on a revision under Section 392/401 Cr.P.C. the judgment, order on sentence cannot be reversed without due notice to the aggrieved party.

O. Section 320 Cr.P.C. enlists offences which are compoundable with or without the leave of the Court however, the said compounding can be after a settlement is arrived at between the accused and the complainant/victim.

3. LOCUS STANDI OF INTERESTED PARTIES

A. In *Arunachalam Vs. P.S.R. Sadhanantham* Supreme Court considered the competence of a private party to invoke the jurisdiction of the Supreme Court under Article 136 of the Constitution of India against the judgment of acquittal by the High Court. Supreme Court held that the power under Article 133 of the Constitution is a plenary power and there are no words in Article 136 which qualify that power. The power under Article 136 cannot be construed with an ordinary appellate power exercised by Appellate Courts which has to be in terms of the Statute. The exercise of power of Supreme Court not being circumscribed by any limitation as to who may invoke the same, Supreme Court entertained a leave to appeal against the judgment of acquittal by private party as the said judgment by the High Court had led to serious miscarriage of justice.

B. Thereafter, P.S.R. Sadhanantham filed a writ petition before the Hon'ble Supreme Court which was decided by the Constitution Bench and reported as (1980) 3 SCC 141 titled as "P.S.R. Sadhanantham Vs. Arunachalam" taking the plea that the Supreme Court had no power to grant special leave to appeal to the brother of the deceased against the judgment of acquittal. The Constitution Bench held that in express terms, Article 136 does not confer a right of appeal on a party as such but it confers a wide discretionary power on the Supreme Court to interfere in suitable cases. This power has to be exercised by the highest Judges of the land with scrupulous adherence to judicial principles well-established by precedents in our jurisprudence. Article 136 has a composite structure of power-cum-procedure inasmuch as there is an inbuilt prescription of exercise of judicial discretion and mode of hearing. It was thus held that in such a situation the Supreme Court can grant leave to one who is not a party on the record.

C. In the decision reported as (2017) 9 SCC 340 Ratanlal Vs. Prahlad Jat & Ors., Supreme Court following the decision in P.S.R. Sadhanantham entertained the special leave to appeal filed by the brother of the deceased victim of the crime. In the said case the two witnesses were examined and cross-examined at length. After a passage of 14 months they filed an application under Section 311 Cr.P.C. before the Trial Court for their re-examination on the ground that statements made by them earlier were under pressure. The learned Trial Court rejected the said application under Section 311 Cr.P.C. Challenging the order of the learned Session Judge the two accused in the said case i.e. Prahlad Jat and Mahavir filed a petition before the High Court

seeking quashing of the order of the Session Judge rejecting application under Section 311 Cr.P.C. which order was set aside by the High Court and the application filed by the two witnesses was allowed by the High Court. Challenging the order of the High Court, the brother of the deceased victim filed special leave petition which was granted. The respondent/ accused therein challenged the locus standi of the brother of the victim to leave to appeal under Article 136 of the Constitution of India against the order of the High Court. Supreme Court held that Article 136 does not confer a right to appeal and confers only a right to apply for special leave to appeal and in suitable cases the Supreme Court will exercise its discretionary power under Article 136 of the Constitution of India, which power is not circumscribed by any limitations as to who may invoke it.

D. An appeal is a statutory remedy and can be availed only if provided. An appeal is a creature of Statute and cannot lie under any inherent power. However, in case of gross injustice, the High Court while exercising its power of superintendence under Article 227 of the Constitution of India, 482 Cr.P.C. and the revisional jurisdiction can correct errors in judicial orders which have led to serious injustice. These powers however cannot be used to nullify the statutory remedy of appeal and cannot be exercised to turn an acquittal into conviction or a conviction into acquittal.

E. The power under Section 482 Cr.P.C. and 401 Cr.P.C. does not qualify the person who can move the Court. Though unknown party to the proceeding would ordinarily be not entertained, however to prevent the abuse of the process of the Court or to secure the ends of justice, the High Court may in a given case entertain a petition by an interested party as well beyond the victim, accused and the State. However, this power can be exercised with great circumspection and very sparingly.

F. Supreme Court in the decision reported as (2010) 12 SCC 599 National Commission for Women Vs. State of Delhi & Anr. declined to entertain a special leave to appeal petition under Article 136 of the Constitution of India by NCW seeking enhancement of the sentence of an accused. Supreme Court held that appeal against a judgment of conviction for sentence as also against acquittal or enhancement of sentence or inadequacy of sentence and compensation in the statutory remedy provided under proviso to Section 372 Cr.P.C. and 377 Cr.P.C. and an appeal by a private individual can be entertained in a case where remedy has been shut out for victim due to malafides on the part of State functionaries or due to inability of the victim to approach Court; however, to permit anybody or an organization to file an appeal would cause utter confusion in criminal justice system. Neither the State nor the heirs of the deceased victim having chosen to file a petition in High Court, Supreme Court refused to entertain the petition filed by the NCW.

G. The High Court's *Parens Patriae* jurisdiction in writ petition is well recognized which the High Court in exercise of its power under Article 226/ 227 of the Constitution of India in relation to juvenile victim or a victim in need of protection can exercise the same.

H. Since a criminal trial has to be conducted as per the procedure established under Cr.P.C. which is required to be adhered to balance and ensure the rights of the victims and the accused, petitions in the nature of a PIL in relation to criminal trial should not be entertained.

4. CONTINUANCE OF APPEAL BY LEGAL HEIRS

A. Section 394 Cr.P.C. provides as under:

394. Abatement of appeals.

(1) Every appeal under section 377 or section 378 shall finally abate on the death of the accused.

(2) Every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant:

Provided that where the appeal is against a conviction and sentence of death or of imprisonment, and the appellant dies during the pendency of the appeal, any of his near relatives may, within thirty days of the death of the appellant, apply to the Appellate Court for leave to continue the appeal; and if leave is granted, the appeal shall not abate.

Explanation.- In this section, "near relative" means a parent, spouse, lineal descendant, brother or sister.

B. It is thus evident that on the death of an accused, an appeal against acquittal and appeal for enhancement of sentence gets abated. However, in respect of an appeal against conviction, the appeal subsists in respect of the quantum of fine. Since the fine can be recovered from the estate of the deceased, proviso to Section 394 CrPC gives liberty to near relative of the deceased appellant to seek leave to continue with the appeal and in case such leave is granted, the appeal shall not abate. The 'Explanation' to Section 394(2) Cr.P.C. defines 'near relative' to mean a parent, spouse, lenial descendants, brother or sister.

C. Section 70 IPC provides that fine leviable within six years, or during imprisonment will not discharge the property from the liability on the death of the convict. It is provided that the fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period, and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

D. It is thus evident that the near relatives of the deceased convict including the legal heirs are at liberty to continue the appeal so as to seek exoneration of the property from which fine can be realized. The near relative of the convict may also pursue the appeal to seek an honorable acquittal to the convict.

E. In the decision reported as (1975) 3 SCC 343 Harnam Singh vs. State of Himachal Pradesh, Supreme Court dealing with the Section 431 of the Criminal Procedure Code, 1898 which was similar to Section 394 of the Criminal Procedure Code 1973 held that it is significant that the parenthetical clause of Section 431 does not contain the word "only". Thus to limit the

operation of the exception contained in that clause so as to take away from its purview appeal directed both against imprisonment and fine is to read into the clause the word "only" which is not there and which by no technique of interpretation may be read there. This decision was followed in Ramesa (dead) through LRs vs. State of Kerala (2020) 3 SCC 45.

F. Since some of the enactments entails attachment of the property such as in PMLA, NDPS Act etc., continuance of the appeal by the legal heirs is resorted to ensure that the property which is bequeathed on them is free from any charge or encumbrances.

G. Article 134 Constitution of India provides for appellate jurisdiction of the Supreme Court in regard to criminal matters whereby a statutory appeal is provided to the Supreme Court from any judgment, final order on sentence in a criminal proceedings of a High Court or in a case where on appeal an order of acquittal of the accused has been reversed and he has been sentenced to death or in a case where the High Court certifies the matter to be fit for an appeal under Article 134A of the Constitution of India. Further under Article 136 of the Constitution of India a special leave to appeal can be sought from the Supreme Court against any judgment of conviction, sentence or order of acquittal.