

## [APPELLATE CRIMINAL JURISDICTION.]

1874.  
March 18.

*In re* NA'RA'YAN M. PENSHE'.

*Right of Counsel to conduct prosecution—Crim. Proc. Code, Secs. 59, 60, 235, 251, and 252—High Court Rule No. 7, Ch. XI., at page 71 of the Rule Book.*

Whether or not a private complainant is permitted, under Section 59 of the Code of Criminal Procedure, to conduct a case as prosecutor, he may instruct counsel who shall be entitled to appear, under No. 7, Chap. XI. of the High Court Rules, and the Public Prosecutor may, thereupon, avail himself of the counsel's services under Section 60.

The effect of Section 235 of the Code, read with Sections 59 and 60, is to make every case tried by the Court of Session a case falling within the provisions of Section 60, that is to say, the Public Prosecutor may always avail himself of the services of counsel retained by a private individual, and in so doing he does not deprive himself of the management of the case.

Where the assistance of counsel has once been accepted, that assistance is not excluded at the stages of the trial (summing-up by the Prosecutor and his reply) to which Sections 251 and 252 apply.

**T**HIS was an application by a complainant in a criminal trial pending before De H. Larpent, Session Judge of Puná.

The applicant charged one Náráyan Jagannáth Bhidé with having made a false statement in a judicial proceeding, and instructed Mr. Leith, Barrister-at-Law, to conduct the case on his behalf. The Session Judge, under the circumstances alluded to in the following judgment, having declined to hear counsel who was not authorized by the Magistrate of the District, an application was made to the High Court.

It was heard by WEST and NA'NA'BHAT HARIDA'S, JJ.

*Leith* (with him *Ghanashám Nilkanth*) appeared for the petitioner.

The judgment of the Court was delivered by

WEST, J. :—It appears to us that Section 59 of the Code of Criminal Procedure is intended to lay down a general rule applicable to all those cases in which more specific rules are not provided. Section 60 applies to the case when a Public Prosecutor has been retained. Under that section, if a private person instructs counsel or pleader, he can only appear subject to

the specific provisions which reserve to the Public Prosecutor the management of the case, and prescribe that the counsel or pleader is to act under his directions. Whether a private complainant is permitted or not, under Section 59, to conduct the prosecution, he may instruct counsel through a pleader under the High Court Rule, Chapter XI., Section 7, at page 71 of the Rule Book; and thereupon the Public Prosecutor may avail himself of the counsel's services under Section 60.

Section 235 provides that in every trial before a Court of Session the prosecution shall be conducted by the Public Prosecutor, Government Pleader, or by some officer specially empowered by the Magistrate of the District. The effect of this enactment is to make every case tried by the Court of Session a case falling within the provisions of Section 60. The Public Prosecutor may avail himself of the assistance of counsel retained by a private individual. In so availing himself of the counsel's services, the Public Prosecutor by no means deprives himself of the management of the case. The two together may work in harmony; if they do not, the counsel may retire, or the Prosecutor may claim to keep the further conduct of the case solely to himself.

A verbal difficulty arises from the wording of Section 251. "The Prosecutor," it is there directed, is to sum up his case. And in the next section, "the officer conducting the prosecution is entitled to a reply." In neither of these sections, however, we think, is the assistance of counsel meant to be excluded. Where the assistance of counsel has once been accepted that assistance is not excluded at the important stages of the trial to which Sections 251 and 252 apply.

In the case before us, there appears to have been some misapprehension on the part of the Session Judge in regard to the proper scope of Section 235. If the Session Judge means that the Public Prosecutor could not delegate *in toto* the management of the case to the complainant's counsel, he would be correct; but if he means that the former could not even delegate the powers of conducting the prosecution to the latter to any extent, he would be wrong. The law

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allows such delegation. The Public Prosecutor may properly delegate the conduct of the case so far as to take the aid of an advocate exercising his proper function, provided he retains general management to himself.

There seems to have been another misapprehension on the part of the Session Judge caused by the Public Prosecutor. He says in the early part of his report that the Public Prosecutor said he did not instruct Mr. Leith. In the postscript he says that the Public Prosecutor informed him that in signing Mr. Leith's brief he considered that he was handing over to him the prosecution of the case. It is to be regretted that this misapprehension was not cleared up at an earlier stage, for it is in consequence of that he refused to hear the counsel. Section 59 has no decisive bearing on the matter. It was competent to the complainant to engage Mr. Leith as counsel, and for the Public Prosecutor to avail himself of his services.

We direct that Mr. Leith, or any other counsel or pleader for the complainant, be allowed to appear and examine the prosecutor's witnesses-in-chief, or re-examine them, and also to cross-examine the witnesses for the defence.

[APPELLATE CIVIL JURISDICTION.]

*Special Appeal No. 349 of 1873.*

June 9. IMA'M SA'HEB and others ..... *Appellants.*  
KA'SIM SA'HEB.....*Respondent.*

*Muhammadan Law—Suit by a legal sharer—Suit by residuaries.*

A suit by a Muhammadan widow (legal sharer) against her sons (residuaries) for her share of the property left by her deceased husband, is no bar to a suit being brought by some of the sons against the others for their shares.

THIS was a special appeal from the decision of N. Daniell, Acting Judge of the district of North Kanara, reversing the decree of the Subordinate Judge of Karwar.