

Anandrao Vs. State of Karnataka

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Court : Karnataka

Decided On : Sep-02-1992

Reported in : ILR1993KAR169

Judge : Mirdhe, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 321

Appeal No. : Crl. R.P. No. 814 of 1990

Appellant : Anandrao

Respondent : State of Karnataka

Advocate for Def. : T.J. Chouta and ;Ramachandra Rao, Advs. for R-2 to R-8

Advocate for Pet/Ap. : G.S. Sriantegowda, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Mirdhe, J.

1. This Criminal Revision Petition is filed by the petitioner who was the complainant in the trial Court under Section 397 Cr.P.C. against the order dated 7.11.1990 passed by the J.M.F.C. II Court, Hubli, in C.C.No. 2067 of 1986.

2. I have heard the learned Counsel for the petitioner and the learned Government pleader for respondent-1 and the learned Counsel for respondents-2 to 8 and 10.

3. The petitioner filed a complaint in the Suburban Police Station, Hubli, which came to be registered at P.R.No. 190/86. Respondents-2 to 10 also filed a counter complaint. The police filed a charge sheet against respondents - 2 to 10. After investigation of the complaint of the petitioner, a case was registered at C.C.No. 2067 of 1986 in the Court of the I Judicial Magistrate, Hubli, for the offences under Sections 143, 147, 148, 504, 427 read with Section 149 I.P.C. The evidence was also taken. On 7.11.1990, the Assistant Public Prosecutor who was incharge of that case filed a Memo under Section 321 Cr.P.C. stating that the Government has instructed him to withdraw the prosecution on administrative grounds as well as in the interest of public welfare or interest. The learned Magistrate by his order dated 7.11.1990 permitted the prosecution to withdraw the case and acquitted respondents-2 to 10. It is this order that is challenged by the petitioner-complainant in this case.

4. Under Section 321 Cr.P.C. the Public Prosecutor or an Assistant Public Prosecutor in charge of a case may, with the consent, of the Court, at any time before the judgment is pronounced, withdraw from the prosecution of any person sither generally or in respect of any one or more of the offences for which he is tried. In *BANSI LAL v. CHANDAN LAL AND ANR.* : 1976 CriLJ328 the Supreme Court has held as follows:-

'Permission to withdraw from the prosecution should not be granted for the mere asking but the Court must be satisfied on the materials placed before it that the grant of permission would serve the administration of justice.'

In another case reported in *RAJENDER KUMAR JAIN v. STATE THROUGH SPL. POLICE ESTABLISHMENT AND ORS.* : 1980 CriLJ1084 the Supreme Court has held as follows:-

'It shall be the duty of the Public Prosecutor to inform the Court and it shall be the duty of the Court to appraise itself of the reasons which prompt the Public Prosecutor to withdraw from the prosecution. The Court has a responsibility and a

stake in the administration of criminal justice and so has the Public Prosecutor, its 'Minister of Justice'. Both have a duty to protect the administration of criminal justice against possible abuse or misuse by the Executive by resort to the provisions of Section 321, Criminal Procedure Code.

An elected Government, sensitive and responsive to the feelings and emotions of the people, will be amply justified if for the purpose of creating an atmosphere of goodwill or for the purpose of not disturbing a calm which has descended it decides not to prosecute the offences involved or not to proceed further with prosecutions already launched, In such matters, who but the Government can and should decide, in the first instance, whether it should be baneful or beneficial to launch or continue prosecutions.

If the policy-makers themselves move in the matter in the first instance, as indeed it is proper that they should where matters of momentous public policy are involved, and if they advise the Public Prosecutor to withdraw from the prosecution, it is not for the Court to say that the initiative came from the Government and therefore the Public Prosecutor cannot be said to have exercised a free mind. Now can there be any quibbling over words. If ill-informed but well meaning bureaucrats choose to use expressions like 'the Public Prosecutor is directed' or 'the Public Prosecutor is instructed', the Court will not on that ground alone stultify the larger issue of public policy by refusing its consent on the ground that the Public Prosecutor did not act as a free agent when he sought withdrawal from the prosecution. What is at stake is not the language of the letter or the prestige of the Public Prosecutor but a wider question of policy. The Court, in such a situation is to make an effort to elicit the reasons for Withdrawal and satisfy itself, that the Public Prosecutor too was satisfied that he should withdraw from the prosecution for good and relevant reasons.'

In SUBHASH CHANDER v. THE STATE (CHANDIGARH ADMN.) AND ORS. : 1980 CriLJ324 the Supreme Court has held as follows;-

'When a case is pending in a criminal Court its procedure and progress are governed by the Criminal Procedure Code or other relevant statute. To intercept and recall an enquiry or trial in a court, save in the manner and to the extent

provided for in the law, is itself a violation of the law. Whatever needs to be done must be done in accordance with the law. The function of administering justice, under our constitutional order, belongs to those entrusted with judicial power, One of the few exceptions to the uninterrupted flow of the Court's process is Section 321, Cr.P.C. But even here it is the Public Prosecutor, and not any executive authority, who is entrusted by the Code with the power to withdraw from a prosecution, and that also with the consent of the Court. The consent of the Court under Section 321 as a condition for withdrawal is imposed as a check on the exercise of that power. Consent will be given only if public Justice in the larger sense is promoted rather than subverted by such withdrawal. That is the essence of the *nolle Presque* jurisprudence. Invested by the statute with a direction to withdraw or not to withdraw, it is for him to apply an independent mind and exercise his discretion, fn doing so, he acts as a limb of the judicative process, not as an extension of the executive. The decision to withdraw must be of the Public Prosecutor, not of other authorities, even of those where displeasure may effect his continuance in office.'

In *SHEONANDAN PASWAN v. STATE OF BIHAR AND ORS.* : 1983 CriLJ348 the Supreme Court has held as follows:-

'A bare perusal of Section 321 shows that it does not prescribe any ground nor does it put any embargo or fetter on the power of the Public Prosecutor to withdraw from prosecution a particular criminal case pending in any Court. All that it requires is that he can do so only with the consent of the Court where the case is pending. The function of the Court in this respect is a limited one and intended only to prevent the abuse. The function of the Court in according its consent to withdrawal is, however, a judicial function. It, therefore, becomes necessary for the Court before whom the application for withdrawal is filed by the public prosecutor to apply its mind so that the appellate Court may examine and be satisfied that the Court has not accorded its consent as a matter of course but has applied its mind to the grounds taken in the application for withdrawal by Public Prosecutor.'

In *K. MOHAN RAO v. STATE AND ORS.* ILR (Karnataka) 1978(2), 1928 this Court has held as follows:-

'While giving or refusing consent under Section 321 of the Criminal Procedure Code for withdrawal from prosecution, the Court exercises its judicial discretion. While discharging the said judicial function the conscience of the Court should be satisfied that giving of consent furthers the cause of justice and that permission is not sought on grounds extraneous to the interests of justice or that offences against the state go unpunished. The reasons for withdrawal must satisfy the judicial conscience of the Court and the Court should record reasons for permitting withdrawal so that the High Court may see whether the discretion is properly used.

Where, therefore, a bald order is passed by the Magistrate without furnishing any reasons and any material to show that he had applied his mind, it is held that the same is unsustainable.'

A perusal of these Rulings makes the law on this point very clear that the Court is not expected to give its consent for mere asking. The Public Prosecutor will have to apply his mind and then file an application for withdrawal of the prosecution and even after the Public Prosecutor has filed the application for the withdrawal of the prosecution the Court cannot, as a matter of course, grant its consent. The Court is required to apply its mind and satisfy its conscience that the giving of consent for the withdrawal of the prosecution is in the interest of justice. The power given to the Court to give its consent under Section 321 Cr.P.C. for withdrawal of the prosecution is as a check against the executive orders directing the Public Prosecutor to withdraw the prosecution. Even if the Public Prosecutor files an application for withdrawal of the prosecution on the instruction of the Government, the Court will be within its powers to refuse to give consent for the withdrawal of the prosecution if it is not in the interest of justice. In the application filed by the Assistant Public Prosecutor under Section 321 Cr.P.C. he has stated that the Director of Prosecutions has come to the conclusion to withdraw the prosecution. His application does not disclose as to whether he was satisfied that there were grounds for withdrawal of the prosecution though there were directions to him from his superiors to withdraw the prosecution. The order passed by the Magistrate on the application is also a very cryptic one. The Magistrate has also not applied his mind to find out whether there were any grounds to withhold the consent. Therefore, the order passed by the Magistrate allowing the application under

Section 321 Cr.P.C. which is not supported by any reasons cannot be said to be an order sustainable in law. But the question arises now whether this Criminal Revision Petition should be allowed and the matter remanded for further trial in the case. The offence is alleged to have taken place on 17.2.1985. The police have filed charge sheet against respondents - 2 to 10 on 27.12.1985 in the Court of the J.M.F.C. II Court, Hubli, for the offences punishable under Sections 143, 147, 148, 504 and 427 read with Section 149 I.P.C. The maximum punishment that is provided for the offences alleged against respondents - 2 to 10 is imprisonment for three years or with fine, or with both. I have perused the order sheet in this case. The order sheet discloses that respondents - 2 to 10 have appeared before the Court on 22.2.1986. So, the trial was pending against them from 22.2.1986. Section 465 Cr.P.C. lays down that no order of a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the order, judgment or other proceedings etc., unless in the opinion of that Court a failure of justice has in fact been occasioned thereby. The offences alleged against respondents - 2 to 10 are not heinous. They are punishable in maximum upon 3 years imprisonment or with fine, or with both. The trial against the accused was pending for a period of more than the sentence that is prescribed for the offences alleged against them. Taking into consideration these factors, I am of the opinion that no failure of justice has in fact been occasioned by the order of the Magistrate allowing the application filed by the prosecution under Section 321 Cr.P.C. Therefore, even though the order of Magistrate is not supported by reasons, the order is not liable to be reversed under Section 465 Cr.P.C. as no failure of justice has in fact been caused thereby in this case.

5. Hence, I proceed to pass the following order:- The Criminal Revisions Petition is dismissed.