

The Public Prosecutor Vs. Mandangi Varjuno and ors.

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Court : Andhra Pradesh

Decided On : Jul-11-1975

Reported in : 1976CriLJ46

Judge : Madhusudan Rao, J.

Appellant : The Public Prosecutor

Respondent : Mandangi Varjuno and ors.

Judgement :

ORDER

Madhusudan Rao, J.

1. This is a petition by the Public Prosecutor, requesting that the court may be pleased to accord permission under Section 321. Cr.P.C. for withdrawal of the case against the respondents who are the accused 1 to 3 and 18 in Sessions Case No. 17 of 1973 of the Visaka-patnam Division. After the trial before the Sessions Court, the respondents 1 to

3 who are the accused 1 to 3 In the case and another person (the fourth accused) have been convicted under Sections 148, 458. 326 and 395/397. I.P.C. and were sentenced to various terms of imprisonment. The fourth respondent i.e. A-18 was convicted under Section 411, I.P.C. and has been sentenced to suffer rigorous imprisonment for two years. The four respondents and the other convicted

accused (A-4) have preferred the Criminal Appeal No. 593 of 1973 against their convictions and sentences and the same is pending before this Court.

2. The question for consideration is whether permission can be accorded under Section 321. Cr.P.C. to the Public Prosecutor for withdrawing the case against the accused 1 to 3 and 18.

3. On an examination of the various provisions of the old Code as also the new Code, it does not appear that there is any provision for the withdrawal of a warrant case or a Sessions Case and much less an appeal. As provided under Section 248 of the Old Code and Section 257 of the new Code, the complainant may be permitted by a Magistrate to withdraw the complaint against the accused at any time before a final order is passed in a summons-case. Section 240 of the old Code and Section 224 of the new Code provide that when a charge containing more heads than one is framed against the same person, and when a conviction has been had on one or more of them the complainant, or the officer conducting the prosecution, may, with the consent of the court, withdraw the remaining charge or charges. Even when a pardon is tendered by a competent authority the acceptance of the tendered pardon does not amount to a withdrawal of the case against the person accepting the pardon. Even Section 333 of the Code which is since deleted in the new Code empowered the Advocate General in trials before the High Court to enter a nolle prosequi and not a withdrawal. Section 494. Cr.P.C. of the Old Code reads as follows:

494: Any Public Prosecutor may, with the consent of the Court in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for Which he is tried; and upon such withdrawal;

(a) If it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;

(b) If it is made after a charge has been framed or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences.

Section 321 of the new Code is as follows:

321 Withdrawal from prosecution:

The Public Prosecutor or 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 either generally, or in respect of any one or more of the offences for which he is tried; and upon such withdrawal;

(a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;

(b) if it is made after a charge has been framed, or when under this Code no charge is required he shall be acquitted in respect of such offence or offences:

Provided....

Section 321 of the new Code is substantially the same as Section 494 of the old Code, except the deletion of the provision in regard to cases tried by jury. The section provides for 'the withdrawal from the prosecution' and not 'the withdrawal of the prosecution'. Withdrawal from a prosecution means, retiring or stepping back or retracting from the prosecution in other words, withdrawal of appearance from the prosecution or refraining from conducting or proceeding with the prosecution. No doubt, when the Court consents to the Public Prosecutor withdrawing from the prosecution, the accused shall be either discharged or acquitted as provided in Clauses (a) and (b).

4. Further, it is abundantly clear from the words of the section that the withdrawal from the prosecution no doubt with the consent of the court, can be made only before the judgment is pronounced in respect of the offence for which the accused is tried. The section postulates only a stage before the pronouncement of judgment by the trial court and does not take in its ambit, cases where judgments have been pronounced by the trial courts. The section can be invoked at any stage of & case, but the last stage is 'before the judgment is pronounced' and not 'after the judgment is pronounced' by the trial court. A Division Bench of the Calcutta High Court has held in *Anania Lal Sinha v. Jahiruddin* AIR 1927 Cal 816 : 28 Cr;

LJ 833) that the Public Prosecutor has no right at the appellate stage of a case to present any petition for withdrawal under Section 494, Cr.P.C. Speaking for the Bench Ghose, J. observed:

To say that the Public Prosecutor is authorised under the terms of this section to withdraw from the prosecution after the accused had been convicted is to state something, which is not only on the face of it starting but absurd, having regard to the words of Sections 494, Criminal P.

5. The petition for the withdrawal of the case against the four respondents is therefore not maintainable and it is accordingly dismissed. The Criminal Appeal No. 593 of 1973 shall be disposed of on merits.

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