

Noor Mohammad Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Feb-26-2002

Reported in : 2002(3)MPHT296

Judge : Dipak Misra, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 321; Indian Penal Code (IPC), 1908 - Sections 451 and 506

Appeal No. : Criminal Revision No. 938/2001

Appellant : Noor Mohammad

Respondent : State of M.P.

Advocate for Def. : S.K. Gangrade, Panel Lawyer

Advocate for Pet/Ap. : Kamaruddin, Adv.

Disposition : Criminal revision dismissed

Judgement :

ORDER

Dipak Misra, J.

1. Invoking the revisional jurisdiction of this Court under Section 401 of the Code of Criminal Procedure (in short 'the Code') the petitioner has called in question the

legal validity of the order dated 17-8-2001 passed by the learned Second Additional Sessions Judge, Bhopal, in Criminal Appeal No. 324/2001 whereby he has affirmed the order dated 16-7-2001 passed by the learned Trial Magistrate, who had refused to grant permission for withdrawal of the prosecution under Section 321 of the Code.

2. The facts as have been depicted are that the petitioner on the basis of an FIR lodged on 18-1-1999 at Nishatpura Police Station was proceeded in respect of the offences punishable under Sections 451 and 506 of the Indian Penal Code (for brevity 'the IPC') which gave rise to Crime No. 26/99 and eventually was registered as R.T. No. 212/99 before the learned Judicial Magistrate First Class, Bhopal. During the pendency of the trial before the learned Magistrate the State Government communicated vide letter dated 25-7-2000 requiring the Public Prosecutor to withdraw the prosecution against the petitioner. The District Prosecution Officer, Bhopal filed an application under Section 321 of the Code seeking withdrawal of the prosecution but the said application was rejected by the learned Magistrate on 6-7-2001. An appeal was preferred against the aforesaid order but it did not meet with success. Hence, this revision.

3. Assailing the aforesaid order it is submitted by Mr. Kamaruddin, learned Counsel for the petitioner that the Courts below have fallen into gross error by not granting permission for withdrawal of the prosecution, though it was categorically stated in the application filed by the District Prosecution Officer that the said application was filed in public interest. The learned Counsel further submitted that if the entire factual matrix would have been properly appreciated by the Courts below the permission under Section 321 of the Code would have been allowed.

4. Resisting the aforesaid submission of the learned Counsel for the petitioner, Mr. S.K. Gangrade, learned Panel Lawyer for the State has submitted that the petitioner has his grievance against the impugned orders and this Court may scrutinise the matter as per law. The learned Counsel fairly submitted that the State has not assailed the orders.

5. This Court by order dated 24-9-2001 had called for the records of the Courts below. I have perused the order passed by the State Government as well as the

application filed by the Public Prosecutor. On a perusal of the order passed by the State Government it transpires that the prosecution is sought to be withdrawn in public interest. A direction was given to the concerned Public Prosecutor to file an application under Section 321 of the Code. Thereafter, the concerned Public Prosecutor filed the application indicating that the State Government has taken a decision in the public interest to withdraw the cases. It is apposite to mention here that the application filed under Section 321 of the Code is absolutely laconic and it contains the reason which has been mentioned in the Government's order and except that nothing else has been stated.

6. Mr. Qamaruddin, learned Counsel for the petitioner has submitted that once the factum of public interest has been mentioned, it is the obligation of the Court to grant permission for withdrawal of the prosecution. In this context, I may profitably refer to the decision rendered in the case of Tariq Riyaz v. State of M.P., 1999(II) MPJR 267, wherein this Court after referring to the language used in Section 321 of the Code and after referring to the decisions rendered in the cases of State of Orissa v. Chandrika Mohapatra, (1976) 4 SCC 250; Sheonandan Paswan v. State of Bihar and Ors., (1983) 1 SCC 438 and Sheo Nandan Paswan v. State of Bihar and Ors., AIR 1987 SC 877, in Paragraph 8 held that the Court while exercising its jurisdiction is not required to give consent as a matter of course. This Court observed that the Court concerned is not required to pass a detailed order when it gives consent but it has to be satisfied that the Public Prosecutor has acted in good faith and filed the application on a proper perusal of the material before him and there has been independent consideration by the Public Prosecutor and the same is in furtherance of public interest. The Court is to see that exercise of discretion by the Public Prosecutor is proper.

7. It is apposite to state here in the aforesaid case this Court referred to the decisions rendered in the cases of Bansi Lal v. Chandan Lal and Anr., AIR 1976 SC 370, R.M. Tewari v. State (NCT of Delhi) and Ors. with Govt. of NCT, Delhi v. Judge, Designated Court II (TADA) and Mohd. Mehfooz v. Chief and Anr., (1996) 2 SCC 610 and Hariram Singh Thakur v. State of M.P., 1994 Cr.LJ 745 and expressed the view that there has to be independent application of mind by the Public Prosecutor and consent cannot be granted in a routine manner. In the said

case in Paragraph 14 after referring to the grounds mentioned in the petition this Court expressed the view as under:--

'In absence of any material being putforth before the Court except stating that there was public interest because of a letter written by the authority in the Department of Law it cannot be said that the Courts below exercised their discretion in an injudicious manner. As is apparent from the communication and, the application filed by the Public Prosecutor the Court was not apprised of the basis or on what material the Public Prosecutor was satisfied that the case warranted withdrawal and accordingly sought permission of the Court. The present case is not where the prosecution has sought withdrawal on the basis that it would not be able to produce sufficient evidence to sustain the charge or that it was not properly founded. This is not a case where it is canvassed that the policy of the State Government requires withdrawal, it is to be borne in mind that an onerous duty is cast on the Court to see that the permission is not sought on the grounds which are extraneous to the interest of justice and the offenders go unpunished without justification because of withdrawal of prosecution against them. The statutory duty which has been conferred on the Public Prosecutor is a sacrosanct one and it has to be performed independently being apprised of the material on record and on a perusal of the reasonings which are sanguine, genuine and objectively sustainable. A spacious or mercurial submission in the petition without any supporting material would not meet requirement of law as that would indicate that the Public Prosecutor has not really applied his mind with keenness and objectivity and the Court in its turn would not be in a position to exercise its discretion at this juncture. The factual matrix in the present case clearly expositis that the Public Prosecutor had no material with him except the letter of the Law Department while filing the application under Section 321 of the Code and as a consequence thereof the Court was not in a position to have even a cursory glance at the material available with the Prosecutor. As has been held by the Apex Court in the case of Bansi Lal (supra) the Court must be satisfied on the material placed before it. In absence of any material before the Court the net result is that consent is to be granted for asking. In that case it becomes a mere formality which is contrary to the mandate of law. On a close scrutiny of the application filed by the Public Prosecutor and the communication made by the authorities in the

Department of Law to the Public Prosecutor it is plain as day that the Public Prosecutor did not apply his independent mind and the petition was quite spacious and nothing was brought to the notice of the Court. Nothing has been spelt out how the public interest is served in withdrawal of the criminal case against the petitioner.'

8. The present factual matrix is to be tested on the touchstone of the aforesaid pronouncement of law. As has been indicated hereinbefore the communication from the Department of Law only indicates that the prosecution is to be withdrawn in public interest. The application filed by the Public Prosecutor does not show on what basis he was satisfied. The Court was not apprised with regard to the material that formed the basis of satisfaction of the Public Prosecutor. In my considered opinion, the case of Tariq Riyaz (supra) and the law laid therein is squarely applicable to the present case.

9. In the result, I do not find any error in the orders passed by the Courts below and accordingly, the same are given the stamp of approval by this Court.

10. Consequently, the criminal revision, being devoid of substance, stands dismissed.