

The State Vs. Rajkishore Panda

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Court : Orissa

Decided On : Feb-27-1970

Reported in : 1971CriLJ186

Judge : G.K. Misra, C.J. and; S. Acharya, J.

Appellant : The State

Respondent : Rajkishore Panda

Judgement :

G.K. Misra, C.J.

1. The opposite party was being prosecuted Under Section 116(1)(a), read with Section 7 of the Prevention of Poor Adulteration Act (No. 87 of 1954), The hearing of the case was over and it was posted for judgment to 13-12-69, Just on the previous day the Prosecuting Inspector (Vigilance) filed an application for withdrawal of the case, Under Section 494, Criminal P.C. The grounds taken in that application were :

1. That on points of law, as, it appears, that there is some defect in initiation of proceedings in the above-noted case, it is desirable that I should withdraw from the prosecution.

2. That it is necessary for the ends of justice that I may be permitted to withdraw from the prosecution and necessary orders may kindly be passed as provided by

law,

This application was taken up on 13.12.69 and the learned Additional District Magistrate (Judicial) passed the following orders :

The judgment is ready, but the P. I. Vigilance has filed a memo for withdrawing the caae. The accused is present. Put up on 18.12 69 for consideration of memo of P. I, and order, accused as before.

On 18.12.69, he passed the following order:

The P. I. Vigilance files a memo for withdrawal Under Section 494, Criminal P.C. He has been declared as a Public Prosecutor.'I find no reason to withhold the consent. Therefore, oonsent for withdrawal is granted. The case is allowed to be withdrawn and the accused is acquitted, Under Section 494 (b), Criminal P. O. The bail bond of the accused is cancelled. Seized property be destroyed acoordipg to law. after appeal period.

2. This matter came to the notice of this Court otherwise. The records were accordingly called for and notice was issued at the instance Of the Court for starting a criminal revision, with a view to consider whether the aforesaid order permitting withdrawal should be set aside. In response to the notice, Mr. B. Mohanty appeared for the opposite party.

3. It would appear from the contents of the application for withdrawal, already extracted, that the Prosecuting Inspector put in a perfunctory memo, wherein he did not press that the oase should be allowed withdrawn. All that he mentioned in both the paragraphs was that he should be permitted to withdraw from the Prosecution. It is one thing to allow withdrawal of a case and it is quite a different matter to allow the oonduoting Prosecutor to withdraw from the caae. This is being pointed out to show that not only the learned Additional District Magistrate (Judicial) did not keep the law in view, but he had not carefully gone through the application in order to ascertain what relief was sought by the Prosecuting Inspector.

3A. Section 494, Criminal P.C. runs thus:

494. Effect of withdrawal from the prosecution. Any public prosecutor may, with the consent of the Court, in case tried by a jury before return of the verdict, and in other cases before 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 made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;

(b) if it 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.

It would be noticed that before withdrawal is allowed, the consent of the Court should be obtained. The consequences of withdrawal are also serious. In the circumstances referred to in Clause (a) the accused shall be discharged in respect of the offence, while under Clause (b) the accused shall be acquitted. The fact that ultimately would lead to discharge or acquittal of the accused would put the Magistrate on guard to carefully examine the reasons placed before him for withdrawal.

4. It has been consistently held that the final order to be passed by the Magistrate is a judicial order and is open to review by the High Court. The withdrawal may often be sought on improper motives or grounds. The Magistrate is therefore required to carefully scrutinise the reasons and would allow withdrawal only if he is satisfied that it is not contrary to law. The matter has been examined closely by high authorities - see : 1957 CriLJ567 (State of Bihar v. Ram NareBh Pandey) A.I.R. 1919 Pat 233 (PB) (King v. Moule Bux) and : AIR1970 Ker158) (Deputy Accountant General v. State of Kerala). All these cases lay down the principles on the basis of which withdrawal should be granted or refused.

The Kerala case lays down that the test to decide the ground on which the Court can properly grant or withhold its consent is a general test, namely that consent should be withheld if the withdrawal would tend to further the mischief the law seeks to prevent, and that it should be granted if it is likely to have the opposite effect. The court gives its consent in exercise of judicial discretion and before

granting consent it must be satisfied that the grounds stated for withdrawal, if true, would make the withdrawal a furtherance of, rather than a hindrance to, the object of the law..

5. In the present case, the Prosecuting Inspector simply filed a memo without saying how there were defects in the initiation of the proceeding. He should have clearly stated the same and the learned Additional District Magistrate (judicial) should have heard arguments on the point, and if thereafter he was satisfied that there was an initial defect whereby the Prosecution might ultimately fail, then withdrawal might have been permitted.

6. We do not have before us all the facts to indicate the initial defect in the initiation of the prosecution. The best course would therefore be to set aside the order of the Additional District Magistrate (judicial) dated 16-12-69 allowing withdrawal and send the case back to him for consideration of the memo filed by the Prosecuting Inspector. The Prosecuting Inspector would be called upon to file a regular application and given an opportunity to substantiate the point that there was an initial defect in the initiation of the proceeding. Both sides will be heard before final order is passed. If the Magistrate is satisfied that the grounds in support of the withdrawal are reasonable, then withdrawal may be permitted; otherwise he should proceed to judgment.

7. In the result, the impugned order of the Additional District Magistrate (judicial) dated 13-12-69 is set aside and the criminal revision is allowed. The records be sent back at once to be put up before the Additional District Magistrate. Mr. R. Mohanty has been intimated to appear before him on 9.3-70.

Acharya, J.

8. I agree.