

Niranjan Pradhan and ors. Vs. State

Niranjan Pradhan and ors. Vs. State

SooperKanoon Citation : sooperkanoon.com/533205

Court : Orissa

Decided On : Aug-10-1990

Reported in : 71(1991)CLT419; 1991CriLJ224

Judge : D.P. Mohapatra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 209, 321, 482 and 494; ;Indian Penal Code (IPC) - Sections 147, 148, 149, 323, 326, 436 and 458

Appeal No. : Criminal Misc. Case No. 681 of 1990

Appellant : Niranjan Pradhan and ors.

Respondent : State

Advocate for Def. : Addl. Govt. Adv.

Advocate for Pet/Ap. : M.M. Sahu, Adv.

Disposition : Application allowed

Judgement :

ORDER

D.P. Mohapatra, J.

1. The accused persons in G.R. Case No. 4 of 1985 now pending in the court of the Judicial Magistrate, Narsinghpur have filed this application under Section 482,

Criminal Procedure Code (Cr. P.C.) assailing the order dated 31 -3-90 refusing to consent to the request of the Asst. Public Prosecutor to withdraw from the prosecution in the case.

2. The aforementioned case was started on the report lodged by one Bidulata Das at the Narsinghpur Police Station on 7-1-85 alleging, inter alia, that at about 1-30 a.m. on the same day about twenty to thirty persons being armed with lathis and tangia (axe) etc. broke open the door of the shop of the informant; when her mother in law enquired of the persons why they were behaving in that manner, one Kirtan Sahu assaulted her by lathi and one Pankaj Behera threw a piece of cloth soaked with kerosene setting fire to the thatch of the house. It was further alleged by the informant that about 200 to 300 persons had assembled outside the house at the time of the incident. Immediately after the incident the informant and her husband came to the Outpost and reported the matter to the police.

3. On receiving the report the police registered P.S. Case No. 2 of 1985 under Sections 147, 148, 149, 458, 323 and 436 I.P.C., the accused persons were apprehended on different dates and filed petitions for being released on bail. All the petitions were rejected by the learned Magistrate on 15-1-85. Subsequently by order of this Court all the accused persons in custody were released on bail of Rs. 3000/- each with two sureties each for the like amount on 4-2-85.

4. On completion of the investigation charge sheet under Sections 147, 148, 149, 458, 436 and 326, I.P.C. against accused Niranjana Pradhan (Petitioner No. 1) and 13 others was submitted on 31-7-85. The learned Magistrate directed issue of summonses to the accused persons who were on bail and non-bailable warrant against the accused persons who were shown as absconders fixing 30-8-85 for appearance.

5. Thereafter the learned Asst. Public Prosecutor who was in charge of the case filed an application under Section 321, Cr. P. C. on 10-8-89 for withdrawal from the prosecution against the accused persons which was rejected by the learned Magistrate by order dated 11-9-89. As the discussions in the order reveal the learned Magistrate was not inclined to grant the prayer for withdrawal of the case for two reasons, viz. that the offences alleged against the accused persons

excepting the offence under Section 323, I.P.C. are not compoundable in nature and the petition filed by the Asst. Public Prosecutor did not disclose any specific reason for withdrawal of the case and did not indicate how the ends of justice would be served by withdrawal of the case.

Again the Asst. Public Prosecutor filed another petition under Section 321, Cr. P.C. for withdrawal of the case on 4-1-90 which was rejected by the learned Magistrate by the impugned order passed on 31-3-90. From the discussions in the said order, it appears that the State Government had advised the Public Prosecutor to withdraw the case since the two rival groups of the village had entered into a compromise and on the basis of the said compromise peace and social harmony has been restored in the village and in order to, sustain fellow feeling amongst the villagers and to avoid feeling of bitterness and antagonism in the village, the case should be withdrawn. Further it was stated in the application that in view of the compromise, the witnesses who are residents of the village are not likely to support the prosecution case during the trial and the prosecution is not likely to succeed in establishing the case against the accused persons. The learned Magistrate has observed in paragraph 3 of the order:

'No doubt, the grounds as stated by the learned A.P.P. are reasonable one for withdrawal of the cases. The opinion expressed by him after examining the prospective of the cases in view of the changing circumstances is not biased.....'

Despite this observation the learned Magistrate felt difficulty in allowing the application for withdrawal of the case since the offence under Section 436, I.P.C. was exclusively triable by the court of session and the court of session will try the case after commitment. The learned Magistrate felt that since he was not invested with any power under the Code to discharge the accused persons or acquit them of the charge triable by the court of session while granting consent to withdraw the cases, he had no jurisdiction to grant the prayer for withdrawal of the prosecution in the case. Accordingly the application was rejected as not maintainable.

6. In course of hearing of the case, the learned Addl. Govt. Advocate stated before me that in the meantime the State Government considering the facts and

circumstances of the case, has decided to advise the public prosecutor to withdraw from the prosecution in the case and necessary instruction in this regard has been communicated to him.

7. From the discussions in the foregoing paragraphs, the question that arises for decision is whether the learned Magistrate was right in rejecting the application filed under Section 321, Cr. P.C. on the ground that he had no jurisdiction to try the case involving the offence under Section 436, I.P.C. The question has been answered by the Apex Court in the case of Rajendra Kumar Jain v. State, reported in AIR 1980 SC 1510 : (1980 Cri LJ 1084) in which the Court considered the specific question whether the committing magistrate is competent to give consent and! considering the scope of the provisions in Section 209 and 321, Cr. P.C. made the following observations in paragraph 7 of the judgment:

'.....The submission was that the Court contemplated by Section 494 was the court capable of pronouncing a judgment, ending the proceeding by an order of acquittal or discharge and, since to Court of the Committing Magistrate under the new Code was not invested with the power of acquitting or discharging the accused it was not the court which could grant its consent to withdraw from the prosecution. In the first place there is no warrant for thinking that only the court competent to discharge or acquit the accused under some other provisions of the Code can exercise the power under Section 321, Criminal Procedure Code. The power conferred by Section 321 is itself a special power conferred on the court before whom a prosecution is pending and the exercise of the power is not made dependent upon the power of the court to acquit or discharge the accused under some other provision of the Code. The power to discharge or acquit the accused under Section 321 is a special power founded on Section 321 itself, to be exercised by the court independently of its power of enquiry into the offence or to try the accused..... In the second place it may not be accurate to say that the Committing Magistrate has no judicial function to perform under the 1973 Code of Criminal Procedure. Section 209 of the Criminal Procedure Code, 1973 obliges the Magistrate to commit the case to the Court of Session when it appears to the Magistrate that the offence is triable exclusively by the Court of Session. Therefore, the Magistrate has to be satisfied that an offence is prima facie

disclosed and the offence so disclosed is triable exclusively by the Court of Session. If no offence is disclosed the Magistrate may refuse to take cognizance of the case or if the offence disclosed is one not triable exclusively by the Court of Session he may proceed to deal with it under the other provisions of the Code. To that extent the Court of the Committing Magistrate does discharge a judicial function. We, therefore, overrule the first submission of Shri Ram Panjawani. We do not agree with the view taken by the High Court of Andhra Pradesh in *A. Venkataramana v. Sanjeeva Ragudu*, 1976 Andhra L.T. 317 that the Court of the Committing Magistrate is not competent to give consent to the Public Prosecutor to withdraw from the prosecution.'

The Supreme Court placed reliance on an earlier decision of the Court in the case of *the State of Bihar v. Ram Naresh Pandey* reported in AIR 1957 SC 389 : (1957 Cri LJ 567).

8. From the principles laid down in the aforementioned case, it is clear that the learned Magistrate was in error in rejecting the application filed under Section 321, Cr. P.C. on the ground that he was not competent to try the case. I may reiterate at the cost of repetition that the learned Magistrate was satisfied that on the facts and circumstances stated in the application, the prayer of the Asst. Public Prosecutor for withdrawal from prosecution, was justified and proper. It is also a well accepted principle that in considering the matter regarding consent for withdrawal from prosecution under Section 321, Cr. P.C. the ultimate guiding consideration in this matter is the interest of public justice in the broader connotation transcending and overflowing the legal justice of the particular litigation See AIR 1977 SC 903 : (1977 Cri LJ 773) : *State of Orissa v. Chandrika Mohapatra* and AIR 1977 SC 2265 : (1977 Cri LJ 1935) *Balwant Singh v. State of Bihar*.

9. Testing the present case on the touchstone of the above principle and the decisions of the Apex Court, I am satisfied that this is a fit case where the impugned order should be set aside and the learned Magistrate should be directed to consider the matter and pass appropriate order in accordance with law.

10. Accordingly, the application is allowed, the order passed by the learned Magistrate on 31-3-90 is set aside and he is directed to pass appropriate order under Section 321, Cr. P.C. in the light of the discussions/observations made in this judgment. Since the petitioners are in custody, it is appropriate that the matter should be disposed of expeditious-ly; the learned Magistrate will therefore dispose of the matter within two weeks from the date of receipt of this order.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com