

Ram Chander Vs. State of Haryana and anr.

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Court : Punjab and Haryana

Decided On : Jan-08-2003

Reported in : 2003CriLJ2461

Judge : Viney Mittal, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 321

Appeal No. : Criminal Revn. No. 233 of 1991

Appellant : Ram Chander

Respondent : State of Haryana and anr.

Advocate for Def. : GPS Nagra, Asstt. Advocate General (for No. 1),; Baldev Singh, Sr. Counsel,;

Advocate for Pet/Ap. : H.S. Gill, Sr. Counsel and; Harichand, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Viney Mittal, J.

1. The present criminal revision has been filed under Section 401, Cr. P.C. by the petitioner challenging the order dated January 12, 1991 passed by the learned

Sessions Judge, Hissar.

2. As per the prosecution, Shri Ram Chander son of Khiali Ram who was working as an Executive Engineer with the State of Haryana in the department of Irrigation was proceeded against under the provisions of Prevention of Corruption Act, 1988. In fact, an FIR No. 6 dated November 14, 1988 under Section 13(1)(e) of the Prevention of Corruption Act, 1988 was registered against him. An investigation was conducted. Even an enquiry was made by Vigilance Bureau, Haryana and challan was presented against him for possessing assets disproportionate to his known sources of his income. During the course of trial before the learned Special Judge, Hissar, the Public Prosecutor moved an application under Section 321, Cr. P.C. seeking the permission for withdrawal from prosecution. The aforesaid application was allowed by the learned Special Judge, Hissar vide order dated January 12, 1991. In the aforesaid order, the learned Special Judge while reproducing the application filed by the Public Prosecutor in extenso has also found it is a fact that the aforesaid application was moved by the Public Prosecutor in good faith and bona fide and, therefore, the learned Special Judge found that the prayer of the Public Prosecutor for withdrawal from the prosecution deserved to be accepted.

3. The present petitioner Ram Chander is retired Deputy Superintendent of Police. He has challenged the aforesaid order dated January 12, 1991 passed by the learned Special Judge, Hissar by way of the present revision petition. The stand taken by the present petitioner Ram Chander, Deputy Superintendent of Police (retired) is that he was the Investigating Officer against the respondent Ram Chander son of Khiali Ram. In these circumstances, it is maintained by the present petitioner that the evidence against the aforesaid accused Ram Chander son of Khiali Ram was sufficient and, therefore, there was no justification for the Special Judge to permit the Public Prosecutor to withdraw from the prosecution.

4. I have heard Shri H.S. Gill, the learned Senior Counsel appearing for the petitioner, Shri GPS Nagra, the learned Assistant Advocate General, Haryana appearing for respondent No. 1 and Shri Baldev Singh, the learned Senior Counsel for respondent No. 2 and with their assistance have also gone through

the record.

5. In my considered view, there is no merit in the present revision petition.

6. It is not in dispute that under the provisions of Section 321, Cr. P.C. the Public Prosecutor has the power, with the consent of the Court at any time before the judgment is pronounced, to 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. It is settled law that when at any stage any such application is moved by Public Prosecutor for withdrawal from the prosecution then the Court has to ascertain as to whether the aforesaid application has been moved by the Public Prosecutor in a bona fide manner or not. Once the Court comes to the conclusion that the application has been moved by the Public Prosecutor in a bona fide manner, then it is the discretion of the trial Court to permit the aforesaid withdrawal.

7. I have gone through the order dated January 12, 1991 passed by the learned Special Judge, Hissar. In my view, the learned Special Judge has come to the categorical finding of fact that the application for withdrawal from prosecution moved by the Public Prosecutor was bona fide. After having come to the aforesaid conclusion, the learned Special Judge was well within his rights to accord the sanction to the Public Prosecutor for such withdrawal.

8. There is another aspect of the matter. Shri Ram Chander was the Investigating Officer. His role ended after the Investigation was complete and the challan was presented to the Court. He had no personal interest in the matter. The very fact that the aforesaid Investigating Officer has chosen to file the present revision petition and continue his tirade against the aforesaid Ram Chander shows that he had some bias against the aforesaid Ram Chander son of Khiali Ram.

9. Looking from any angle, the present revision petition is without any merit and the same is dismissed.