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Court : Delhi

Decided On : Mar-30-1973

Reported in : 9(1973)DLT216

Judge : Pritam Singh Safeer, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 494

Appeal No. : Criminal Revision Appeal No. 291 of 1972

Appellant : Pindi Dass

Respondent : State and ors.

Advocate for Def. : Mr. K.N. Chitkara

Advocate for Pet/Ap. : J.N. Raizada,; Charanjit Talwar and; K.N. Chitkara, Adv

Judgement :

P.S. Safeer, J.

(1) This revision petition is in consequence of the jurisdiction exercised by the Addl Sessions Judge, Delhi under section 438 of the Criminal Procedure Code, hereafter called 'the Code'. After receiving the recommendation contained in the order dated 4th of August 1972 the Registrar issued notice through counsel to the respondents other than Mohd. Ismail who had appeared in person before him On

the 13th of September, 1972 Shri Jagdish Narain appeared for the petitioner and Shri K.N. Chitkara appeared for respondents No. 1 to 13. Notice was directed to be issued to respondents No. 14 to 23. On the 23rd of October, 1972 Mr. Sunil Kumar Raizada appeared for the counsel for the petitioner and Mr M.L. Srivastva appeared for Mr. K.N. Chitkara counsel for respondents No. 1 to 13 and all other respondents excepting respondent No. 16 were present in person. Fresh notice was issued to respondent No. 16. The order dated the 20th of December, 1972 made by the Registrar was to the effect that in spite of having been served personally respondent No. 16 remained absent. Finding that the service was complete he directed that the matter be listed before the Court. I have heard the counsel appearing for the parties. The circumstances out of which this petition arises may be noticed. Munshi and others, 23 persons accused of offences allegedly punishable under section 147/148/461/470 read with section 34 of the Indian Penal Code were charged on the 2nd of February, 1970 to stand their trial. In the course of the trial an application was filed by the public Prosecutor on the 11th of January, 1971. It deserves to be re-produced in entirety :-

'APPLICATION for the withdrawal of this case.' Sir, 1. Most respectfully I beg to submit that the above noted case is pending in this Hon'ble Court. 2. That the Hon'ble Lt. Governor of Delhi State is pleased to withdraw the above mentioned case as per DM. letter No. F. 22/23/70 G.A (Jud1)/217 of dated 4th January, 1971. It is therefore prayed that the necessary permission may kindly be granted.'

On receiving the application the Court passed the order on the 21st of January, 1971 which affirms that the permission given to withdraw the case was not based on any reasons recorded for giving the same. It is stated in that order that an application had been made stating that the Delhi Administration had withdrawn the case. The word 'withdraw' written in English in the order was followed by the words in Hindi 'Kar Lia Hai'. The order then proceeded to state that the permission to withdraw the case was being given. The accused were discharged. (2) The trial Court was dealing with an application which did not mention any provision of law, but had been preferred within the purview of section 494 of the Code, which is :-

'S. 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. '

The provision does not postulate that the Public Prosecutor will arbitrarily seek the consent of the Court to withdraw the case. He has to make an application which must contain reasons which the Court may take into consideration for giving or withholding the consent.

(3) The penal laws are enacted for achieving social objectives. A person may be punished when he is found to have committed an offence. The punishment awarded to him, will be the deterrent to others and will curb those elements which may otherwise be contemplating to indulge in commission of offences.

(4) The statute places a peculiar limitation on the power of withdrawal and that limitation is that the withdrawal within section 494 can only be with the consent of the Court. The provision casts an obligation on the public prosecutor to furnish grounds to the Court which may be taken into consideration and the Court is to exercise its judicial mind and disclose in the order passed under the said provision the reasons for granting the consent in the circumstances of the particular case. My attention has been invited to *M.N. Sankaranarayanan Nair v P.V. Balakrishnan and others*. While dealing with the scope of section 494 of the Code the Supreme Court noticed the decisions by various High Courts and then observed in paragraph 8 of its judgment:-

'It appears to us that the wide and general powers which are conferred under section 494 on the public Prosecutor to withdraw from the prosecution though they are subject to the permission of the Court have to be exercised by him in relation to the facts and circumstances of that case in furtherance of, rather than as a hindrance to the object of the law and justified on the material in the case which

substantiate the grounds alleged, not necessarily from those gathered by the judicial method but on other materials which may not be strictly on legal or admissible evidence. The Court also while considering the request to grant permission under the said Section should not do so as a necessary formality, the grant of it for the mere asking. It may do so only if it is satisfied on the materials placed before it that the grant of it subserves the administration of justice and that permission was not being sought covertly with an ulterior purpose unconnected with the vindication of the law which the executive organs are in duty bound to further and maintain.'

In the cases which were referred to by the Supreme Court applications had been filed under section 494 of the Code containing the grounds on which the consent of the Court was sought to withdraw the cases. In the instant case, the application does not contain any ground and is in the nature of information being given to the Court that the Lieutenant Governor of Delhi State had withdrawn the case. The decision to permit the withdrawal of the case was to be made by the Court under section 494 of the Code. The Lieutenant Governor was not the deciding authority. It has been submitted on behalf of the State that an opportunity should be given to the learned counsel to peruse the letter mentioned in the application. The letter mentioned in the application was never filed along with it. Even if the letter had been filed along with the application as envisaged by section 494 of the Code, the application by itself was to enunciate the grounds for which the Court was to give consent. The order passed on the 21st of January, 1971 while acting under section 494 of the Code suffers from the complete disregard shown to the requirements of the provision. Arbitrariness is the inherent infirmity in it.

(5) Accepting the recommendation the said order is hereby set aside. The parties will appear before the Court below on the 20th of April, 1973. The State will be at liberty to move an appropriate application which may meet the requirements of section 494 of the Code.

(6) With these observations, the petition is disposed of.