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Court : Delhi

Decided On : Apr-11-1985

Reported in : 1985(9)DRJ99

Judge : J.D. Jain, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 321

Appeal No. : Criminal Revision Appeal No. 140 of 1984

Appellant : Om Parkash and ors.

Respondent : State

Advocate for Pet/Ap. : S.N. Sapra,; D.R. Sethi and; C.L. Prem, Advs

Judgement :

J.D. Jain, J.

(1) This revision petition is directed against order dated 7th June 1984 of an Additional Sessions Judge declining permission to the Public Prosecutor to withdraw from the prosecution of the petitioners.

(2) The facts giving rise to the present petition in brief are that S/Shri Surinder Singh, Raghbir Singh, Balbir Singh and Mohinder Singh, who are real brothers, are running a guest house called 'Dashmesh Guest House' at Chowk Sang

Tarashan, Delhi. Hari Parshad-petitioner No. 4, his sons Om Parkash-Petitioner No. 1 and Satish Kumar-petitioner No. 3 have a shop near by the said Guest House where they sell milk, curd and fruit juices etc. On 19th June 1980, Surinder Singh lodged a report (FIR No. 877/80 under Section 307/324/34 IPC) against all the four petitioners with Paharganj police to the effect that seven or eight days prior to that date Hari Parshad etc-. were having a Jagran (i.e. recitation of devotional songs etc. night to propitiate the Goddess) at Chowk Sang Tarasban and they were singing Bhajans (religious songs), However, the mike of the loud speaker was fitted in the direction of their Guest House and the music was being played at a very loud pitch. So, a brother of Surinder Singh nick named Pappu went to the shop of Hari Parshad Verma at about 10 p.m. and told them that their customers were feeling disturbed on account of loud pitch of the music. But Hari Parshad and his sons felt annoyed and were out to quarrel with him. However, some other people intervened and the ugly situation was averted. On 19th June 1980 again Hari Parshad and his sons held another Jagran and played the music at loud pitch which was disseminated through a loud speaker. So, at about 9.30 PM., Surinder Singh and his brother Raghbir Singh approached Hari Parshad Verma and asked them not to play the music at a loud pitch but Hari Parshad exhorted his son Satish, "Maro Salon Ko Roz ka Jhagra Nipta Do". Thereupon Satish threw powdered chillies in, the eyes of Surinder Singh and attacked him with a knife. He tried to ward off the attack , bringing forward his left forearm with the result that the knife landed, on his forearm. His brother Raghbir Singh stepped forward to help him but Hari Parshad and his son Om caught hold of him and Satish stabbed him With the knife on his abdomen. On hearing the shouts, Balbir Singh and Mohinder Singh, brothers of Surinder Singh were also attracted to the place of occurrence. Thereupon, Sohan Lal @ Chuggi-petitioner No. 2, who was also present there, dealt a knife blow on his left thigh. Both the parties grappled with each other but the crowd which gathered there in the meantime intervened and separated the parties, Balbir Singh, Mohinder Singh and Raghbir Singh were removed to the hospital for medical examination etc. Since the injury to Mohinder Singh was characterised as dangerous, a case under Section 307/34 Indian Penal Code was registered against the petitioners.

(3) On the same date, another report was lodged by Om Parkash- petitioner No. 1 being Fir No. 880/80 at about 12.30 midnight stating- that Balbir Singh @ Beera Along with two other Sikh youth came to his shop at about 9/10 P.M. and they struck a lathi blow on his hand and head. They also hurled abuses. Thereafter Pappu also came to his shop and they over threw the counter of his shop and broke glass tumblers etc. A case under Section 452/427/34 Indian Penal Code was registered on its basis.

(4) On completion of investigation two separate challans were filed by the police, one against the present petitioners and the other against Surinder Singh, Balbir Singh etc. The case against the petitioners being triable by the Court of Session was committed to the court of an Additional Sessions Judge while trial of the other case proceeded in the court of a Metropolitan Magistrate. During the pendency of the trial the Additional Public Prosecutor made an application under Section 321 Code of Criminal Procedure in the court of the Metropolitan Magistrate for permission to withdraw from the prosecution of Balbir Singh, Surinder Singh etc. stating that it would be conducive to public interest and pacify the surcharged emotions of the parties. Moreover, there was no independent witness to support the prosecution version. The said application was allowed by the learned Magistrate. Subsequently, a similar application was made by the Additional Public Prosecutor in the court of the Additional Sessions Judge for permission of withdrawal from the prosecution of the petitioners. It was stated that further proceedings in the case would further embitter the strained emotions of the parties and it will be prejudicial to the larger interest of administration of justice: It was pointed out that the criminal case pending in the court of the Metropolitan Magistrate had already been withdrawn and there was no independent evidence. By another application the Public Prosecutor filed a copy of Fir No. 880/80 to appraise the court of the nature of the case which had been withdrawn. However, the learned Additional Sessions Judge, after hearing the parties, declined 'permission' to the Public Prosecutor to withdraw from the prosecution vide impugned order.

(5) The learned Additional Sessions Judge has rejected the prayer of the Public Prosecutor for withdrawal of the prosecution primarily on the ground that the

allegations against the accused being grave, the withdrawal of the case at that stage was not likely to advance the interest of justice. He pointed out that it could not be said as urged by counsel for the accused that a conviction could not be recorded on the testimony of the injured persons alone because it all depended on their credibility. Hence, he felt that absence of any independent witness was by itself no ground to permit withdrawal of the case. He also noticed that the mere fact that the cross-case had been permitted to be withdrawn was not sufficient to warrant withdrawal of the prosecution in the instant case too. He pointed out that the cross-case was quite minor if not innocuous in nature and it was not known what reasons prevailed upon the learned Magistrate to accord permission to withdraw the said case.

(6) The learned counsel for the petitioners has canvassed vigorously that the whole approach of the learned Additional Sessions Judge is contrary to the letter and spirit of the provisions contained in Section 321 Cr.P.C. as enunciated by the Supreme Court in a long catena of decisions. He has urged that under the said provision withdrawal from the prosecution is an executive function of the Public Prosecutor and the discretion to withdraw from the prosecution is his and none else. So a Public Prosecutor can withdraw from the prosecution not merely on the ground of paucity of evidence but on other relevant grounds as well in order to further the broad interests of public justice, public order and peace. Further, according to him, the court in granting its consent to the withdrawal merely performs a supervisory function and in discharging such function the court is not to re-appraise the grounds which led the Public Prosecutor to request withdrawal from the prosecution. All that it has to consider is whether the Public Prosecutor has applied his mind as a free agent uninfluenced by irrelevant or extraneous considerations.

(7) On a consideration of the whole matter, I find considerable merit in this contention. In the State of Bihar v. Ram Naresh Pandey and another, : 1957 CriLJ567 , which is a leading authority on the subject, the Supreme Court while dealing with Section 494 of the old Code of Criminal Procedure observed thus:

'It follows that in granting the consent the Court must exercise a judicial discretion. But it does not follow that the discretion is to be exercised only with reference to material gathered by the judicial method. Otherwise the apparently wide language of Section 494, Criminal P.C. would become considerable narrowed down in its application..... The judicial functions, therefore, implicit in the exercise of the judicial discretion for granting the consent would normally mean that the court has to satisfy itself that the executive function of the Public Prosecutor has not been improperly exercised, or that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes. In this context it is right to remember that the Public Prosecutor though an executive officer is, in a larger sense, also an officer of the court and that he is bound to assist the Court with his fairly- considered view and the Court is entitled to have the benefit of the fair exercise of his function.'

(8) These observations have been reiterated and cited with approval in various subsequent judgments of the Supreme Court. (See M.N. Sankara narayanan Mair v. P.V. Balakrishnan and others, : 1972 CriLJ301 , BansiLal v. ChandanLal and another, : 1976 CriLJ328 , State of Orissa V..Chandrika Mahapatra and others etc., : 1977 CriLJ773 , Balwant Singh v. State of Bihar, : 1977 CriLJ1935 , Subhash Chander v. The State (Chandigarh Admn.) and others, : 1980 CriLJ324 and Rajender Kumar Jain v. State, : 1980 CriLJ1084 .) In the last mentioned authority, after reviewing the entire case law on the subject the Supreme Court enunciated eight propositions as emerging from the decided cases. Out of these, the following four would be germane to the decision of the case on hand :

'1.....2. The withdrawal from the prosecution is an executive function of the Public Prosecutor. 3. The discretion to withdraw from the prosecution is that of the Public Prosecutor and none else, and so, he cannot surrender that discretion to someone else. 5. The Public Prosecutor may withdraw from the prosecution not merely on the ground of paucity of evidence but on other relevant grounds as well in order to further the broad ends of public justice, public order and peace. The broad ends of public justice will certainly include appropriate social, economic and, we add, political purposes sans Tammany Hall enterprises. 8. The Court's duty is not to reappreciate the grounds which led the Public Prosecutor to request

withdrawal from the prosecution but to consider whether the Public Prosecutor applied his mind as a free agent, uninfluenced by irrelevant and extraneous consideration. The Court has a special duty in this regard as it is the ultimate repository of legislative confluence in granting or withholding its consent to withdrawal from the prosecution.'

(9) The Supreme Court, however, added a note of caution by way of elaborating proposition No. 5 that the court has a responsibility and a stake in the administration of criminal justice and so has the Public Prosecutor, its 'Minister of Justice'. Both have a duty to protect the administration of criminal justice against possible abuse or misuse by the Executive by resort to the provisions of Section 321 Cr. P.C.

(10) It is thus abundantly clear that paucity of evidence or lack of prospect of a successful prosecution in the light of evidence is not the only ground on which the prosecution may be withdrawn. The ultimate guiding consideration must necessarily be the interest of administration of justice and that is the touch-stone on which the question must be determined. So, the Court has to consider whether the broader cause of public justice will be advanced or retarded by the withdrawal or continuance of the prosecution. Applying the guidelines adverted to above to the case on hand and baring in mind that the function of the court was limited one, all that it had to see was whether the decision of the Public Prosecutor to withdraw from the case on the grounds given by him in his application for withdrawal could be said to be actuated by improper or oblique motive or whether he bonafide thought that it would be in the interest of broader Public justice to withdraw from the prosecution. One fact which stares straight in one's face is that the cross case filed against the opposite party viz. Surinder Singh etc. was permitted to be withdrawn. May be that the degree of culpability in the said case was much less than that in the instant case but there can be no room for doubt that withdrawal of the said case has placed the complainant party in the instant case in an advantageous position. While they must be feeling emboldened on account of the withdrawal of the prosecution against them the petitioners may be feeling sore over and even let down by this development. Thus continuance of prosecution in this case may veritably cause heart-burning and acute bitterness in their mind. On

the other hand if the withdrawal is permitted there is a likelihood of a degree of peace descending on the parties. Certainly there is nothing on the record to suggest that the prayer for withdrawal is likely to subvert criminal prosecution and interest of public justice. One more fact which saliently projects itself is that the prosecution witnesses are partisan in the sense that they are injured persons themselves and there is no independent witness although it is common ground that a large number of people had collected there and had witnessed the occurrence. Precisely the same position prevailed in the cross case against the complainant party in the instant case. So even if it may be legally permissible and indeed their evidence may be eventually found to be completely acceptable, the Public Prosecutor can justifiably think that it may not be in the broader interest of public justice to stake the conviction of the petitioners on the evidence of partisan witnesses alone. Reference in this context may be made to *Tejinder Singh v. Bhavi Chand Jindal and others*, Cr. R. No. 205/81, decided by me on 21st August 1981, in which the prosecution witnesses were aggrieved income-tax officials alone and I expressed the view that 'the hesitancy on the part of the prosecution in proceeding with the trial seems to stem from a feeling that it may not be safe or advisable to pin implicit faith in the uncorroborated testimony of income-tax officials alone.' So, by no stretch of reasoning it can be said that the prayer of the Public Prosecutor for withdrawal from the prosecution would be tantamount to sacrificing the public interest of administering criminal justice in this case. A correlated consideration in this respect would be that the venue of the incident admittedly was the place where Jagran was being held by the petitioners and the genesis of the altercation on complaints own showing, was the protest lodged by the complainant party which may have hurt religious susceptibilities of the petitioners and they may have taken the so-called protest as undue interference with their religious function. So, the withdrawal of prosecution may pacify their surcharged emotions and lead to greater harmony and cordial relations between the parties. Anyhow, having an overall view of the whole episode it cannot be said by any stretch of reasoning that the Public Prosecutor while making prayer for withdrawal from the prosecution did not have the broader interest of public justice in mind or that he was actuated by any improper or oblique motive unconnected with the vindication of the law. Thus, the learned Additional Sessions Judge was

hardly justified in crippling/usurping the power of the Public Prosecutor by embarking upon a re-appraisal of the possible culmination of the prosecution in conviction of the petitioners.

(11) To sum up, therefore, I hold that the learned Additional Sessions Judge slipped into a grave error in declining permission to the Public Prosecutor to withdraw from the prosecution. Hence, this appeal is allowed and the impugned order is set aside. As a necessary consequence, the prayer of the Public Prosecutor to withdraw from the prosecution is allowed and the petitioners are acquitted of the charges framed against them.

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