T.P. Nandakumar Vs. State Represented by the Deputy and ors.

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Court : Kerala

Decided On : May-21-2008

Reported in : 2008CriLJ4040; 2008(2)KLT913

Judge : V. Ramkumar, J.

Acts : Evidence Act - Sections 27; Delhi Special Police Establishment Act, 1946; Terrorist and Disruptive Activities Prevention Act; Code of Criminal Procedure - Sections 173, 239, 321, 397 and 401; Indian Penal Code (IPC) - Sections 34, 109, 120, 120B, 201, 466, 469 and 471

Appeal No. : Crl. Rev. Pet. No. 1048 of 2008

Appellant : T.P. Nandakumar

Respondent : State Represented by the Deputy and ors.

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : K. Ramakumar (Sr.), Adv.

Judgement :

ORDER

V. Ramkumar, J.

1. In this Revision filed under Sections 397 read with Section 401 Cr.P.C. the petitioner who claims to be the Chief Editor of a periodical by name 'Crime Fortnightly' challenges the order dated 11-3-2008 passed by the Chief Judicial Magistrate, Thiruvananthapuram, giving consent to the Special Public Prosecutor in-charge of C.C. 193 of 2006 to withdraw from the prosecution all the 7 accused persons in the above case, and consequently discharging the said accused persons of all the offences.

THE PROSECUTION CASE

2. The Deputy Police Superintendent, CBCID, SIG - I, Muttada, Thiruvananthapuram filed before the Chief Judicial Magistrate, Thiruvananthapuram a final report under Section 173 Cr.P.C. against 7 persons arrayed as the accused in the case. A synoptic resume of the prosecution case is as follows:

During the general elections to the Kerala Legislative Assembly in the year 2001, the first accused (Smt. Shobhana George) while contesting for the election from the Chengannur Assembly Constituency, spread a propaganda that if she succeeded in the election she would definitely be a Minister. Eventhough the first accused Shobhana George had won the election, she could not become a Minister. While so, a news came to the effect that charge witness No. 108 (Sri. K.V. Thomas) who had become a Minister from the Congress-I group was shifting his allegiance towards the congress 'A' Group. Thereupon, A2 (Chandramohan) a journalist by occupation, A3 (Jayachandran) also a journalist and A4 (Anil P. Sreerangam), P.A. to the first accused Shobhana George, with a view to see that the wishes of the first accused to somehow or other get into the

existing or re-constituted Ministry, are fulfilled, conceived plot that by leveling grave, atrocious and false allegations against Sri. K.V. Thomas he would be constrained to resign from the Ministry. A2 to A4 then advised the first accused to create such a situation that would compel Sri. K.V. Thomas to resign from the Ministry or to see that the entire ministry falls down. Accordingly, A1 to A4 together with A5 (T.T. Praveen, a student hailing from Neyaattinkara and a close associate of A4) A6 (V.O. Anilkumar,Chief News Reporter, Soorya T.V.) and A7 (Sukumaran, Chief News Editor, Soorya T.V.) hatched a criminal conspiracy, at about 1.30 p.m. on 23- 6-2002 in the house of A1 at Akkulam in Thuruvickal Village and in pursuance of the said conspiracy at about 5.30 p.m. on the same day in the D.T.P. room of Vinfarge Press belonging to charge witness No. 96 (Jasmine) at Muduvanmukal, they created a false and forged document purporting to be an intelligence report alleged to have been sent by the Director General of Police (Intelligence), Police Head Quarters, Thiruvananthapuram to the Secretary of the then Chief Minister who was also holding the Home portfolio stating that Sri. K.V. Thomas, Minister for Tourism and Fisheries was involved in a Havala Money Transaction to the tune of Rs. 336 crores. The forged intelligence report was created using the C.P.U. of the Computer belonging to A2 after making use of the impression of the seal of the Police Headquarters made available to A2 by A3. A news item based on the forged intelligent report was then flashed through Soorya T.V. Channel by A6 and A7 in the news bulletins at 6.30 p.m. and 11 p.m. on 24-6-2002. The telecasting of the said news item by A6 and A7 was with the intention of making the viewers and the public believe that the forged intelligent report was genuine. Thereafter, evidence of the commission of the above offences was destroyed by the accused persons by burning the incriminating papers, removing the Sim cards and entrusting the same along with the mobile phones with charge witness Nos. 53 and 57, by deleting the data in the C.P.U. and by re-installing the hard disc after re-formatting and over-writing the same. The accused have thereby committed offences punishable under Sections 466, 469, 471 and 201 read with Section 120B, 109 and 34 I.P.C.

THE COGNIZANCE

3. The final report was filed before the Chief Judicial Magistrate on 13-11-2006. There are altogether 174 prosecution witnesses, 138 documents and 32 material objects produced along with the final report. On 17-11-2006 the learned Magistrate took cognizance of the aforementioned offences as against A1 to A6.

POST COGNIZANCE DEVELOPMENTS

4. On 31-12-2007 A3 filed C.M.P. 5952 of 2007 before the court below seeking his discharge under Section 239 Cr.P.C. On the same day accused Nos. 6 and 7 also filed C.M.P. No. 5953 of 2007 seeking their discharge under Section 239 Cr.P.C. Both the said applications were opposed by the Special Public Prosecutor who filed separate written objections to the same. On 26-2-2008 the Special Public Prosecutor in-charge of the case filed C.M.P. No. 940 of 2008 under Section 321 Cr.P.C. for withdrawal from prosecution. The said application was vehemently opposed by the petitioner herein who filed detailed objections to the same. As per the impugned order dated 11-3-2008 the learned Chief Judicial Magistrate allowed the application for withdrawal. It is the said order which is assailed in this Revision by the revision petitioner.

OBJECTIONS TO THE REQUEST FOR WITHDRAWAL

5. Sr. Advocate Sri. K. Ramakumar appearing for the revision petitioner made the following submissions in support of his revision:

The petitioner is a journalist and is the Chief Editor of a Fortnightly by name 'Crime'. He is also a social worker and a voter of Kozhikode Constituency. He had brought to justice several corruption cases through legal battles. He was the person who had obtained directions from the High Court entrusting the investigation with the C.B.I. in the Lavellin case involving in crores of rupees. Smt. Shobhana George who is the main accused in the present case was creating a false document for the purpose of ousting Sri. K.V. Thomas from Ministership and to herself occupy the chair of the Minister. The occurrence in this case took place on 24-6-2002. Eventhough the Crime Branch Police had conducted the investigation in this case with reasonable expedition,

on account of the influence wielded by Smt. Shobhana George, Sri. Vakkom Purushothaman the then Speaker of the Legislative Assembly interfered in the investigation restraining the investigating agency from filing the charge sheet against Shobhana Goerge without the permission of the Speaker. The petitioner herein had filed a Writ Petition before this Court on 6-3- 2006 seeking a direction to entrust the investigation of the present case with the C.B.I. since the accused persons in this case are highly influential and were maintaining unwholy alliance with the police. When the investigation of the case had reached such a stage that the arrest of Smt. Shobhana George became inevitable, then with a view to misdirect the investigation she held a press conference in her residence on 26-9-2002 to the effect that it was the petitioner herein who had forged the false iintelligence report. She had also filed a complaint before the Chief Judicial Magistrate, Thiruvananthapuram raising the very same allegations. However, the said complaint was summarily dismissed by the Magistrate even without taking the case on file. The print and visual media had widely published the above allegation levelled against the petitioner herein. As it was defamatory to the petitioner herein he has instituted a suit for damages as O.S. 586 of 2004 against her claiming a sum of Rs. 1 crore as compensation. The petitioner has also lodged a criminal complaint before the J.F.C.M. as C.C. 2696 of 2002. As the investigation in the present case was being misdirected at the instance of accused Nos. 1,3 and 4 who were influential with the police, the petitioner herein had approached this Hon'ble Court seeking a direction to entrust the investigation with the C.B.I. Sri. P.G. Thampi, the Director General of Prosecution submitted before this Court during the hearing of the said Writ Petition that strong evidence had been collected in the present case and that the accused persons would be charge-sheeted soon. It was recording the said submission made by the Director General of Prosecutions that this Hon'ble Court disposed of W.P.C 6674 of 2006. The Government while granting leave to the Public Prosecutor to withdraw the case was approaching the present case so lightly that the only consideration was that the case involves a few journalists. There has been a conscious attempt to conceal the fact that the present case involves the fabrication of a forged document purportedly issued by the State Intelligence Bureau. The withdrawal of this case will affect the credibility of the State Police and would be illegal. After taking a stand that sufficient evidence has been collected to substantiate the charge against the accused persons, the Government was making a clean somersault. The learned chief Judicial Magistrate was clearly in error in holding that the petitioner herein has no locus standi to object to the request for consent to withdraw from the prosecution. The court below ought to have found that public interest would be better served by allowing the prosecution to be proceeded with the trial of the case rather than scuttling the same.

THE STATE PROSECUTOR'S STAND

6. Sr. Adv. Sri. P.G. Thambi, the learned Director General of Prosecution made the following submissions before me in support of the impugned order:

The petitioner herein who is neither the complainant nor the accused has no locus standi to object to the request made by the prosecutor in-charge of the case to withdraw the prosecution. The petitioner is a meddlesome intruder. The stand taken by the Government while disposing of the Writ Petition filed by the petitioner herein was that the investigating agency, namely, the Crime Branch Police had conducted an exhaustive investigation. There was no submission to the effect that the materials collected by the investigating agency were sufficient to launch a successful prosecution against the accused persons. The Special Public Prosecutor in-charge of the case was convinced that the C.P.U., Printer and Scanner produced by the investigating agency as recovered at the instance of the 2nd accused, Chandramohan, were not used for creating the forged document in question. It was after realising that the above item of evidence was detrimental to the prosecution that the Special Public Prosecutor came to the independent conclusion that the forgery alleged by the prosecution would fail and the trial of the case may not be successful. Hence, the learned Chief Judicial Magistrate was fully justified in granting consent to withdraw the prosecution and no interference is called for in the matter.

JUDICIAL EVALUATION

7. As mentioned earlier, the prosecution case is that accused Nos. 1 to 4 (Sobhana George, Chandramohan, Jayachandran and Anil P. Sreerangam) in furtherance of their common intention to defame and tarnish the image of Sri. K.V. Thomas, the then Minister for Tourism created a forged document making it appear to emanate from the office of the D.G.P. (Intelligence), Police Headquarters and caused it to be telecast through A6 and A7 (V.O. Anilkumar and Sukumaran) of Surya T.V. with a view to see that Sri. K.V. Thomas is craftily ousted from ministership and in his place the first accused Shobhana George is appointed as a Minister either in the existing ministry or in re-constituted ministry. The case was originally registered as Crime No. 256/CR/SI/02 of CBCID SIG-I, Thiruvananthapuram on 25-6-2002 for offences punishable under Sections 466, 469 and 471 read with Section 120B, 109, 201 and 34 I.P.C. During the course of investigation of the case, according to the petitioner herein, the first accused Shobhana George, with a view to mislead the investigating agency as well as the general public, levelled an allegation that it was the petitioner herein who had forged the intelligence report purportedly issued from the Police Headquarters. The petitioner would allege that this was a sinister plot conceived by the first accused with a view to tarnish his reputation. Whatever that may be, the petitioner herein had filed a Writ Petition before this Court as W.P.C. No. 6674 of 2006 seeking a direction to entrust the investigation of the above case with the Central Bureau of Investigation. In that Writ Petition the Crime Branch Dy.S.P. in- charge of the investigation had filed a statement to the effect that the investigation had revealed that with the help of A1, A3 and A4, the the 2nd accused prepared the fake intelligent report showing that Sri. K.V. Thomas was involved in the Hawala transaction, that it was A2 who had brought the C.P.U. to a a printing press at Mudavankukal for typing the fake report in the computer installed in the said printing press, that A3 had procured the seal from the confidential section of the police headquarters and its impression was entrusted with A2 for the purpose of copying, that photocopies of the fake report were taken and information of the report was given to Surya T.V. through mobile phone by A3 who impersonated himself as intelligence Dy.S.P. who is the son of a freedom fighter and the said information was telecast through Surya T.V. on 24-6-2002 at 6.30 p.m. and 11 p.m. It is further stated that on the publication of the above news through the visual media the accused had thought that Sri. K.V. Thomas would resign from ministership and the first accused Shobhana Goerge could then become a Minister in his place. The statement of the Dy.S.P. further shows that altogether 171 witnesses, 137 records and 32 material objects are sought to be placed before court and that the filing of the charge-sheet is delayed since prosecution sanction has to be obtained in respect of first accused Smt. Sobhana George who is a member of the Legislative Assembly.

8. On 13-11-2006 the C.B.C.I.D. SIG-I, Thiruvananthapuram filed the charge-sheet before the Chief Judicial Magistrate, Thiruvananthapuram who took cognizance of the offences against A1 to A6 on 17-11-2006. On 31-12-2007 A3 filed C.M.P. 5952 of 2007 seeking a discharge under Section 239 Cr.P.C. To the said petition, the Special Public Prosecutor in-charge of the case filed objections contending inter-alia that some of the original documents have been intentionally destroyed and this fact can be substantiated during trial, that offences punishable under Sections 201 and 120 B I.P.C. are very much attracted against the 3rd accused.

9. C.M.P. 5953 of 2007 was filed by accused Nos. 6 and 7 on 31-12-2007 seeking their discharge under Section 239 Cr.P.C. It is not known as to why the 7th accused joined the said petition since the learned Chief Judicial Magistrate had taken cognizance of the offences only as against A1 to A6. It appears that all concerned did not notice this fact. The learned Special Public Prosecutor filed objections to C.M.P. 5953 of 2007 as well contending inter alia that with regard to the publication of the false report so as to make it appear that the said report is genuine, the involvement of accused Nos. 6 and 7 is very important and if those accused persons are deleted at this stage it will materially affect the prosecution case and that the role of accused persons 6 and 7 in the whole case can be ascertained only after taking evidence and that according to the charge-sheet filed this is not a case where discharge of accused Nos. 6 and 7 can be allowed at this stage.

10. It was within one month of filing the above objections to C.M. P. Nos. 5952 and 5953 of 2007, that the learned Special Public Prosecutor filed C.M.P. No. 940 of 2008 on 26-2-2008 under Section 321 Cr.P.C. seeking consent to withdraw from prosecution C.C. 193 of 2006. Even in the said petition the Special Public Prosecutor

has confessed as follows:

At the time of approving the charge I perused the documents and the statement of the witnesses. But I could not peruse the MOs as they were already in court. The detailed expert opinion was also not perused.

Thereafter the averments made in support of the request for consent to withdraw from prosecution are as follows:

In the petition for discharge filed by A3, there is an averment in paragraph 10 about the certificate received from C-DAC, Thiruvananthapuram about the forged document- When I perused item 50 in the records and compared with item 75 in the records, I was able to find that there is some substance in the averment of A3.

Item 50 which is the seizure mahazar prepared on 9-1-2003 at 12.30 p.m. would show that the Printer and Scanner recovered under the mahazar as shown by A2 were not seen installed in the CPU (Central Processing Unit) of the accused No. 2. Para 2 installed packages of the certificate issued CDAC, Thiruvananthapuram does not speak about the software packages installed in the CPU of A2 recovered from the Winfrag Press, Poojappura under Section 27 of Evidence Act which inter alia means that the alleged document cannot be created using the above Printer and Scanner.

As per the prosecution case, the evidence of the creation of forged document were deleted and overwritten by the Accused person. Para 3 and 4 of the certificate issued by CDAC are the logs of the CPU/Hard Disk allegedly used in creating false document in this case. Para 3 Deleted Folders of the certificate issued by CDAC, Thiruvananthapuram does not speak about the files created on 20-6-2002 after 5.30 p.m. on the same day. Para 4 Deleted and Overwritten Folders of the certificate issued by CDAC, Thiruvananthapuram does not speak about a file created on 20-6-2002 after 5.30 p.m. on the same day which was allegedly deleted and overwritten by the accused as stated in the final Report filed by the Complainant in the case. The above facts are very detrimental to the prosecution case which may prove that the CPU, Printer and Scanner produced by the Prosecution before this Court are not in any way connected with the creation of the false document in the case as alleged by the prospection.

On a perusal of the case records it is seen that the investigating agency spent their time and energy in investigating the case but the forgery fails and so the trial of the case may not be successful.

11. If the Special Public Prosecutor had not perused the MOs and if she had not perused the detailed expert opinion as admitted by her in the petition, it is not known as to how she could accept the contention of the 2nd accused that the impugned intelligence report was not prepared using the C.P.U. belonging to A2. The investigating agency has a specific case that after fabricating the false intelligence report, the accused persons had caused disappearance of the evidence of the offences by detecting the date in the C.P.U. and by re-installing the hard disc after re-formatting and ever-writing the same. If so, it was premature for the Special Public Prosecutor to conclude that the CPU belonging to A2 was not used for the commission of the offence. That apart, in the applications for discharge filed by A3, A6 and A7 the Special Prosecutor had, after applying her mind, filed objections to the effect that investigation of the case showed that the actions of accused Nos. 1 to 5 were interlinked and that their complicity or otherwise could be established only after taking evidence. But after receiving the letter from the Government, the Special Public Prosecutor was conveniently becoming oblivious of the specific stand taken by her while opposing the discharge applications.

12. The main issue for trial is as to whether the intelligence report purportedly issued from the police headquarters to the effect that a sitting Minister is involved in Hawala transactions to the tune of Rs. 336 crores was a fabricated document concocted for the purpose of maligning the sitting Minister and eventually inducing his resignation from the Ministry so as to enable the first accused Shobhana George to stage an entry into the Ministry. This is an issue of great public importance and affecting the credibility of the police establishment as well. Such an issue cannot be taken lightly either by the Public Prosecutor or by the court even if the Government were to give a green signal for withdrawal of prosecution due to political or other

reasons presumably to pamper the fourth estate.

13. Section 321 Cr.P.C. gives the discretion to the Public Prosecutor in-charge of a case to withdraw from the prosecution of any person either generally or in respect of any one or more offences for which he is tried. The said discretion is not an absolute discretion but is hedged in by the power of the court to give consent to the Public Prosecutor to withdraw from the prosecution. Section 321 Cr.P.C. reads as follows:

321 - Withdrawal from prosecution: The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court at any time 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:

Provided that where such offence-

i) was against any law relating to a matter to which the executive power of the Union extends, or

ii) was investigated by the Delhi Special Police Establishment under the Delhi Special Police Establishment Act, 1946 (25 of 146), or

iii) involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or

iv) was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty,

and the prosecutor in charge of the case has not been appointed by the Central Government he shall not, unless he has been permitted by the Central Government to do so, move the Court for its consent to withdraw from the prosecution and the Court shall, before according consent, direct the Prosecutor to produce before it the permission granted by the Central Government to withdraw from the prosecution.

14. Although a reading of the section would indicate that withdrawal from prosecution is a matter within the discretion of the public prosecutor concerned, courts have taken the view that he cannot exercise his discretion capriciously or according to his sweet will unmindful of the public interest involved. Until the year 1977 the view generally taken was that the State being the only authority competent to initiate a criminal prosecution on behalf of the injured, did also possess the power to terminate such prosecution through the process of withdrawal. In State of Orissa v. C. Mohapatra : 1977CriLJ773 the Apex Court took the view that the policy decision for withdrawal from prosecution could be taken by the State although the application for withdrawal was to be filed by the Public Prosecutor. The Apex Court observed as follows:

We cannot forget that ultimately every offence has social or economic cause behind it and if the State feels that elimination or eradication of the social or economic cause behind it would be better served by not proceeding with the prosecution the State should be at liberty to withdraw.

It was in the year 1977 that the trend changed and the Apex Court took the view that the statutory responsibility for deciding whether the prosecution should be withdrawn or not was squarely on the Public Prosecutor and none else and the discretion vested in him should be independent untrammelled and unfettered by the decision, view, direction or advice of the Executive. Vide Balwant Singh v. State Bihar : 1977CriLJ1935 . Subsequently in Subhash Chander v. State : 1980CriLJ324 Justice Krishna Iyer observed as follows:

The functionary clothed by the Code with the power to withdraw from the prosecution is the Public Prosecutor. The Public Prosecutor is not the executive, nor a flunkey of political power. Invested by the statute with a discretion to withdraw or not to withdraw, it is for him to apply an independent mind and exercise his discretion. In doing so, he acts as a limb of the judicative process, not as an extension of the executive..The jurisprudence of genuflexion is alien to our system and the law expects every repository of power to do his duty by the Constitution and the laws, regardless of commands, directives, threats and temptations. The Code is the master for the criminal process. Any authority who coerces or orders or pressurises a functionary like a public prosecutor, in the exclusive province of his discretion violates the rule of law and any public prosecutor who bends before such command betrays the authority of his office. May be, Government or the District Magistrate will consider that a prosecution or class of prosecutions deserves to be withdrawn on grounds of policy or reasons of public interest relevant to law and justice in their larger connotation and request the public prosecutor to consider whether the case or cases may not be withdrawn. Thereupon, the Prosecutor will give due weight to the material placed, the policy behind the recommendation and the responsible position of Government, which in the last analysis, has to maintain public order and promote public justice. But the decision to withdraw must be his

The concept of independent application of mind by the Public Prosecutor on the question of withdrawal from prosecution was thus introduced by the Supreme Court which insisted that the Executive cannot direct or pressurise the Public Prosecutor to withdraw from prosecution. It was further held that the Public Prosecutor must come to his own independent judgment in the matter without bending before the command of the executive. Although the role of the Public Prosecutor in applying for withdrawal from prosecution is in essence, an exercise of executive function, since he is invested by the statute with a discretion either to withdraw or not to withdraw from prosecution in a given case, he must come to his own opinion independent of the opinion, advise or command of the executive. See Balwant Sing's Case : 1977CriLJ1935 ; Subhash Chander's Case : 1980CriLJ324 case and Sheo Nandan Paswan v. State of Bihar : 1987CriLJ793 .

15. The Public Prosecutor cannot act like a post box or act on the dictates of the State Government. He has to act objectively as he is also an officer of the court. At the same time the court is also not bound by the decision taken by the State Government. The court is free to assess whether a prima facie case is made out or not. If not satisfied, the Court can also reject the prayer for granting consent. Vide S.K. Shukla and Ors. v. State of U.P. : 2005CriLJ148 . Thus, there can be no doubt that withdrawal is an executive function to be performed by the Public Prosecutor after exercising the duty cast upon him in accordance with the settled principles and honestly, properly and in good faith and bearing in mind the interest of public justice. He is not to reckon himself as a servant of the political executive nor is he expected to act in accordance with the dictates of another. He has ample discretion vested in him to come to a decision not to withdraw from the prosecution in a given case notwithstanding the wishes, advice, opinion or direction by the State Government.

16. With regard to the grounds on which the Public Prosecutor can apply for withdrawal from prosecution, the preponderance of judicial opinion is that withdrawal can be sought only for furthering the cause of public justice. See Sheo Nandan Paswan's case (Supra). If public justice is the guiding principle both for the Public Prosecutor as well as for the court, then it cannot be said that a person who is a member of the public has no locus standi to object to the request for consent for withdrawal from prosecution for the reason that he is neither the complainant nor the victim. It is in this context that the question of locus standi of the petitioner assumes importance. The minority view of the Constitution Bench decision in Sheo Nandan Paswan v. State of Bihar : 1987CriLJ793 as expressed by Justice P.N. Bhagwathi, made a classic observation as follows:

It is now settled law that a criminal proceeding is not a proceeding for vindication of a private grievance but it is a proceeding initiated for the purpose of punishment to the offender in the interest of the society. It is for maintaining stability and orderliness in the society that certain acts are constituted offences and the right is given to any citizen to set the machinery of the criminal law in motion for the purpose of bringing the offender to book. It is for this reason that in A.R. Antulay v. R.S. Nayak : 1984CriLJ647 this Court pointed out that 'punishment of the offender in the interest of the society being one of the objects behind penal statute

enacted for larger good of society, the right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a strait jacket formula of locus standi'. This Court observed that locus standi of the complainant is a concept foreign to criminal jurisprudence. Now if any citizen can lodge a first information report or file a complaint and set the machinery of the criminal law in motion and his locus standi to do so cannot be questioned, we do not see why a citizen who finds that a prosecution for an offence against the society is being wrongly withdrawn cannot oppose such withdrawal. If he can be a complainant or initiation of criminal prosecution, he should equally be entitled to oppose withdrawal of the criminal prosecution which has already been initiated at this instance. If the offence for which a prosecution is being launched is an offence against the society and not merely an individual wrong, any member of the society must have locus to initiate a prosecution as also to resist withdrawal of such prosecution if initiated.

The above view has been accepted as reflecting the true legal position. Thus, the petitioner who is a member of the society has sufficient locus standi to resist the request for withdrawal of prosecution. Where an objection has been filed against the grant of sanction the court should examine the materials on record including the evidence of the witnesses and decide whether the prayer for withdrawal of the case amounts to an abuse or improper interference with the normal course of justice. Vide S.B. Sharaf v. K.P. Singh : AIR1964Pat33 and Deputy Accountant General v. State of Kerala : AIR1970Ker158 . In the celebrated Veerappan's case reported in : (2000)8SCC710 Abdul Karim and Ors. v. Karnataka and Ors. the father of one Shakeel Ahamed who was allegedly killed by Veerappan, the forest brigand, had opposed the Special Public Prosecutor's application for withdrawal of the charges for the offences punishable under the TADA Act and for transferring the case from the Designated Court to the regular Sessions Court for continuance of the trial with regard to the other offences. Refering to the locus standi of the said person this is what the three Judges Bench of the Apex Court held in para 33 of the said decision.

The locus standi of the present appellant has not been contested before this Court. Had it not been for his appeal, a miscarriage of justice would have become a fait accompli.

V.S. Achuthanandan v. R. Balakrishna Pillai and Ors. : AIR1995SC436 is another instance where the leader of the opposition in the Kerala State Assembly had opposed the request for withdrawal of prosecution. He was held to have sufficient locus standi to oppose the request for withdrawal by filing an appeal before the Supreme Court against the order for withdrawal granted in revision by this Court.

17. The learned Chief Judicial Magistrate refused to hear the petitioner herein on the ground that he, not being the complainant or the accused, had no locus standi to oppose the request for withdrawal of prosecution. In this context the learned Magistrate relied on the following observation stated to be made by a Constitution Bench in State of Punjab v. Surjit Singh : 1967CriLJ1084 .

In cases, therefore, in which the Public Prosecutor appears it is for him to decide whether he would continue with the prosecution or withdraw from it. If he decides to withdraw, he has the power to apply to the Court under Section 494 Criminal P.C. for giving consent to his withdrawal. This power cannot, in our opinion, be subject to the wishes of a third person even though he might be interested directly in the case.

18. First of all, the above extract is not an observation made by the Constitution Bench. It was a passage extracted from the decision of the Rajasthan High court in Amar Narain v. State of Rajasthan as can be seen at paragraph 26 of Surjit Singh's case. In Surjit Singh's Case, the question was as to whether the Public Prosecutor who was not in - charge of the particular case and who was not actually conducting the prosecution in such case could seek permission to withdraw from prosecution. It was in that connection that the above observation of the Rajasthan High Court was quoted before the Apex Court. Hence, the above passage was extracted out of context by the learned Magistrate to hold that the petitioner herein has no locus standi to be heard in the matter.

19. After bestowing my anxious consideration to the entire facts and circumstances of the case, I have no hesitation to hold that the learned Chief Judicial Magistrate was in error in refusing to hear the objections of

the petitioner on the question of withdrawal from prosecution. The petitioner had sufficient locus standi as any member of the public to oppose the request for withdrawal from prosecution on the ground that public interest was better served by continuing the trial rather than terminating the prosecution without a trial. The impugned order is accordingly set aside and the matter is remitted to the court below for a fresh disposal of C.M.P. 940 of 2007 in C.C. No. 193 of 2006, in accordance with law.

In the result, this revision is allowed and the matter is remanded as above.