

Gopalakrishnan and ors. Vs. the State

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Court : Kerala

Decided On : Jul-01-1988

Reported in : 1989CriLJ727

Judge : K. Sreedharan, J.

Appellant : Gopalakrishnan and ors.

Respondent : The State

Judgement :

ORDER

K. Sreedharan, J.

1. Petitioners, 20 in number, are accused in S.C. 67/87 pending before the Assistant Sessions Judge's Court, Kottarakkara. They stand charged with offences under Sections 143, 147, 148, 332, 307 and 427, IPC and also under Sections 2(1)(a) and 3 of the Prevention of Damages to Public Property Act. The case was posted for trial from 6-6-1988 onwards. The Assistant Public Prosecutor filed Criminal M.P. No. 144/88, under Section 321 of the Code of Criminal Procedure praying for permission to withdraw the case. The Lower Court dismissed that petition by order dated 7-6-1988. That order is under challenge,

2. The prosecution version of the incident which led to the case is as follows. The then opposition parties in Kerala called for a Kerala Bandh to be observed on 7-

10-1985. The accused are followers of those opposition parties. For making the Bandh a success at any cost they wanted to cause obstruction to the vehicular traffic on the Kottarakkara-Oyoor Road. They placed huge rubbles and boulders on the road during the night between 6-10-85 and 7-10-85. Charge witnesses 1 to 6 and 17 who are police officials were engaged in patrol duty during that night. While they came along the road in police jeep bearing Regn. No. KLV 3170 they saw the accused placing obstructions on the road. In discharge of their official duty they wanted the accused to remove those obstructions. The accused retaliated and attacked the police-men with dangerous weapons like swords, sticks etc. They also pelted stones at the police party and at the Government vehicle. The policemen sustained injuries and the police jeep was extensively damaged. Hence the charge.

3. When the case came up for trial, as stated earlier, the Asst. Public Prosecutor moved CrI. M.P. 144/88 seeking permission to withdraw the prosecution. The contents of the petition is summarised by the Court below as:

A perusal of the petition on the face of it shows that it is shabbily written. I fail to understand the averments in para. 2 and the first sentence in para. 3. The Additional Public Prosecutor has stated that even if the entire witnesses are examined it will not serve any useful purpose. He also stated that it will not be in keeping with public policy to penalise the youth, who have committed crime without knowing the consequences. It is also stated that the witnesses are reluctant to give evidence.

4. The Public Prosecutor has a wide discretion in approaching the Court for sanction to withdraw the prosecution under Section 321 of the Code of CrI. Procedure. He must apply his mind to all relevant factors which gave rise to the incident. He must act in a bona fide manner. He is not to act at the dictates of higher-ups. If the Court is satisfied that the request of the Public Prosecutor to withdraw from the prosecution would not serve the purpose of administration of justice and that the permission sought is with ulterior purpose unconnected with the vindication of law the Court is not to give him permission to withdraw the prosecution. The Court is not to act mechanically in such circumstances. The

confidence of the people in the efficiency of administration of justice is not to be shaken by the public prosecutor by abuse of his discretion enjoined in Section 321 of the Code of Crl. Procedure. Even though the initiative for withdrawal from the prosecution must be that of the public prosecutor, the Court has to satisfy itself that the 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. The ultimate guiding consideration must always be the interest of administration of justice and that is the touchstone on which the question must be determined whether the prosecution should be allowed to be withdrawn. Vide *State of Orissa v. Chandrika Mohapatra* : 1977 CriLJ773 .

5. The then opposition parties called for a Kerala Bandh. Those who wanted to join the Bandh were at liberty to do so. But the followers of the political parties cannot impose the Bandh on the unorganised common-man, The common-man should have the freedom to choose whether to take part in the Bandh or not. His freedom of movement is not to be curtailed by the followers of political parties by placing boulders and road blocks. After creating these road blocks for creating untold miseries to the common-man, it will not be fair on the part of the political parties who called for the Bandh to describe it as a success. The accused in this case were trying to put up road blocks to inconvenience the common-man. The police party who were on patrol duty tried to dissuade the accused from doing such unlawful acts. Thereupon they attacked them, caused injuries by using weapons and by pelting stones and also damaged the police vehicle. The damage caused to the public vehicle is something which cannot be tolerated. It is a loss to the public at large : the State. Now the public prosecutor has come forward with a case that even if the entire witnesses are examined it will not serve any useful purpose and that the witnesses are reluctant to give evidence. I find it difficult to agree with this stand of the public prosecutor. The witnesses who sustained injuries are police officers. I find no ground to presume that they will be reluctant to give evidence. In case the Court finds that the witnesses are giving false evidence before Court, they must be proceeded against in accordance with law. That does not mean that the prosecution should be allowed to be withdrawn. The other ground that the trial will not serve any purpose, to say the least, is preposterous. The accused in this case have to be tried in the interest of the administration of

justice. The objective of every judicial process must be attainment of justice. Yet another ground urged by the prosecution is that:

it will not be in keeping with public policy to penalising the youth, who have committed crime without knowing the consequences.

This approach made by the public prosecutor is against the interest of the public. The youth cannot be allowed to commit crimes and to go scot free on the ground that they did it without knowing the consequences. A person who does an act must be presumed to know its consequences. The youth must not develop a feeling that they can commit crimes if they follow the ideologies entertained by the political parties. A situation should not be created wherein a feeling is created in the minds of the youth that if they are connected with any political party they can do any atrocity against the society with impunity.

5A. In the circumstances detailed above, I have no hesitation in holding that the learned public prosecutor has not exercised his discretion enjoined by Section 321 of the Code of Criminal Procedure in a bona fide manner. Nor was it in the best interest of the administration of justice. The Court below was, therefore, justified in refusing the prayer made by the prosecutor for permission to withdraw the prosecution.

6. In the result, I find no merit in this Criminal Revision Petition. It is accordingly dismissed.

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