

Amar Singh and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Aug-21-1978

Reported in : 1978(11)WLN383

Judge : K.D. Sharma, J.

Appeal No. : S.B. Criminal Misc. Appl. No. 55/78

Appellant : Amar Singh and ors.

Respondent : State of Rajasthan

Judgement :

K.D. Sharma, J.

1. The petitioners have invoked inherent jurisdiction of this Court by way of an application under Section 482, Cr.P.C. for quashing the criminal proceedings pending against them in the court of the Chief Judicial Magistrate, Jalore, under Sections 147, 148, 451, 323 and 326, I.P.C. on the ground that consent to the withdrawal of the prosecution was wrongly withheld by the learned Chief Judicial Magistrate, Jalore.

2. The relevant facts giving rise to this application under Sections 482, Cr.P.C. may be briefly stated as follows : One J.S. son of P.S. resident of Paota lodged a written report with the police at police station, Umedpur, District Jalore on 13-8-

1971 at 4 p.m. It was alleged in the report that on 12th August, 1971 at about 10 or 11 in the night he was sitting inside the 'Pol' of his house. At that time, Jai Singh, Bhopal Singh, Bhanwar Singh, Amar Singh and Prithvi entered the 'Pol' having lathis in their hands. Prithvi Singh and Bhanwar Singh caught hold of the hands of Jog Singh and dragged him outside the 'Pol' Thereafter, all the aforesaid persons started bearing him with lathis. Jog Singh fell on the ground. Then Amar Singh sat on his chest, while Jai Singh struck a below on his hands with a small dagger, Jog Singh raised an outcry which attracted Jeeva Meena to the place of occurrence Jeeva rescued the injured Thereafter, Jog Singh's uncle Kishan Singh came there and removed the injured to the hospital at Takhat garh. From Takhhathgarh he was brought to the hospital at Gudha, on the advice of the Doctor. At Gudha he was medically examined as to his injuries.

3. On receipt of the above information in writing the police registered criminal case under Sections 451, 326, 323, 147 and 148 read with Section 149, I.P.C. against the accused and investigated into the matter. Upon completion of investigation, the police submitted a charge-sheet again at the accused petitioners in the court of the Munsiff and Magistrate First Class, Jalore, for the aforesaid offences. The learned Magistrate to try the petitioner but: latter on, the case was transferred to the court of the Chief Judicial Magistrate, Jalore, for trial in accordance with law. In the course of the trial the Assistant Public Prosecutor filed an application in the court on 17th March 1977, for the with drawl from the prosecution of the petitioners along with the true copy of the wireless message received from the Home Department of the Rajasthan Government in this behalf. The Chief Judicial Magistrate heard arguments on the application for withdrawal from the prosecution and refused to give his consent to the withdrawal for the simple reason that no grounds for the withdrawal were stated by the Assistant Public Prosecutor in his application Aggrieved by the accused petitioners filed a revision-petition in the court of the Sessions Judge, Jalore. The learned Sessions Judge dismissed there vision petition after hearing the parties and sent the case back to the Judicial Magistrate, Jalore and ordered that the trial shall continue in the court. As against this order, the petitioners have moved this Court for interference and prompt redress in exercise of its inherent jurisdiction, as stated above.

4. I have carefully gone through the record and heard Mr. Bhim Raj Purohit, learned Counsel for the petitioner and Mr. S.L Mardia Public Prosecutor for the State. It has been vehemently contended on behalf of the petitioners that consent to the withdrawal from prosecution was unreasonably withheld by both the courts below, merely on the ground that grounds for withdrawal were not stated by the Assistant Public Prosecutor in his application. According to the learned counsel, there is nothing in Section 494, old Cr.P.C., (which is applicable to this case) which prevents a Public Prosecutor from withholding from prosecution of the petitioners, if he is of the view that withdrawal is necessary in the interest of administration of justice or there is expediency of a prosecution for reasons of the State or on grounds of public policy. It was further urged before me Mr. Bhim Raj that the petitioners are facing prolonged trial for the last 7 years and during this period the prosecution could produce eight witnesses only who could not establish the guilt of the petitioners beyond reasonable doubt. As the prosecution was not likely to end in a conviction, so the Government instructed the Public Prosecutor for the withdrawal of the prosecution and the Chief Judicial Magistrate was not justified in withholding his consent to the withdrawal in these circumstances. In support of his above contention, Mr. Bhim Raj referred me to *Ramesh Jho v. State* : AIR1959 Pat380 , *M.N.S. Nair v. P.V. Balakrishnan* : 1972 CriLJ301 , *State of UP. v. Kapil Deo* : 1972 CriLJ1214 , *Balwant Singh v. State of Bihar* : 1977 CriLJ1935 , *C.C. Parmor v. A.U. Khanderia* 1975 Cr.L.J. 1340, *State of Orissa v. Chandrika Mohapatra* 1977 Cr.L.J. 773, *Public Prosecutor, A.P. v. P.P. Reddy* 1977 Cr.L.J. 2013, *State of Andh Pra. v. G.S. Ruddy* 1968 (2) Cr.L.J. 708, *Rajendra Kumar Jain v. State and Ors.* 1978 Cr.L.J. (NOC) 132, and *Bhagwat Singh v. Balwant Singh* 1978 Cr. L.R. Raj 340.

5. Mr. S.L. Mardia, Public Prosecutor, on the other hand, contended that the Chief Judicial Magistrate has rightly rejected the Assistant Public Prosecutor's request for withdrawal from the prosecution on the ground that grounds for withdrawal were not stated by the Public Prosecutor in his application. According to his submission, consent cannot be given in all cases as a matter of routine. The Chief Judicial Magistrate was bound under the law to exercise his discretion in the matter on sound legal principles. The mere fact that the Assistant Public Prosecutor was instructed by the Government or the District Magistrate to apply

for withdrawal was not a good reason for the Magistrate for giving his consent to such withdrawal. In report of his above proposition Mr. S.L. Mardia relied upon *Amar Narain v. State of Rajasthan and State of Bihar v. Raw Nresh* : 1957 CriLJ567 .

6. I have gone through the authorities referred to above and considered the rival contentions. I may observe at the outset that Section 494, old Cr.P.C. does not specify or define the circumstances under which a withdrawal from the prosecution may be made by the Public Prosecutor and, therefore, no invariable rule prescribing the limits within which a withdrawal can be made under this section can be laid down. Each case has to be judged on its peculiar facts and circumstances. Suffice it to say, that Section 494, old Cr PC empowers the Public Prosecutor to withdraw from the prosecution in all cases conducted by him. A discretion is given to him alone in this matter. He may, however, consult the Government or the District Magistrate before exercising his discretion All that Section 494, old Cr.P.C. requires is that the Public Prosecutor should state unconditionally that he does not want to prosecute the accused for certain offences. When a withdrawal from prosecution is formally made by him the section gives a wide discretion to the court to either grant or to withhold its consent. The discretion must, however be exercised in a judicial manner and not in an arbitrary way, because consent by the court is not an empty formality and is not to be given in all cases as a matter of routine. While exercising its discretion to grant its consent to the withdrawal, the court has to form its own independent opinion upon consideration of the materials appearing on the record or upon circumstances extraneous to the record of the case, if any. The circumstances extraneous to the record of the case must, however, be such as to satisfy the judicial conscience of the court; The mere fact that the Assistant Public Prosecutor has been instructed by the Government or the District Magistrate, as the case may be, to apply for withdrawal is not a valid reason for the court to give its consent to have withdrawal. As the court is required under the law to perform' a judicial act in giving its assent to the withdrawal of the prosecution, it can ask from the Public Prosecutor the reasons for the withdrawal (if he has omitted to state them in his application) in order to satisfy its judicial conscience whether the Public Prosecutor has not improperly or arbitrarily exercised his discretion or has not made an

attempt to obstruct the normal course of justice contrary to the interests of administration thereof Reference in this connection may be made to the authority of the Supreme Court in *M.R.S. Nair v. P.V. Balakrishnan* (supra) wherein their Lordship laid down certain guide lines to be allowed by the courts while exercising their discretion in granting consent to the withdrawal. The observations of their Lordships are quoted below in extenso:

It appears to us that the wide and general powers which are conferred under Section 491 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 substantiated 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 in 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 sub-serves 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.

Judged from these principles, the order of the Chief Judicial Magistrate Jalore, refusing to give his consent to the withdrawal appears to be improper, as he had made no attempt, to exercise his discretion in the matter on sound legal principles. If the grounds for the withdrawal were not stated by the Assistant Public Prosecutor in his application, the Chief Judicial Magistrate was entitled to ask from him the reasons for the withdrawal in order to enable himself to perform the judicial act of granting or withholding his consent to the withdrawal. It is no doubt true that consent is not required to be given in all cases as a matter of routine, but it should not be withheld unreasonably without judicial consideration of all the circumstances or materials on which action may be taken in a particular case under Section 494, old Cr.P.C.

7. The application under Section 482, Cr.P.C. is, therefore, accepted, the orders of the courts below dated 28th March, 1977 and 16th March, 1978, are set aside and the case is sent back to the Chief Judicial Magistrate, Jalore for exercise of his discretion in the matter on sound judicial principles and in the light of the observations made above.

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