

State Vs. L. Ganesan and Others

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Court : Chennai

Decided On : Apr-25-1995

Reported in : 1995CriLJ3849; 1995(2)CTC185

Judge : Rengasamy, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 120B, 212, 302, 307, 324, 326 and 332; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 321

Appeal No. : Crl. M.P. Nos. 7135 and 7136 of 1994

Appellant : State

Respondent : L. Ganesan and Others

Advocate for Def. : Mr. V. Gopinath and ;Mr. R. Shanmugasundaram, Advs.

Advocate for Pet/Ap. : Mr. P. Govindarajan, Govt., Adv.,

Judgement :

ORDER

1. These are petitions filed under Section 5 of Limitation Act to condone the delay in filing the revisions. The respondents in Crl. M.P. No. 7135/94 were prosecuted before the III Assistant Sessions Judge, Coimbatore, in S.C. No. 145/87 for the offences under Sections 120-B, 307 and 212, Indian Penal Code and also under Sections 3 and 5 of Explosive Substances Act, Section 126(e) of the Prevention of

Damages to the Public Property Act. Similarly, the respondents in Crl. M.P. No. 7136/94 were prosecuted before the II Additional Sessions Judge, Trichy, in S.C. No. 77/88 for the alleged offence under Sections 120-B, read with Sections 302, 307, 326, 324 and 332, Indian Penal Code, Section 126 Indian Railways Act and Sections 3 to 6 of the Explosive Substance Act.

2. By the G.O.Ms. No. 895 Public (Law and Order) Department dated 8-5-90, with these case were ordered to be withdrawn and the Court also permitted to withdraw the prosecutions on 25-6-90 and 20-9-90 respectively discharging the respondents. It is against these orders of the trial Judges, the State has filed revisions. With a delay of 1407 days in Crl. M.P. No. 7135/94 and 1320 days in Crl. M.P. No. 7136/94. Hence, these petitions have been filed to condone the delay in filing the revisions.

3. The respondents have filed counters opposing these petitions stating that the delay is inordinate and proper reasons have not been given for the delay except calling it as administrative delay and the administrative delay cannot constitute any cause for condonation when especially the delay is enormous. It is also stated that when the State itself filed the petition to withdraw the prosecution under S. 321, Cr.P.C. the same State Government cannot now file the petitions challenging the order of granting permission to withdraw the prosecution, and therefore, the respondents seek to dismiss the petitions.

4. The points for consideration are whether the petitioners have sufficient reasons for condonation of delay and whether the petitions are maintainable.

5. This is a strange case in which the State which moved for withdrawing the prosecution and got the favourable order has now come forward with the revisions challenging the orders passed in its favour for withdrawing the prosecution. As mentioned above, the respondents were accused in SC No. 145/87 on the file of the III Assistant Sessions Judge, Coimbatore, and also in SC No. 77/88 on the file of the II Additional Sessions Judge, Trichy, under various offences including Ss. 302 and 307, IPC in SC No. 77/88. But the Government of Tamil Nadu passed the G.O.Ms. No. 895 Public (Law and Order) Department dated 8-5-90 ordering to withdraw the cases against the respondent. The Public Prosecutors of the

concerned Courts being satisfied that the prosecution had to be withdrawn, moved before the learned Judges seeking permission to withdraw the prosecution and the learned Judges also, considering the request of the public prosecutors and the nature of the offences, granted permission on 25-6-90 and 20-9-90 to withdraw the prosecution in both the Sessions cases. However, the same Government of Tamil Nadu has come forward with revisions attacking the order of sanction passed in these Sessions cases for the withdrawal of the prosecution.

6. The learned Government Advocate (Criminal Side) Mr. Govindarajan represents before me that the offences alleged against the respondents are serious in nature, that the then Government in the year 1990, obliged the respondents showing political favouritism for passing the G.O. to withdraw the Sessions cases, that the Public Prosecutors also under the pressure of the then Government had moved to withdraw these cases that the Court without applying its mind and without considering the gravity of the offences against the society, had simply permitted to withdraw the case, that since these defects are to be rectified and the culprits of the offences have to be dealt with according to law, the present Government which came to power in June 1991, have taken steps to set right the illegal order passed by the Courts in SC No. 145/87 and SC No. 77/88, that as the papers were moving in different departments and the opinion of the public prosecutor, High Court, also had to be obtained, the delay has occurred in filing the Revisions and as this delay is beyond the control of the State, due to administrative reasons, the same is to be condoned.

7. So far as the maintainability of the petitions are concerned, learned counsel for the respondents contended that the State which moved for withdrawing the prosecution, cannot turn-round now to attack the order passed in its favour for the simple reason that there is a change in the Government and according to the learned counsel, the public prosecutors representing the State are the best Judges to apply their minds to take a decision whether the cases on hand were fit to be withdrawn and taking into consideration of all the aspects, as they moved for the withdrawal of the prosecution, now, even though the Government is changed the same office, namely, the public prosecutor, cannot come forward with these applications attacking the orders passed by the Court, at the instance of the

present Government which is trying to take political revenge against the respondents. The learned counsel further contended that irrespective of the Government in power, the learned Judges, before whom those cases were pending, considered the pros and cons of the request of the State to withdraw the cases and when once the Court has permitted to withdraw the prosecution, taking into consideration of the circumstances under which the withdrawal was sought for, that order cannot be challenged by the very State though the ruling party alone is changed now, as it will prejudice the accused persons, giving the scope for the political vendetta of the successive ruling parties.

8. Even though this aspect to be gone into in the main revision, as the maintainability of those petitions are questioned on the ground that the State which moved for withdrawal is not entitled to file these petitions for condonation, I feel that this aspect also has to be gone into, now.

9. The withdrawal of the prosecution, though may be at the instance of the State, it is expected to be thoroughly looked into by the Public Prosecutor, who is acting as the Minister of Justice to justify for such withdrawal before he acted on behalf of the State. When he had exercised that move to withdraw the case, then the burden is upon the Court, to appraise itself of the reasons which prompted the public prosecutor to withdraw from the prosecution. Both of them have the heavy responsibility to protect the administration of justice, against the possible abuse of the power by the executive. In this case, both the public prosecutor and Courts were satisfied that the withdrawal would promote the ends of justice. But, however, now the very same office of the public prosecutor would allege mala fide in their moves for withdrawal. I feel that the same office, of the public prosecutor, which acted for the State to withdraw the cases, cannot come forward to set aside the order permitting to withdraw the cases, irrespective of the change in the ruling party, as it will lead to uncertainty as to the finality of the proceedings. When the Government ruled by a particular party withdraw the prosecution and the successive Government, ruled by another party, wanted to set aside that order, what will be the situation, if there were successive changes in the ruling parties and if this request is allowed, certainly it will be a havoc and prejudice to the accused persons, without knowing the destination of the prosecution, apart from

the embarrassment to the public prosecutors. Therefore, I also feel that the State which moved for withdrawing the prosecution cannot seek to set aside the order of permission granting withdrawal of the prosecution. If a third party comes forward with such a prayer, the position may be different.

10. Then coming to the delay in the petitions, the petitioners themselves have admitted that there is long delay in preferring the revision petitions. The delay in filing these petitions is about 4 years and 3 years and 8 months respectively. In the Petition, it is simply stated that the delay is only an administrative delay and it is neither wilful nor wanton. I feel that these sentences were only formal without furnishing the details as to what were the steps taken soon after the present Government came to power to rectify the alleged wrong move in withdrawing the prosecution. In the affidavits filed by the respective police officers, they have not specifically mentioned the nature of steps taken to file the revisions at least soon after the present ruling party came into power. As it is mentioned that the present Government came into power June 1991, they could have taken steps within a reasonable time to file the revisions. But I find the letter of the Joint Secretary to the Government dated 20-11-1991 addressed to the Director General of Police calling for his remarks to re-open the proceedings. Another letter shown to me written by the Director General of Police dated 2-4-1992 reads that the Government may seek the opinion of the Public Prosecutor of the High Court. These petitions have been filed only on 8-8-94. We do not know what had happened after the letter of the Director General of Police. When a party moves the Court for condonation of delay, the cause of the delay must be properly explained and the delay also must have been beyond the control of the party. If the party seeking the condonation was negligent or had taken his own time for moving the Court, it cannot be said that the delay was beyond the control of the party. As found above, though the move was made by the Government in November 1991 to re-open the proceedings, nothing is made clear as to the subsequent steps taken by the Government and the laches on the part of the Government machinery cannot be called as administrative delay. As I find no acceptable reasons for the inordinate delay of nearly four years in filing these revisions, I am unable to hold that there is sufficient cause to condone the delay. Therefore, the petitions are bound to fail.

11. In the result, both petitions are dismissed.

12. Petitions dismissed.

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