

Sivanandi @ Dharmalingam and ors. Vs. V. Rajendran and anr.

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Court : Chennai

Decided On : Feb-17-2005

Reported in : 2005(2)CTC22

Judge : N. Kannadasan, J.

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

Appeal No. : Crl. R.C. No. 260 of 2004

Appellant : Sivanandi @ Dharmalingam and ors.

Respondent : V. Rajendran and anr.

Advocate for Def. : T. Lajapathi Roy, Adv. for Respondent No. 1 and ;A. Muthukaruppan, Government Adv. (Criminal Side) for Respondent No. 2

Advocate for Pet/Ap. : S. Nagamuthu, Adv.

Disposition : Revision allowed

Judgement :

ORDER

N. Kannadasan, J.

1. The above Revision Petition is filed challenging the order passed by the Court below in Criminal M.P. No. 1069 of 2004 in S.C.No. 96/1996 dated 27.10.2004 on

the file of the Principal Assistant Sessions Judge, Madurai.

2. The Government in G.O. (ID) No. 32, Public (Law & Order B) Dept. dated 14.4.2000 has passed an order to the effect that the District Collectors of Southern Districts in Tamil Nadu are requested to address the Public Prosecutor incharge of the cases mentioned in the Annexure therein to take necessary steps to withdraw such cases, which are registered in connection with the caste clashes during the year 1996 and prior to 1996.

3. In pursuance of the said order, it appears that the learned Public Prosecutors of the Southern Districts have filed an application under Section 321, Cr.P.C before the Court to withdraw the cases. In the instant case such an application was filed by the learned Public Prosecutor seeking permission to withdraw the case which is registered as against the petitioners herein/accused for the alleged offence. The alleged offence took place on 3.7.1992. The Trial Court by order dated 5.6.2000 has granted permission to the prosecution to withdraw the case and discharged the petitioners in pursuance of the power conferred on it under Section 321, Cr.P.C. Subsequently, the witnesses have filed a revision before this Court challenging the order passed by the trial Court on 5.6.2000. The learned Judge passed an order in CrI.R.C.No. 641 of 2001 dated 17.3.2004 setting aside the order of the trial Court granting permission for withdrawal of the case and accordingly remitted the matter with a direction to the learned Public Prosecutor to file a fresh application with proper reasons in view of the G.O. dated 11.4.2000. Subsequently, a fresh application was filed on 9.8.2004 setting out the detailed reasons for seeking permission to withdraw the case. The learned Additional Principal Sessions Judge, Madurai has passed the order rejecting the application filed by the Public Prosecutor, which is impugned in the present revision.

4. The learned counsel for the petitioners contended that the trial Court has erroneously rejected the application filed by the Public Prosecutor by setting out two reasons namely the offence is not compoundable and the witnesses are ready to give evidence in the proposed trial.

5. Heard the learned Additional Public Prosecutor for second respondent and the learned counsel for the first respondent/defacto complainant.

6. The learned counsel for the first respondent contended that the trial Court has correctly rejected the application filed by the Prosecution and the same shall not be interfered with. The learned counsel, however, contended that the offence for which the petitioners are charged cannot be construed as communal clashes inasmuch as one group of the persons alone were injured, whereas petitioners did not suffer any injuries. The learned counsel would further contend that if the petitioners are discharged from the cases, there is every possibility of recurrence of the similar incidents. The learned counsel also relied upon the decision of the Apex Court to the effect that the Court should not grant permission for withdrawal for mere asking for and in this connection he has cited the decision of the Apex Court: Abdul Karim and Ors. v. State of Karnataka and Ors., and Satyajit Banerjee and Ors. v. State of W.B. and Ors., and Satyajit Banerjee and Ors. v. State of W.B. and Ors., .

7. I have considered the rival contentions of the learned counsel for the respective parties.

8. It is not in dispute that in the year 1996, in the Southern Districts, there are several communal clashes. In the light of the said acts, the Government has passed an order in G.O. (ID) No. 32, Public (Law & Order B) Dept., dated 14.4.2000 which reads as follows:

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