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Puran Chand Vs. Partap Chand

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Court : Himachal Pradesh

Decided On : Mar-22-1972

Reported in : 1972CriLJ1609

Judge : D.B. Lal, J.

Appellant : Puran Chand

Respondent : Partap Chand

Judgement :
ORDER

D.B. Lal, J.

1. These are six cases which have been reported for orders of the High Court under Section 438 of the Criminal Procedure Code. The six cases which have been registered as criminal revisions Nos. 30. 31. 32. 33. 34 and 35 of 1971 arise out of a single judgment dated 22nd July, 1971 made by the Additional Sessions Judge, Dharamsala. whereby he recommended that these revisions be accepted and the order dated 4th November. 1970 of the Chief Judicial Magistrate, Kangra. be quashed and permission be accorded to the Public Prosecutor to withdraw the criminal cases which have started against Puran Chand and others under Sections 7 and 16 of the Prevention of Food Adulteration Act. 1954. These cases have come to High Court with the following history which may be stated in brief.

2. There is an institution known as 'Baghulo Co-operative Milk Supply Society. Jawalamukhi' and the accused Puran Chand and others are all salesmen. Sales-Manager, President and Vice-President to that society. One of the functions of the said society is to collect milk and after the same is tested by the Government Veterinary Doctor of Baghulo. the same is supplied in sealed tins and is distributed to the public at large. It was submitted in the complaints that were filed before the learned Chief Judicial Magistrate. Kangra, that on 22-1-1970. 19-2 1970 and 18-3-1970. Shri Partap Chand. Food Inspector, seized samples of milk belonging to this Co-operative Society and subsequently when these samples were sent for analysis, the Public Analyst reported that these were deficient in milk fat and hence adulterated within the meaning of the Prevention of Food Adulteration Act, 1954. Therefore, on the basis of the report received from the Public Analyst, complaints were filed against Puran Chand and others in the Court of the Chief Judicial Magistrate. Kanera. Thus. before the said Magistrate there were three defined parties supporting or opposing the complaints, namely. the State, Shri Partap Chand Food Inspector and the accused who were Puran Chand and others.

At some stage during trial the Public Prosecutor applied under Section 494 of the Criminal P.C. for the withdrawal of the prosecution against Puran Chand and others. It was submitted by him that in public interest such a withdrawal was necessary. It was further stated that the accused were not personally benefited and the particular business to supply milk was for the benefit of the public at large. The deficiency of the milk fat was also negligible. On these grounds the learned-Public Prosecutor wanted withdrawal of the prosecution. The learned Chief Judicial Magistrate however, considered that no valid grounds were made out for the withdrawal of the prosecution. Accordingly. he dismissed the application for withdrawal moved by the Public Prosecutor, on 4th November. 1970.

3. Against the order of the Chief Judicial Magistrate dated 4th November. 1970 the State as well as the accused Puran Chand and others came in revision before the learned Additional Sessions Judge. Dharamsala. The revising Court found that there were sufficient grounds to allow the application for withdrawal of the prosecution. It was held that the normal course of justice was not disturbed and

the withdrawal was not sought for any illegitimate reasons or purposes. The accused were not personally benefited and the business of the society was for public benefit. The deficiency found in the milk contents was also negligible. On these grounds the learned Additional Sessions Judge has recommended for allowing the applications for withdrawal of prosecution. He has further asked for the quashing of the order made by the learned Chief Judicial Magistrate.

4. Shri Puran Chand. Food Inspector, despite service chose to remain absent in this Court. Both the State as well as the accused Puran Chand and others have no doubt appeared and they have supported the order of the learned Additional Sessions Judge and have persuaded me to accept the reports so that the prosecutions are withdrawn and the order of the learned Chief Judicial Magistrate is quashed.

5. It is no doubt correct to say that the learned Chief Judicial Magistrate was required to exercise his discretion judicially and if sufficient grounds were made out he should have permitted the withdrawal of the prosecution. If in the opinion of the Magistrate, the Public Prosecutor could be stated to act improperly or arbitrarily so that abuse in the process of Court was likely to result or interference with the normal course of justice was the consequence. he would be justified in refusing the withdrawal of prosecution. At the same time the Magistrate ought to have examined the material on record in order to decide whether the prayer for withdrawal was based on sounder reason and if proper grounds are made out. his refusal for withdrawal would amount to an abuse or improper interference with the normal course of justice and the Magistrate could be stated to have acted improperly or arbitrarily in refusing to give his consent to the withdrawal. As is evident, the accused are either the members or functionaries of the Baghulo Co-operative Milk Supply Society and as such they held public offices. They are not personally interested in the supply of the milk. The milk supply is made to the public for its benefit. If a set back results in the business, the supply of milk is retarded and in consequence the public is made to suffer. At the same time we have to keep in mind that the deficiency recorded by the Public Analyst is rather meager and could even go unnoticed. In my opinion, all these factors did justify a permission to withdraw the prosecution and the learned Chief Judicial Magistrate

has taken a strict view for which there was no justification.

6. I would, therefore, accept the recommendations of the learned Additional Sessions Judge and in the result I hereby quash the order dated 4th November. 1970 of the Chief Judicial Magistrate, Kangra. The permission sought for by the Public Prosecutor to withdraw from the prosecution is deemed granted. The necessary consequence of discharging or acquitting the accused, as the case may be, would follow and the prosecution cases would come to an end.

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