
(1951) 04 RAJ CK 0005
In the Rajasthan High Court
Case No : Criminal Revision No. 90 of 1951

Amar Narain Mathur

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 23-04-1951

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 333, 439, 494

Citation : AIR 1952 Raj 42

Hon'ble Judges : Wanchoo, C.J.;Bapna, J

Bench : Division Bench

Advocate : S.P. Sinha, Assisted by Narain Andley and Mohd. Raza, for the Appellant; G.S. Pathak, M.R. Purohit, Government Advocate, C.L. Agarwal, (for Nos. 2, 3 and 4), Murli Manohar Vyas, (for No. 4), Bapu Bhai Desai, (for No. 5) and Non-Petitioners Nos. 7 and 8 Party in person, for the Appearing Parties

Final Decision : Dismissed

Judgement

Wanchoo, C.J.—This is a revision by Shri Amar Narain Mathur against the order of Shri P.D. Pande, Special Judge, dated 19-1-1951, by which he allowed the Public Prosecutor to withdraw from the prosecution of five criminal cases, which were pending in that Court. Consequent upon such withdrawal, the accused in those five cases have been discharged. The contention of the applicant is that the Special Judge did not apply his mind to the facts of the cases when he consented to the withdrawal of the Public Prosecutor, & therefore, this Court should interfere & set aside the order of the Special Judge.

2. The opposite parties in this revision are the State of Rajasthan & seven other persons. A brief history of the facts, which have led to this revision, will be useful in understanding the case. His Highness the Rajpramukh promulgated the Rajasthan Special Criminal Courts Ordinance (No. XLIV of 1949) on 8-12-1949. Under that Ordinance a Special Criminal Court was created on 3-1-1950, for the whole of Rajasthan, & Shri Pande was appointed Judge of this Court. On 5-1-1950, five cases were allotted for trial to this Court u/s 5 of the Ordinance.

The first of these cases was against Shri Jai Narain Vyas, who was, once upon a time, Chief Minister of the former Jodhpur State, & his Personal Assistant, Shri Shyam Krishna Vyas. This is now case No. 8 of 1950, of the Special judge's Court. The second case was against Shri Mathura Das Mathur, former Education Minister of the former Jodhpur State, & Shri M.L. Sanghi. This is now case No. 6 of 1950. The third case was against Shri Dwarka Das Purohit, former Finance Minister of the former Jodhpur State, & Shri M.L. Sanghi. This is now case No. 7 of 1950. The fourth case was against Shri Mathura Das Mathur & his Personal Assistant, Shri Kapur Chand Mangal, & it is No. 9 of 1950 now. The last case was against Shri Dwarka Das Purohit & his Personal Assistant, Shri Mukand Lal, & is No. 2 of 1950 now. These cases were under various sections of the Penal Code, & some evidence was taken in one of them. The accused, however, took the objection that the Rajasthan Special Criminal Courts Ordinance was "ultra vires" after the coming into force of the Constitution of India. This objection was disallowed, & they had gone to the Supreme Court of India, & the proceedings before the Special Judge were stayed. In the meantime, the State of Rajasthan decided to withdraw the prosecutions & consequently an application was made on 19-1-1951, u/s 494, Criminal P.C., by Shri M.R. Purohit, who had been appointed public Prosecutor for these cases on 18-1-1951. The petition in the Supreme Court had been withdrawn on 16-1-1951, & the stay order had been vacated. The applications for withdrawal in all the five cases were in the same terms, of the Special judge was requested to consent to the withdrawal of the Public Prosecutor from these cases "on the ground of inexpediency of prosecution for reasons of State." The Special judge gave his consent to the withdrawal on 19-1-1951, & thereafter discharged the seven opposite parties other than the State of Rajasthan.

3. Mr. S.P. Sinha, learned counsel for Shri Amar Narain, began to argue the petition as if Shri Amar Narain was a party to the cases, whereupon a preliminary objection was raised by Mr. Pathak on behalf of the State of Rajasthan & his contention was that the applicant had no "locus standi", & this Court should not, therefore, hear his counsel. The argument was that the applicant, Shri Amar Narain, was a complete stranger to the proceedings, & had, therefore, no right to apply to this Court in revision. It was further urged that in a criminal case started at the instance of the State a stranger had no right to apply to this Court in revision when the Public Prosecutor had decided to withdraw from the prosecution.

4. After hearing Mr. Pathak for the State of Rajasthan & Mr. Sinha for the applicant, we have come to the conclusion that the preliminary objection is well-founded, & the applicant has no right to apply to this Court in revision in the circumstances. In criminal cases it is the State which is in control of the proceedings, particularly where the prosecution is launched at the instance of the State. In cases, therefore, in which the Public Prosecutor appears it is for him to decide whether he would continue with the prosecution or withdraw from it. If he decides to withdraw, he has the power to apply to the Court u/s 494 Criminal,

P.C., for giving consent to his withdrawal. This power cannot, in our opinion, be subject to the wishes of a third person even though he might be interested directly in the case. We may, in this connection, refer to two cases of the Patna High Court. In the first, "Gopi Bari v. Emperor" AIR 1920 Pat 362, a case had been prosecuted by the Police u/s 143, Penal Code. At a later stage the Court Sub-Inspector in charge of the prosecution applied for withdrawing from the case u/s 494. This was objected to by the complainant, & withdrawal was thereupon refused. The accused then went up to the High Court, & it was held that where a case had been started upon a police report, & the Court Sub-Inspector wanted to withdraw from prosecution, the Court acted without jurisdiction in rejecting the prayer for withdrawal, simply because the complainant wanted to proceed with the case. It was further held that in such a case the complainant had no "locus standi" to control the proceedings.

5. In the second case *Gulli Bhagat Vs. Narain Singh*, , the Public Prosecutor applied for withdrawal from the case at a late stage. This prayer was allowed by the trial Court, & thereupon the complainant came to the High Court in revision. The revision was rejected with the following observations at page 284:

"Finally there is a deeper & indeed a fundamental reason for non-interference which turns upon the position of a private prosecutor in prosecutions for cognizable offences. In our opinion, the private prosecutor has no position at all in the litigation. The Crown is the prosecutor & the custodian of the public peace & if it decides to let an offender go, no other aggrieved party can be heard to object on the ground that he has not taken his full toll of private vengeance.

If, therefore, in the present case, the Court has allowed the Public Prosecutor to withdraw the case upon insufficient or improper grounds, the Local Govt. is the only authority who can take action for the correction of that error."

6. The present applicant is even in a worse position than a private prosecutor, for he is in no way connected with these five cases. What he claims is that as a member of the public & Secretary of an Association, called "Janta Kashta Niwarak Sangh", he is interested in seeing that these cases, which involve embezzlement of public funds in three of them & bribery in two, should be thoroughly investigated, & the guilt or innocence of the accused, three of whom hold important public offices, should be established in a Court of law. This desire of the applicant may be commendable, but we are of opinion that it gives him no "locus standi" to come to this Court in revision. We, therefore, hold that the applicant has no "locus standi" to be heard by counsel. We also intimated to the learned counsel for the applicant that we would only hear him as "amicus curiae."

7. But this does not, however, dispose of the matter. u/s 435, Criminal P.C., the High Court has the power to call for & examine the record of any proceeding before any inferior criminal Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. One of the ways in which the High Court can exercise this power is when the matter is

brought to its notice by an application in revision by one of the parties to the proceeding in the inferior Court. But this is not the only way in which the High Court may act u/s 435. It can act under that section when the proceedings before an inferior Court come to its knowledge in any other way. In *Shailabala Devi Vs. Emperor*, Sulaiman, C. J., observed at page 680 as follows:

"Obviously there may be many ways in which the proceeding comes to the knowledge of the Court, one being information supplied by a third party. The Court is certainly entitled to receive Such information & to act upon it at its option."

That was also a case of a third party, namely, the mother of the accused making an application to the High Court. It was held that;

"an application by a stranger informing the Court of the proceeding in the lower Court is merely by way of supplying information & bringing the fact to the knowledge of the Court, & it is nothing more."

The present application was & can only be treated as supplying information to this Court & as certain salient points were made out in the petition, the Court sent for the files & issued notice to satisfy itself as to the correctness, legality or propriety of the order.

8. With the assistance of Mr. Pathak, we have gone through the record & the first point made out that Mr. Mansha Bam Purohit, Govt. Advocate, who made the petition to the lower Court for permitting withdrawal was not the Public Prosecutor in charge of the case is not correct. While Mr. K.C. Jain was appointed Public Prosecutor in charge of the cases before the Special Criminal Court by Govt. Notification in the Rajasthan Gazette of 5-1-1949, the order of the Govt. appointing Mr. Mansha Ram as Public Prosecutor for the cases before the Special Criminal Court is dated 18-1-1951, & was placed on record, & it was on the 19th of January that the application for withdrawal from prosecution was made. While, as observed by their Lordships of the Calcutta High Court in *Sher Singh Vs. Jitendranath Sen*, , the appointment of a new Public Prosecutor for the purpose of withdrawal of cases only is unusual, there is nothing illegal in this procedure. It is, however, obvious that when the Govt. changes its mind, it saves the first Public Prosecutor from embarrassment.

9. The next point made out is about the order itself. When we come to examine it, the first thing that strikes us is the nature of the reasons that were advanced by the Public Prosecutor for withdrawing from these cases. The only reason that was given was the "inexpediency of prosecution for reasons of State. " The Special Judge, when dealing with the applications of the Public Prosecutor, made the following observations:

" "Reasons of State" are decidedly matters extraneous to the records of the cases & therefore matters on which, as a Judge, I should refrain from delivering any opinion for or against the applications for withdrawal. The position laid

thread-bare is that the Rajasthan Govt. itself which launched the prosecutions is now, for reasons of State, anxious to withdraw them. I therefore, see no sense in refusing consent to the withdrawal of the cases."

10. It may be pointed out that on the same day, i.e., 19-1-1951, previous to the application for withdrawal from prosecution u/s 494, Criminal P. C., an application was presented to the Court in each of the five cases by Mr. Mansha Ram, Govt. Advocate, u/s 5, of the Ordinance (XLIV of 1949), the relevant portion whereof is:

"I have been directed by the Govt. of Rajasthan to communicate their decision to withdraw all the five cases. Accordingly I hereby request this Hon"ble Court to take note of the decision of the Govt. & terminate the proceedings."

It was explained by Mr. Pathak that u/s 5 of the Ordinance the Govt. had the power to withdraw any case or cases made over to the Special Criminal Court, but it was not certain whether this power could be exercised by the Govt. by a simple communication of the order to the Court or required a notification in the Gazette. It was for that reason that the subsequent application u/s 494, Criminal P.C., was made. It may be pointed out that the withdrawal of cases from the Special Criminal Court u/s 5 of the Ordinance did not put an end to the cases, & had not the same effect as withdrawal from prosecution u/s 494 of the Code, & the application u/s 5 could only create an impression so far as the Special Judge was concerned that his jurisdiction over these cases would in any case be taken away.

11. In the circumstances, the observations of the learned Special Judge give rise to the impression in our mind that the Special Judge thought that he could not enquire what the reasons of State were, & that he was more or less, bound to give consent without any further enquiry. If that was so, we cannot agree, & have, therefore, felt it necessary to exercise the option of looking into the cases ourselves, so that the legal position with respect to withdrawal by the Public Prosecutor for reasons of State may be made clear to the Courts below:

12. Section 494, Criminal P.C., reads as follows;

"Any Public Prosecutor may, with the consent of the Court, in cases tried by jury before the return of the verdict, & in other cases before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of anyone or more of the offences for which he is tried..."

13. The first question, which arises is whether the Court before whom such application for withdrawal is made is entitled to demand from the Public Prosecutor reasons for the withdrawal. We, are of opinion that the Court is entitled to demand from the Public Prosecutor reasons for his withdrawing from the case. This is inherent, in the fact that the Court has to give its consent to the, withdrawal. This section may be contrasted with Section 333, Criminal P.C. which empowers the Advocate-General at any stage of a trial before a High Court to inform the Court that he will not further prosecute, & thereupon all

proceedings have to be stayed, & the accused person has to be discharged. In that section there is no question of the consent of the Court. The power given by that section to the Advocate-General is analogous to the power of "nolle prosequi" in the English law which is exercised by the Attorney-General. But u/s 494 the Court is entitled to demand the reasons for withdrawal from the Public Prosecutor. It has been held in a number of cases that the giving of consent u/s 494 by the Court is a judicial act, as it results in either the acquittal or discharge of the accused. We may here refer to *The King Vs. Moule Bux and Others*, , which is a Pull Bench decision, & where it was held that:

"An order of acquittal or discharge passed u/s 494, consequent on the withdrawal of Public Prosecutor from the prosecution of any person with the consent of Court, is a judicial order and liable to revision by the High Court, if the discretion vested in the Magistrate to give consent has been improperly or arbitrarily exercised."

In another Full Bench case, *The King Vs. Parmanand and Others*, , the same Court held that:

"As the effect of the withdrawal of the Public Prosecutor with the consent of the Court is either discharge or acquittal of the accused, the giving or withholding of the consent is a judicial act & the discretion conferred on the Court must be exercised judicially."

In a third case, "*The King v. K.N. Chachan*" AIR 1949 Pat 449, the same Court held that:

"The discretion must be based on correct legal principles & must not be exercised arbitrarily, & the High Court can & will interfere if the discretion has been arbitrarily exercised, & the matter is one which, in the public interests, requires further judicial investigation.""

We have no doubt that the act of the Court in giving consent is a judicial act, & the Court is, therefore, entitled to ask from the Public Prosecutor the reasons for his withdrawal from the case in order to enable it to give its consent after a judicial consideration of the circumstances.

14. The next question is whether the Public Prosecutor can ask for withdrawal for reasons of State & if so, whether he is bound to disclose those reasons. The view was once held by various High Courts that the reasons for the withdrawal must all be reasons which can be substantiated from the record, & this would have ruled out withdrawal of cases for reasons of State which must necessarily be extraneous to the record. But the present view, & if we may respectfully say so, the better view, is that it is possible for the Public Prosecutor to withdraw from a case for reasons which are extraneous to the record, & which may, therefore, include reasons of State. In this connection we may refer to two cases. In *Giribala Dasi Vs. Mader Gazi and Another*, , Mukerji, J., observed as follows:

"The legislature not having defined the circumstances under which a withdrawal

is permissible it would not be right to attempt to lay down any hard & fast rule circumscribing the limits within which the withdrawal may be made..... Section 494, in my opinion, contemplates action to be taken, more often than not upon circumstances extraneous to the record of the case in expediency of a prosecution for reasons of State, necessity to drop the case on the ground of public policy, credible information having reached the Govt. as to the falsity of the evidence by which the prosecution is supported & Other matters of that description."

The same learned Judge adhered to this view in the case of Harihar Sinha and Others Vs. Emperor, . The same view was taken by a Full Bench of the Patna High Court in The King Vs. Moule Bux and Others, , already cited. The following passage appears at page 235:

"Section 494, Criminal P. C., has been expressed in very general terms, & no fixed rule can be laid down as to the reasons for withdrawal. In some earlier decision the view taken was that the reason must not be extraneous to the case, but later decisions make it clear that the in expediency of a prosecution for reasons of State may be a ground for withdrawal u/s 494."

We respectfully agree with this, & are of the opinion that there may be cases in which the Public Prosecutor may withdraw from a case for reasons of state.

15. The next question, however, is whether even where the Public Prosecutor intimates to the Court that he wants to withdraw for reasons of State, the Court can ask the Public Prosecutor to give those reasons. We are of opinion that as the Court has to give consent on judicial principles, it should ask the Public Prosecutor to give those reasons. Our attention was drawn to the case of "Kasi Viswanadham v. Madan Singh AIR 1948 Mad 422, in this connection. The learned Single Judge, who decided that case, held, in conformity with the decision of the Madras High Court "in re Sadayan 4 Ind Cas 1126 (Mad)", that:

"Neither the public prosecutor nor the Judge is called on to give any reason for his action, that is, either in the application to withdraw or in granting permission to withdraw."

So far as the Judge is concerned, we agree that he is not bound to give his reasons when consenting to the withdrawal for Section 494, does not require the Judge to record the reasons in writing, though we must add that it is desirable that the Judge should give the reasons for recording his consent, for the order is a judicial order subject to revision by the High Court: But we must respectfully differ from the view that the Public Prosecutor is also not bound to give reasons for withdrawal, for as we have already remarked, it is not possible for the Court to consider the question of giving consent judicially unless it has before it the reasons which impel the Public Prosecutor to withdraw from the case. We are, therefore, of opinion that even where the Public Prosecutor intimates to the Court that he wants to withdraw from the prosecution for reasons of State, it is the duty of the Court to enquire what those reasons are before it gives consent. However, we cannot fail to recognize that sometimes reasons of State may be of

a very confidential nature, & it may not be possible for the Public Prosecutor to disclose those reasons. We feel, however, that such can only be the case in a comparatively few cases, & that it should be possible for the Public Prosecutor to disclose the reasons in most cases. Where, however, the reasons are of a confidential nature, it is the duty of the Public Prosecutor to give an affidavit of some responsible officer of the State to the effect that the reasons are of a confidential nature, & it would not be in the public interest to disclose them. Where such an affidavit is given, it will be for the Court to decide whether, considering the nature of the case, it should give its consent without further disclosure of reasons. In the present case, however, the Court below never seems to have thought of enquiring from the Public Prosecutor what were those reasons of State which impelled him to withdraw from the prosecution, and inasmuch as this was not done, the order of the Court below is certainly open to objection.

16. The next question is whether we should now ask the Public Prosecutor to disclose those reasons, or, if they are of a confidential nature to put in the affidavit of some responsible official of the Govt. to say so. It has to be borne In mind that the Govt. has already intimated its intention to withdraw the cases from the Special Criminal Court & therefore, the Special Rule of evidence which in the circumstances pointed out in Section 9 placed the burden of proof on the accused will not apply & the ordinary rule of evidence which places the burden of proof on the prosecution to prove all the ingredients or the offence will apply. Judged in the light of this principle we feel that in four of these five cases there does not seem to be any necessity for asking the Public Prosecutor to disclose the reasons or to have an affidavit to the effect that the reasons cannot be disclosed. The first of these cases is No. 8, against Shri Jai Narain Vyas & Shri Shyam Krishna Vyas. The charge against Shri Jai Narain Vyas is that he dishonestly obtained Rs. 500/- as halting allowance for certain periods in November, 1948, from the Govt. of jodhpur, while he had been drawing halting allowance from the Govt. of India for the same period, & further that lie attempted to obtain a sum of Rs. 250/- as halting allowance for ten days in March, 1949, from the Govt. of Jodhpur, while he had drawn halting allowance from the Govt, of India for the same period. The charge against Shri Shyam Krishna is for abetting Shri Jai Narain Vyas. There is a further charge that these two embezzled Rs. 500/-out of Rs. 1,500/- taken as advance in March & April 1949. The element of dishonest intention is an ingredient of the offences both under Sections 409 & 420, & nothing has been said in the complaint as to what the explanation of the accused was in respect of these items. So far as the charge of drawing or attempting to draw halting allowance, when it should not have been drawn, is concerned, it seems to us that this could have happened by mistake. We also feel that if a person of the status of Shri Jai Narain Vyas were to say in a Court that the halting allowance was drawn or a bill for it was prepared & signed by oversight, the statement would, in all probability, be accepted. It seems to us, therefore, unnecessary to call for the amplification of

the reasons in connection with this matter. It also does not appear worthwhile having further investigation into this matter of halting allowance in these circumstances. As to the other matter of embezzlement of Rs. 500/-, no details of it have been given in the complaint, & the question may be merely of accounting. We are, therefore, of opinion that so far as Case No. 8 against Shri Jai Narain Vyas & Shri Shyam Krishna Vyas is concerned, there is no necessity of calling for the amplification of the reasons, & that the withdrawal should be allowed & the order of 19-1-1951, with respect to this case should stand.

17. Then we come to the two cases Nos. 6 & 7, in which Shri Mathura Das Mathur, Shri Dwarka Das Purohit, & Shri Mohan Lal Sanghi are parties. These two cases are of the same kind. The charge against Shri Mathur & Shri Purohit is that they took a Chevrolet car from Shri M. L. Sanghi, & passed a claim of his for Rs. 1,30,000/-, & this was done with improper motives, without proper consideration being paid for the cars. The complaints, however, show that each car was worth Rs. 12,000/-, & in each case Rs. 6,000/- were paid in cash. & for the balance an old car was given. There is no allegation in the complaints that the cash amount was never paid, & bogus receipts were obtained. In one case the complaint is that the old car that was given for Rs. 6,000/- was only worth Rs. 4,500/-, while in the other case, it was only worth Rs. 2,000/-. The value of an old car is after all a matter of opinion, & it seems to us that though there might be some ground for suspicion, because of the payment of a large sum of money soon after this transaction had taken place, it is not worthwhile asking the State for amplification of the reasons in the circumstances. The order, therefore, of 19-1-1951, relating to these two cases will also stand.

18. Then we come to case No. 2 of 1950. The charge against Shri Dwarka Das Purohit & Shri Mukand Lal is that between November 1948, & April, 1949, they entered into a conspiracy to commit criminal breach of trust, & embezzled a major portion of a sum of Rs. 3,200/-, which had been drawn as Travelling Allowance Advance. We must say that the complaint in this case does not disclose any details at all, & the question would apparently be one of accounting. If in such circumstances, the State decided to withdraw the complaint, we do not think it necessary to call for any amplification of the reasons. The withdrawal is allowed, & the order of 19th January will stand.

19. The last case is No. 9 of 1950, against Shri Mathura Das Mathur & Shri Kapur Chand Mangal. The charge against them is that they submitted false travelling allowance bills, & thereby cheated the Govt. of the former State of Jodhpur, & also embezzled a sum of Rs. 3,100/- which had been obtained by them as Advance Travelling Allowance. So far as the amount of Rs. 3,100/- is concerned, this case stands on the same footing as the case against Shri Dwarka Das Purohit & Shri Mukand Lal. If the matter stood at that, there would have been no necessity for calling for any amplification of reasons in this case either. But we further find that details have been given of amounts drawn through false travelling allowance bills, & some evidence has also been recorded. It seems to

us that it is necessary to call for amplification of the reasons, which have led the Public Prosecutor to withdraw these specific charges. The nature of these charges is such that we do not think that there should be any ground for the Public Prosecutor to withhold the reasons for withdrawing these charges. It may very well be that the State is now satisfied that the travelling allowance bills were not false. But if that is so, they should say so. In any case, even if there are any confidential reasons for withdrawing this case, some responsible officer should, in our opinion, file an affidavit to that effect. So far, therefore, as this case is concerned, we call upon the State of Rajasthan to give us the reasons which impelled them to withdraw it, or to file an affidavit that they cannot disclose the reasons because they are confidential. We shall pass final orders in this revision after the above order has been complied with by the State of Rajasthan.

20. We may, in the end, mention an argument, which was advanced on behalf of Shri Jai Narain Vyas, Shri Mathura Das Mathur, & Shri Dwarka Das Purohit. It was urged on their behalf by Mr. Chiranji Lal that the Special Judge had no jurisdiction to try these cases, & in any case, even if he had jurisdiction to try case No. 2, he had no jurisdiction to try cases Nos. 6 to 9. We do not propose to dispose of this objection at this stage. We shall do so, if necessary, after the State has complied with the order relating to case No. 9.

21. ORDER: An application has been filed by the Govt. Advocate giving some reasons for the withdrawal of case No. 9 against Shri Mathura Dass Mathur & Shri Kapurchand Mangal. In addition, an affidavit has been filed, sworn by the Law Secretary to the Govt. of Rajasthan, to the effect that there are some other reasons of State which it, would not be desirable to disclose in the public interest. In view of the reasons disclosed & also in view of the affidavit of the Law Secretary, we are of the opinion that case No. 9 against Shri Mathura Das Mathur & Shri Kapurchand Mangal should also be allowed to be withdrawn. We allow this & the order, dated 19-1-1951 would stand.

22. This revision is accordingly dismissed.