
(2018) 11 UK CK 0206

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application (C-482) No. 1426, 1442 Of 2017

Bhagat Ram Kothari & Others

APPELLANT

Vs

State & Ors

RESPONDENT

Date of Decision : 22-11-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 197, 321, 482

Indian Penal Code, 1860 — Section 34, 288, 304

Prevention of Damage to Public Property Act, 1984 — Section 3,4

Citation : (2018) 11 UK CK 0206

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : Arvind Vashishtha, Vivek Pathak, Sandeep Tandon, Siddhartha Singh

Final Decision : Allowed

Judgement

Lok Pal Singh, J.

1. By means of present criminal misc. applications u/s 482 Cr.P.C., applicants have sought quashing of charge sheet no.15 of 2015 dated 21.09.2015 and the order dated 04.09.2017 passed by Additional Sessions Judge, Tehri Garhwal, whereby the said court has rejected the application under Section 321 of Cr.P.C.. Applicants have also sought quashing of the criminal proceedings of Sessions Trial No.21 of 2016 State vs. Bhagat Ram Kothari and others.

3. Factual matrix of the case is that an F.I.R. was lodged by the informant with P.S. Kirtinagar District Tehri Garhwal under Section 304 of The Indian Penal Code, 1860 (hereinafter to be referred as IPC), against M/s Dev Bhoomi Builders, M/s Hillways Construction Company, M/s Madhwa High-tech Engineering Company Pvt. Ltd., Public Works Department, Pauri Garhwal, consequent to the death of a person due to felling of under construction Chauras Bridge, on the ground that the under construction bridge had fallen down at 03:00 AM midnight on 25.03.2012 in which 30-35 people got injured and few have died. The construction company was getting the work done without security measures and

support and the bridge was not supported by iron bolts properly. Investigation of the incident was carried out. The State Government also ordered the primary inquiry in the matter deputing Principal Secretary to conduct the inquiry along with technical expert Dr. Pramod Kumar Singh, Professor and head of department, Civil Engineering IT, BHU, Banaras. Inquiry report was submitted by the Principal Secretary which revealed that the bridge fell down basically due to faulty design, fabrication or mounting, however, the inquiry report did not hold any departmental officer, firm or contractor responsible for the collapse. Thereafter, in a Public Interest Litigation, the Division Bench of this Court asked the Government about the action taken against the responsible officer. Meanwhile, a three member committee was constituted by the Uttarakhand Government for fixing the liabilities of the erring officer/officials. The committee submitted its report to the Government wherein it was stated that the bridge collapsed due to absence of holding down arrangement at abutment ends of the bridge; casting of deck slab from middle span instead of casting the end span first; selection of components of building section not in line with good engineering practices; change of bearing system by department officers from the one which was designed and proposed by the designer-Dr Vipul Prakash of IIT Roorkee to POT-PTEE bearing system without obtaining the design of hold down arrangements from the supplier of bearings. In the report, different officers/engineers by name were held liable for not performing their work diligently which had led to collapse of the bridge. On completion of investigation, charge sheet was filed by the I.O. against the petitioners Mohan Ram Sharma and Bhagat Ram Kothari on 21.09.2015 in respect of offence punishable under Section 304/288/34 of The Indian Penal Code and one punishable under Section 3/4 of Prevention of Damage to Public Property Act, 1984 of IPC. In the charge-sheet, 11 other persons were also made accused but they were not charge-sheeted, as sanction was not accorded by the Government under Section 197 of Cr.P.C. against them, hence, no trial could commence against them and the investigation was closed on 07.12.2016. Being aggrieved by the charge-sheet, the petitioners represented the Government. The State Government, as per requirement of Section 321 of Cr.P.C., taking into consideration all the aspects of the matter, vide order no.2168/XX-3-2016-08(109)2016 dated 23.12.2016, decided to withdraw the prosecution in public interest. Subsequently, the Public Prosecutor moved an application u/s 321 of Cr.P.C. before the Addl. Sessions Judge, Tehri Garhwal. In the application, the trial court issued notices to the complainant Mukendra and scribe of F.I.R. Arjun Singh. Both these witnesses appeared before the trial court and stated that they have no objection if the prosecution is withdrawn by the State Government. After hearing the Public Prosecutor and upon perusal of material available on record, the trial court rejected the application moved u/s 321 of Cr.P.C.

3. Mr. Arvind Vashisth, Senior Advocate appearing for petitioner Bhagat Ram Kothari and Mr. Siddhartha Singh, Advocate appearing for petitioner Mohan Lal Sharma would submit that the trial court has committed manifest error of law in

rejecting the application moved u/s 321 of Cr.P.C. They would submit that the State Government after considering all the relevant factors had decided to withdraw the prosecution.

4. Mr. Arvind Vashishtha, Senior Counsel would submit that during investigation no material or evidence regarding any defect or short-coming in laying of R.C.C. deck slab was found and the incident is not directly or indirectly related to laying of R.C.C. Deck Slab which was done by petitioner's Company. He would further submit that the work to the extent of only 20% was in progress and the bridge fell down. According to him, the accident had not taken place due to material which was used in casting R.C.C. Deck Slab; the R.C.C. Deck Slab was being casted under direct control, directions and supervisions of the Public Works Department Engineer and thus there is no act or omission on applicant's part.

5. Mr. Siddhartha Singh, learned counsel appearing for the petitioner Mohan Lal Sharma would submit that the bridge collapse due to failure of U 13, U 14 member of bridge, fabricated by Madhwa High-Tech and the petitioner's company i.e. Hillways Company was only given the work of 100 mt. of launching nose, its fabrication, erection to connect the main bridge, and rebitting, bolting and painting. The said work was a kind of finishing work as per design made and approved by I.I.T. Roorkee.

6. I have heard learned counsel for the parties and have gone through the entire material available on record.

7. Before any further discussion, it would be apt to reproduce Section 321 of Cr.P.C, which reads as under:

"321. Withdrawal from prosecution.- The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried, and, upon such withdrawal,-

(a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;

(b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences:"

(i) was against any law relating to a matter to which the executive power of the Union extends, or

(ii) was investigated by the Delhi special Police Establishment Act, 1946 (25 of 1946), or

(iii) involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or

(iv) was committed by a person in the service of the Central Government while

acting or purporting to act in the discharge of his official duty, and the Prosecutor in charge of the case has not been appointed by the Central Government, he shall not, unless he has been permitted by the Central Government to do so, move the Court for its consent to withdraw from the prosecution and the Court shall, before according consent, direct the Prosecutor to produce before it the permission granted by the Central Government to withdraw from the prosecution."

8. A plain language of aforesaid Section would make it clear that the Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court, at any time before the judgment is pronounced, withdraw from the prosecution.

9. In *Rahul Aggarwal v. Rakesh Jain and another*, AIR 2005 SC 910, the Hon'ble Apex Court held as under:-

"10. From these decisions as well as other decisions on the same question, the law is very clear that the withdrawal of prosecution can be allowed only in the interest of justice. Even if the Government directs the Public Prosecutor to withdraw the prosecution and an application is filed to that effect, the court must consider all relevant circumstances and find out whether the withdrawal of prosecution would advance the cause of justice. If the case is likely to end in an acquittal and the continuance of the case is only causing severe harassment to the accused, the court may permit withdrawal of the prosecution. If the withdrawal of prosecution is likely to bury the dispute and bring about harmony between the parties and it would be in the best interest of justice, the court may allow the withdrawal of prosecution. The discretion under Section 321, Code of Criminal Procedure is to be carefully exercised by the court having due regard to all the relevant facts and shall not be exercised to stifle the prosecution which is being done at the instance of the aggrieved parties or the State for redressing their grievance. Every crime is an offence against the society and if the accused committed an offence, society demands that he should be punished. Punishing the person who perpetrated the crime is an essential requirement for the maintenance of law and order and peace in the society. Therefore, the withdrawal of the prosecution shall be permitted only when valid reasons are made out for the same."

10. In the instant case, the Court finds that after the bridge collapsed the State Government ordered an inquiry in the matter by S. Raju, Principal Secretary, Government of Uttarakhand. Dr. Pramod Kumar Singh, Professor and HOD, Civil Engineering Department, I.T.B.H.U., Banaras was appointed by the Principal Secretary for conducting technical investigation. After inquiry, the Principal Secretary submitted his report to the Government. Inquiry report reveals that the bridge collapse due to defect in design. The report of technical investigation conducted by Dr. Pramod Kumar also reveals that bridge fell down due to failure of member U13, U14 in compression. None of the report pointed out any defect in construction or fabrication. In the report, it has been held that Madhwa Hi-tech

had not completed the design work within time frame nor had completed the work at site consequent to which the work was given to debitale agencies. Madhwa Hi-tech was held responsible for not doing the design work and causing delay in construction and as such recommendation was made to blacklist Madhwa Hi-tech. M/s J Sons Pvt. Ltd. Meerut was also held liable for not making the arrangement to avoid the uplift at the ends of abutment hence, recommendation was also made to blacklist the firm. In the report, petitioners' Companies i.e. M/s Devbhoomi Constructions Pvt. Ltd. and the M/s Hillways Construction Company have not been held liable. It would also be worth-mentioning here that the officers/officials who were held liable in bridge collapse in the inquiry were also made accused in the charge-sheet but as sanction was not accorded by the State Government to prosecute them, trial could not begun against them and the investigation was closed against them as such. That being the position, if the trial continues against the present petitioners, the case would likely to end in an acquittal and the continuance of the case would only cause severe harassment to the petitioners.

11. In the light of aforesaid, I am of the considered view that the State Government has rightly decided to withdraw from the prosecution. Record reveals that the same has been done in public interest. The trial court has committed manifest error of law in rejecting the application moved u/s 321 of Cr.P.C.

12. Inherent powers under Section 482 of Cr.P.C. has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Instant case appears to be one such where continuation of criminal proceedings against the petitioners would lead to miscarriage of justice.

13. Accordingly, present petitions u/s 482 of Cr.P.C. are allowed. Impugned charge-sheet and the order dated 04.09.2017 passed by Additional Sessions Judge, Tehri Garhwal as well as the criminal proceedings emanating therefrom are hereby quashed.

14. No order as to costs.