
(1978) 02 CAL CK 0015
In the Calcutta High Court
Case No : Criminal Rev. No. 102 of 1977

Chintamani Mondal

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 24-02-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 333
Penal Code, 1860 (IPC) — Section 143, 147, 148, 342, 380

Citation : 82 CWN 578

Hon'ble Judges : Sudhamay Basu, J

Bench : Single Bench

Advocate : Ajoy N. Mukherjee, for the Appellant; Dipak Sengupta for the Opposite Party Nos. 3 to 12 and D.P. Sengupta for the State, for the Respondent

Final Decision : Dismissed

Judgement

Sudhamay Basu, J.—This Rule was obtained against an Order dated 16th November, 1976 passed by Judicial Magistrate, 2nd Court, Contai in Case No. C.R. 428 of 1974 by which permission was given to the Assistant Public Prosecutor to withdraw prosecution in that case. The petitioner's case is that on 7.6.73 at about 9 or 10 P.M. the opposite parties nos. 2 to 12 entered his house and looted about 150 mds. of paddy from the khamar after confining the inmates of the house in a room, F.I.R. was lodged on 8.6.73 and a case was started being Khejuri P.S. Case No. 5 (6) 73 under sections 143, 148, 380 and 382 of the Indian Penal Code. On 8.11.74 the police on completion of the investigation submitted charge sheet against the opposite parties under the aforesaid sections of the Indian Penal Code. On 26.11.75 the learned Magistrate framed charges against the accused opposite parties under sections 147, 342 and 380 I.P.C. The charges were read over and explained to the accused persons who pleaded not guilty. On 2.11.76 the learned Assistant Public Prosecutor filed a petition praying for withdrawal of the case and by the impugned order the learned Magistrate gave permission to the same u/s 494 (1) Cr. P.C. It is necessary to quote the relevant portion of the said order as arguments were advanced by both sides

concerning the nature and character of the same. It is as follows:

Learned Assistant Public Prosecutor has shown to me the sanction of State Government as well as of District Magistrate in this respect regarding withdrawal. It also appears that there are some discrepancy in 161 Cr. P.C. statements which might damage prosecution case. It also appears that no stolen property was recovered. No seizure list is lying with the case record. So apparently there are some defects. Considering all these elements including petition of learned Assistant Public Prosecutor dated 2.11.76 I think that there are grounds for which consent may be given for withdrawal from prosecution in this case. Consequently, the learned Assistant Public Prosecutor is permitted to withdraw from prosecution in this case.

2. Mr. A. N. Mukherjee, learned advocate, appearing for the Petitioner argued that both the learned Public Prosecutor and the learned Magistrate failed to apply their mind as would be evident from the recital of the sanction by the State Government and the District Magistrate. It was further argued that the reasons given by the learned Magistrate are not at all convincing and he failed to exercise his judicial function. Instead of applying his own mind the learned Magistrate has given permission on extraneous grounds. He called in question the right of the learned Magistrate to look into statements made u/s 161 Cr.P.C. He also hinted at political pressure with change of government but when it was pointed out that the withdrawal was made before the new government came into office he readily withdrew the same and expressed regret.

3. Mr. Sengupta, learned advocate, opposing the rule, however, pleaded that the order was a perfectly valid one passed in exercise of judicial discretion. It was based on consideration of the materials on record upon which an assessment was made by the learned Magistrate. It could not be said to be at the behest or dictate of any extraneous agency.

4. A number of decisions of the Supreme Court and of this High Court were referred to at the Bar concerning the principles which have to be applied in such a case. Section 494 Cr.P.C. is as follows :--

The Public Prosecutor can be asked by the State Government to consider the filing of a petition for obtaining permission of the Court to withdraw from the prosecution. He can it he is of opinion that the prosecution ought not to proceed get the consent of the government to file such a petition.

In the case of M. N. S. Nayar Vs. P. B. Balkrishnan, (A. I. R. 1972 S.C. 496) the Supreme Court construed the same. The power contained in S. 494 gives a general executive direction to withdraw from the prosecution subject to the consent of the Court which may be determined on many possible grounds and is therefore wide and uncontrolled by any other provision in the Code. This provision, it may be noted, differs from section 333 Cr. P. C. which confers a power of entering a nolle Prosequi to the advocate general at any stage in a trial of the High Court. The same is not depended upon any permission of the court.

The permission u/s 494 can be sought at any stage. The language of the section is in general terms but the Supreme Court held that:

The essential consideration which is implicit in the grant of the power is that it should be in the interest of administration of justice which may be either that it will not be able to produce sufficient evidence to sustain the charge or that subsequent information before prosecuting agency would falsify the prosecution evidence or any other similar circumstances which it is difficult to predicate as they are dependent entirely on the facts and circumstances of case. Nonetheless it is the duty of the court also to see in furtherance of justice that the permission is not sought on grounds extraneous to the interest of justice or that offences which are offences against the State go unpunished merely because the government as a matter of general policy or expediency unconnected with its duty to prosecute offenders under the law, directs the public prosecutor to withdraw from the prosecution and the public prosecutor merely does so at its behest.

A special Bench decision of the Calcutta High Court in *Debendra Kumar Vs. Yar Bakht Chaudhury*, reported in A. I. R. 1939 Calcutta 220; a full Bench of the Patna High Court in *King Vs. Paramananda*, reported in A. I. R. 1949 Patna 222 and a full Bench decision of the Kerala High Court in *Deputy Accountant General, Kerala Vs. State of Kerala*, reported in AIR 1970 Kerala 158 were considered by the Supreme Court in the said case. It appears that the power of the public prosecutor to withdraw is to be exercised "in furtherance of rather than as hindrance to the object of the law". But it is not necessarily circumscribed in gathering materials by judicial methods strictly on legal or admissible evidence. The Court also is not to grant the permission for the mere asking but is to be satisfied on the materials placed before it that the grant would subserve the administration of justice. It may be worthwhile to remember that in an earlier case *State of Bihar Vs. Ram Naresh Panda*, reported in AIR 1957 S. C. 389 the Court enjoined that the court is to satisfy itself that the process "is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes". In a very recent case, *State of Orissa Vs. Chandika Mahapatra*, reported in A. I. R. 1977 S. C. 903 the Supreme Court reiterated some of these principles. It was held, inter alia, that "the ultimate guiding consideration must always be the interest of administration of justice and that is the touch stone on which the question must be determined whether the prosecution should be allowed to be withdrawn". It cautioned that it will not be sufficient for the public prosecutor merely to say that it is not expedient to proceed with the prosecution. On the facts of that case the Supreme Court upheld the learned Magistrate's order in granting permission and set aside the High Court's Order.

5. In this connection it is also worthwhile to remember another golden principle which is often lost sight of, namely, that the criminal law is not to be used as instrument of wrecking private vengeance by an aggrieved party against the person who, according to that party, had caused injury to it. As was pointed by

Mudholkar, J. a decade ago in the case of *Thakur Ram Vs. State of Bihar*, reported in AIR 1966 S.C. 911 barring few exceptions in criminal matters the aggrieved party is the State "which is the custodian of the social interest of the community at large and so it is for the State to take all the steps necessary for bringing the person who is guided against the social interest of the community to look". Another case which may be noted is *Raj Kishore Vs. State* reported in A. I. R. 1969 Calcutta 321 in which it was emphasised that the public prosecutor must apply his own mind. He is not only mouthpiece of his client, the State but owes allegiance to a higher cause.

6. It is not necessary to delve into the case laws any further. The main point that emerges from the decisions is that it is the ends of justice which must always be kept in mind while considering a case of withdrawal of prosecution. Whatever conduces to the same are germane to the issue and whatever is extraneous to the same are irrelevant. The initiative has to come from the Public Prosecutor who will exercise his mind independently not actuated by dictates of the executive authority and the Magistrate who has a very wide discretion in the matter will be guided solely by considerations of administration of justice. Looking at the facts of the present case from the above point of view it would appear that the petition which was filed by the Public Prosecutor for withdrawal of the case stated that I.O. could not procure witnesses for the trial and that Sec. 161 statements were inconsistent. There is substance in the submission of Mr. Sengupta when he stated that the petition showed that the learned Public Prosecutor applied his mind and the petition for withdrawal was based on consideration made personally by him based on the materials on record. It would appear that he made assessment not at the behest or dictate of any extraneous agency. There is nothing to show that the learned public prosecutor was actuated by the dictate of the State or the executive authority of the district. So far as the learned Magistrate is concerned it is true that he has noted that the sanction of the State Government and of the District Magistrate for withdrawal were shown to him. But he has himself given reasons which, inter alia, include discrepancy in the submission as made in section 161 Cr.P.C. This court is unable to accept the plea of Mr. Mukherjee that the court was incompetent to look into the case diary and other materials available for the purpose of giving permission for withdrawal. In the instant case the initiative has come from the Public Prosecutor who has applied his mind independently and the learned Magistrate has given his permission on considerations which do not seem to be extraneous to the interest of administration of justice. Mr. Mukherjee's contention that the learned Magistrate's observation that no seizure list was lying was incorrect is also not acceptable. What the learned Magistrate meant was that there was no seizure list in respect of stolen properties. It would be hardly proper to infer, as Mr. Mukherjee would like the court to, that the learned Magistrate did not apply his mind at all.

The petition, therefore, fails. The rule is discharged.