

(2006) 07 GAU CK 0035
In the Gauhati High Court

Jadu Gopal Dutta

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 25-07-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 321
Penal Code, 1860 (IPC) — Section 114, 148, 149, 302, 323

Citation : (2006) 3 GLR 781 : (2006) 3 GLT 243

Hon'ble Judges : T. Vaiphei, J;A.H. Saikia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

T. Vaiphei, J.—We have extensively heard Mr. P.K. Biswas, the learned Counsel for the petitioner and Mr. S. Das, the learned Special Public Prosecutor, assisted by Mr. K.K. Pal, the learned Counsel for the respondents.

2. The sole question which falls for consideration in this revision petition is whether the learned Sub-Divisional Judicial Magistrate, Belonia, has properly exercised his jurisdiction in allowing the prosecution to withdraw the criminal case, i.e., GR No. 390 of 1988 (Belonia P.S. Case No. 15(10)/88) under Sections 148/149/326/114 IPC from prosecution and discharging the respondent Nos. 2 to 10 from the case.

3. The petitioner is the informant/complainant of the aforementioned case. According to him, on 13.10.1988 at 11.30 hours, he lodged a written complaint to the Officer-in-charge of Manpathar Police Outpost of Belonia stating that on 12.10.1988 at about 1100 hours, Shri Sreedam Paul, ADC Member came to the party office of the CPI(M) at Birchandranagar Market along with his other companions and made provocative speech against the Congress workers and thereafter started indiscriminate firings from their firearms targeting the Congress workers resulting in the death of Congress (I) worker on the spot and serious injury to Shri Narayan Paul. The further case of the petitioner is that shocked and excited by this, the public who were present there tried to approach

the police for help but were fired upon by Sreedam Paul and his party, which caused serious injuries to Congress workers, Shri Rupen Ghosh (24) and Shri Nirpati Patowary @ Nonai (26). The specific case of the petitioner is that Shri Sridam Paul and other members of his party committed the crime in a pre-planned manner and that the names of the persons involved in the crime are (1) Shri Sridam Paul, Member, ADC, (2) Shri Sudhir Debnath of Manu, (3) Shri Sukha Rn Mura Singh, (4) Shri Nitya Hari Mura Singh, (5) the two security guards of Shri Sridam Paul, (6) Shri Laxman Debnath, (7) Shri Nibaran Das, (8) Shri Parimal Das, (9) Shri Lal Mohan Debnath, (10) Shri Milan Baidhya, (11) Shri Hiralal Debnath, (12) Shri Paritosh Debnath and (13) Shri Mati Lal Bhowmick. According to the petitioner, his complaint was forwarded to the Officer-in-Charge of Belonia PS, which was received at 1250 hours on 13.10.1988 and the same was treated as the FIR with the registration number referred to earlier. It is also stated by the petitioner that the case filed by him is a cross/counterfoil case to Belonia PS Case No.14(10)/88 under Sections 148/149/448/323/326/302/436/114 IPC; that both the cases were investigated by the police, which after completion of the investigations, submitted the charge sheets before the court; that the learned Additional Sessions Judge, South Tripura, thereafter proceeded with the case relating to Belonia P.S. Case No. 14(10)/88 (GR No. 390/88), framed charges and thereafter tried the same and that both cases being counter cases ought to have been jointly tried to prevent prejudice to the accused persons and that on 20.3.1999, the prosecution submitted a certified copy of the order dated 27.10.1999 to show that the case had been withdrawn from prosecution by the learned Sub-Divisional Judicial Magistrate/Belonia by the learned Assistant Public Prosecutor with the permission of the learned Sub-Divisional Judicial Magistrate/Belonia. Aggrieved by this, this revision has been filed.

4. It is contended by Mr. P.K. Biswas, the learned Counsel for the petitioner that the fact that the learned Assistant Public Prosecutor did not mention in his application that the case sought to be withdrawn by him was the counter case to Belonia PS Case No. 14(10)/88 goes to show that the application for withdrawal was made with the oblique motive of shielding the respondent Nos. 2 to 10 from punishment u/s 302 IPC. He further submits that the withdrawal petition is bereft of cogent reason for the withdrawal nor was the impugned order passed by the learned Sub-Divisional Judicial Magistrate after satisfying himself that the withdrawal application was made in public interest. The learned Counsel for the petitioner also contends that the withdrawal application was made by the prosecution in a hush-hush manner while the consent order was without issuing notice to the petitioner. In any view of the matter, submits the learned Counsel for the petitioner, the impugned order suffers from gross impropriety and illegality calling for the interference of this Court. He placed strong reliance on the decisions of the Apex Court in Abdul Karim v. State of Karnataka AIR 2001 SC 116 and S.K. Shukla v. State of UP 2006 CrL LJ 148 to support his various contentions. On the other hand, Mr. S. Das, the learned senior counsel appearing

for the respondents, supports the impugned order and submits that the withdrawal application as well as the consent thereto given by the learned Sub-Divisional Judicial Magistrate was made in public interest to maintain peace and tranquility among different groups of people inhabiting the affected area. It is thus submitted by the learned senior counsel that when no jurisdictional error or gross illegality have been demonstrably shown by the petitioner in the impugned order, the interference of this Court will be unjustified and not warranted.

5. We have carefully gone through the withdrawal application filed by the learned Assistant Public Prosecutor and also the impugned order. In the application, the learned Assistant Public Prosecutor stated that the case arose out of group rivalry; that the people of the area were now living in peace and tranquility and amity and social harmony among the different groups had been brought back and that if the cases were now tried in court and witnesses brought, fresh tension and enmity might arise. In other words, the reason which prompted the learned Assistant Public Prosecutor to move for withdrawal of the case from prosecution appears to be the apprehension that the social harmony maintained by the Government heretofore would be disturbed if the said respondents were prosecuted, which would create serious law and order problems. The learned Magistrate accepted the prayer for withdrawal of the case by observing that the case arose out of political rivalry; that maintenance of peace and tranquility in the society should be the prime consideration of the State and that the facts and circumstances in the case as projected by the learned Assistant Public Prosecutor warranted granting of his consent for the withdrawal of the case from prosecution.

6. To understand the ambit and scope of Section 321 Cr.P.C., we may at the outset refer to and reproduce hereunder the provision:

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:

Provided that where such offence --

(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 under 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.

It may be noted that Section 321 Cr.P.C. is virtually more or less a mechanism for composition of an offence by the State. The State is the matter of the litigation in criminal cases. A cursory look at the aforesaid provision shows that there are two limbs of Section 321. The first is that any Public Prosecutor or Assistant Public Prosecutor in-charge of a case may withdraw from the prosecution of any person, but this power to withdraw from the prosecution is not an unfettered or restricted power because it can be exercised only "with the consent of the court". If the court does not give its consent to the withdrawal of the prosecution, the Public Prosecutor or the Assistant Public Prosecutor cannot withdraw it. But the question is as to what are the grounds on which the Public Prosecutor or the Assistant Public Prosecutor can apply for withdrawal from the prosecution and also what are the considerations which must weigh with the court in granting or refusing consent for the withdrawal of the prosecution. After reviewing the various decisions rendered by the Apex Court, the following propositions have been summed up by the Apex Court in *Rajender Kumar Jain and Others Vs. State Through Special Police Establishment and Others*,

1. Under the scheme of the Code prosecution of an offender for a serious offence is primarily the responsibility of the Executive.
2. The withdrawal from the prosecution is an executive function of the Public Prosecutor.
3. The discretion to withdraw from the prosecution is that of the Public Prosecutor and none else, and so, he cannot surrender that discretion to someone else.
4. The Government may suggest to the Public Prosecutor that he may withdraw from the prosecution but none can compel him to do so.
5. The Public Prosecutor may withdraw from the prosecution not merely on the ground of paucity of evidence but on other relevant grounds as well in order to further the broad ends of public justice, public order and peace. The broad ends of public justice will certainly include appropriate social, economic and, we add, political purposes sans Tammany Hall enterprises.

6. The Public Prosecutor is an officer of the court and responsible to the court.

7. The Court performs a supervisory function in granting its consent to the withdrawal.

8. The Court's duty is not to reappreciate the grounds which led the Public Prosecutor to request withdrawal from the prosecution but to consider whether the Public Prosecutor applied his mind as a free agent, uninfluenced by irrelevant and extraneous consideration. The court has a special duty in this regard as it is the ultimate repository of legislative confidence in granting or withholding its consent to withdraw, from the prosecution.

7. From the propositions laid down by the Apex Court in the foregoing, it is abundantly clear that the withdrawal from the prosecution is an executive function of the public prosecutor, who, before taking a decision on withdrawal, has to keep in mind not only the lack of evidence but also other relevant grounds such as the broad ends of public justice, public order and peace. However, the discretion to withdraw from prosecution is purely his and he cannot act under the dictate of the State Government. Nor can he surrender or abdicate his function, in other words, the Public Prosecutor must apply his independent mind before taking such a decision. Once it is found that the application for withdrawal by the Public Prosecutor has been made in good faith after careful consideration of the materials placed before him, and the order of consent given by the Magistrate was also made after due consideration of relevant materials, it would not be proper for a revisional court to interfere therewith. As indicated above, paucity of evidence in the case cannot be the only ground for withdrawal from prosecution.

8. It is against the backdrop of the propositions laid down by the Apex Court in R.K. Jain case (supra) that we propose to examine the controversy raised by the petitioner in this case. At this stage, we may also refer to the contents of the withdrawal application, which is as under:

... That I have carefully examined the records of this case and I find that the instant case arose out of group rivalry. Now in the area people are living in peace and tranquility. Amity and social harmony among the different groups have been brought back. It is apprehended that if the case is now tried in the court and witnesses are brought, fresh tension and enmity may arise, in which social harmony may break down in the area, which will not be helpful too keep and maintain peace, tranquility, amity and harmony among the different sections of people and therefore, I should not continue with the prosecution of the instant case. Moreover, from the records of the case as I find that such type of cases should not be continued in the interest of social justice and I have decided to withdrawn from the prosecution of this case.

9. From the foregoing extract, it becomes apparent that what weighed with the learned Assistant Public Prosecutor, which was concurred with by the learned Magistrate, was that if the case was not withdrawn from prosecution, and the trial of the case was proceeded with, it would disrupt peace and tranquility

thereby posing serious law and order problems for the State Government. In our considered view, the materials taken into account by the learned Assistant Public Prosecutor in moving the withdrawal application are certainly germane and not irrelevant. It must be noted that a discretion has been conferred by law upon the learned Assistant Public Prosecutor to decide as to whether a particular case is to be withdrawn from prosecution or not in public interest. As noted earlier, the factor which weighed with the Assistant Public Prosecutor in withdrawing the case from prosecution is basically to prevent breach of peace and tranquility in the area already engulfed by an orgy of political violence in which thirteen lives of the rival political party were lost. If that is the prime consideration for withdrawal of prosecution from prosecution of the respondent Nos. 2 to 10, which appears to be the case, the consent accorded by the learned Magistrate to such withdrawal does not suffer from any illegality or jurisdiction error. The legislature has given such discretion to the learned Assistant Public Prosecutor. The learned Assistant Public Prosecutor has exercised his discretion after taking into account the relevant facts. There is no evidence that the learned Assistant Public Prosecutor was acting under the dictate of the State Government in moving the withdrawal application. The learned Magistrate also applied its independent mind before according his consent to the withdrawal. It would, therefore, be improper for this Court, keeping in view the scheme of Section 321, to embark upon detailed enquiry into the facts and evidence of the case or to direct re-trial for that would be destructive of the object and intent of the section.

10. For what has been stated above, we do not find any improper exercise of jurisdiction by the learned Magistrate in according his consent to the withdrawal of the case from prosecution. Resultantly, this revision petition has no legs to stand and is hereby dismissed.