
(1995) 09 KL CK 0044
In the High Court Of Kerala
Case No : Criminal R.P. 488 of 1992

K.A. Abdul Azeez

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 27-09-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 321

Citation : (1996) 1 ALT(Cri) 109 : (1996) CriLJ 316 : (1996) 1 ILR (Ker) 482

Hon'ble Judges : N. Dhinakar, J

Bench : Single Bench

Advocate : M.K. Damodaran, for the Appellant; V.P. Raghu Raj, for (Nos. 2 to 5) and E. Thankappan, Public Prosecutor (for No. 1), for the Respondent

Final Decision : Allowed

Judgement

N. Dhinakar, J.—This revision is against the orders of the Asst. Sessions Judge, Kasaragod, allowing the prosecution to withdraw the sessions case No. 48 of 1990 u/s 321 Crl. P.C. The petition is filed by the victim, Charge Witness 2, in the case.

2. The ease of the prosecution is, that, on 16-6-1989 at about 1.15 p.m. respondents 2 to 5 who are the accused in the above said sessions case, with the common intention of attacking and inflicting injuries on the petitioner wrongfully restrained him and inflicted indiscriminate stab injuries. The petitioner was immediately taken to the Government Hospital, Kasaragod, from where he was referred to Wenlock Hospital, Mangalore. The petitioner was actually taken to the Unity Health Complex, Mangalore, by his relatives and that the injury suffered by the petitioner on the left side of the chest was a serious one. An X-ray of the chest had shown that there were injuries to the lungs on account of which there was no breathing sound on the left side. According to the doctor of Unity Health Complex, Mangalore, the injuries sustained by the petitioner to his lungs were deep enough and the petitioner would not have survived, but for the immediate medical treatment given to him.

3. Before the trial commenced, the public prosecutor filed a petition u/s 321 Crl. P.C. on 7-4-1992 before the Sessions Court for the withdrawal of the above said Sessions Case No. 48 of 1990. The petition filed by the public prosecutor reads as follows:

"That the Government of Kerala has informed as per reference No. 71905/F3/91/ Home dated 17-3-1992, addressed to the Dist. Collector that the Government has no objection in withdrawing the above case.

2. It is therefore prayed that the petition may be ordered accordingly."

On the said petition the Asst. Sessions Judge passed the following order: "Withdrawal allowed." Counsel for the petitioner contends, that the said petition filed u/s 321 Crl. P.C. by the public prosecutor was motivated and that there was a total non-application of mind on the part of the public prosecutor when he filed the petition for withdrawal of the case.

4. It is now a well settled principle that it is not sufficient for the public prosecutor merely to say that it is not expedient to proceed with the prosecution. He has to make out some ground which would show that the prosecution is sought to be withdrawn because inter alia the prosecution may not be able to produce sufficient evidence to sustain the charge or that the prosecution does not appear to be well founded or that there are other circumstances which clearly show that the object of administration of justice would be advanced or furthered by going on with the prosecution. It is also the duty of the court to see that the grounds of withdrawal are legally valid and that the application made by the Public Prosecutor is bona fide and is not collusive. The court is not expected to give its consent for mere asking. The Public Prosecutor has to apply his mind to the facts of the case and then apply for the withdrawal of the case u/s 321. When any such withdrawal petition is filed, the court is expected to apply its mind and satisfy its conscience, that the giving of consent for the withdrawal of the prosecution is in the interest of justice. The power given to the court, to give its consent u/s 321 Crl. P.C. for withdrawal of the prosecution, is a check against the executive orders directing the Public Prosecutor to withdraw the prosecution. In my view, the order passed by the Asst. Sessions Judge allowing the application u/s 321, which is not supported by any reasons, cannot be said to be an order which is sustainable in law.

5. A learned single Judge of this Court in *P. Seethi Haji v. State of Kerala* 1986 KLT 1274 held that continuation of the prosecution till, it reaches its normal end should be the rule and withdrawal of any person from prosecution prematurely is only an exception and resorted to very sparingly. The Public Prosecutor must bear in mind, among various factors, that the confidence of the public in the efficacy of the administration of justice is not shaken by abuse of the discretion cast on the Public Prosecutor by virtue of Section 321 Cr. P.C. When the Parliament conferred the wide discretion envisaged in Section 321 of the Code on a Public Prosecutor, a special confidence has been reposed in his high office that

the discretion would not be exercised unfairly or for defeating the object of administration of criminal justice. The Court's power to grant or refuse to grant consent is intended to be a safeguard against the abuse of the aforesaid discretion.

6. As stated by me earlier, the petition filed by the Public Prosecutor is bare in details and the order of the Asst. Sessions Judge is a non-speaking order. Neither from the petition filed by the Public Prosecutor u/s 321 Cr.P.C. nor from the order passed by the Asst. Sessions Judge, allowing the withdrawal of the prosecution, this Court is not able to find out the reasons as to why the prosecution wanted to withdraw the case by filing a petition u/s 321 Crl. P.C. As the order of the Sessions Judge allowing the Public Prosecutor to withdraw the case, suffers from several infirmities I am of the view that the said order of the Asst. Sessions Judge has to be set aside and accordingly it is set aside. This petition is allowed. The Asst. Sessions Judge will take the case on his file and dispose it of according to law as expeditiously as possible.