

(1995) 05 SHI CK 0021

In the High Court Of Himachal Pradesh

Case No : Criminal M. P. (M) No's. 85 and 197 of 1995

Madan Mohan and Others

APPELLANT

Vs

Ram Singh and Another
 State of Himachal Pradesh Vs
Madan Mohan and Others

RESPONDENT

Date of Decision : 18-05-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 321
Penal Code, 1860 (IPC) — Section 147, 148, 149, 323, 324

Citation : (1995) 2 ILR HP 1532

Hon'ble Judges : A.L. Vaidya, J

Bench : Single Bench

Advocate : M.S. Chandel, D.C. Jishtu, Rakesh Jaswal and Abhilasha Kumari, in Cr. M.P. M No. 85 of 1995 and C.L. Sharma, A.A.G. and Shyama Dogra, Deputy A.G. in Cr. M.P. M No. 197 of 1995, for the Appellant; Party-in-Person for Respondent No. 1 and C.L. Sharma, A.A.G. in Cr. M.P. (M) No. 85 of 1995 for the Respondent No. 2 and M.S. Chandel, D.C. Jishtu, Rakesh Jaswal and Abhilasha Kumari, in Cr. M.P. (M) No. 197 of 1995, for the Respondent

Judgement

A.L. Vaidya, J.—Both these petitions are being disposed of by the common judgment on the ground that the Petitioners in both the petitions have assailed the same order passed in criminal case instituted against the present Petitioners in Cr.M.P.(M) No. 85 of 1995 through F.I.R. No. 135/91 of Police Station, Amb.

2. The brief facts giving rise to the present proceedings are that a case vide F.I.R. No. 134/91 dated 8th December, 1991 under Sections 147, 148, 149, 325 and 506 of the Indian Penal Code was registered at Police Station, Amb, against Ram Singh son of Shri. Thakur Dass and others. This Ram Singh son of Shri. Thakur Dass is Respondent No. in Cr.M.P.(M) No. 85 of 1995. In that trial, charges had been framed against the accused persons including this Ram Singh Respondent, referred to above. On 20th November, 1993 an application was preferred u/s 321 of the Code of Criminal Procedure by the learned Assistant Public Prosecutor, seeking permission to withdraw the case against the accused

persons, which was allowed and as a consequence thereof, accused were acquitted.

3. Another case at the instance of aforesaid Respondent Ram Singh was registered against the Petitioners in Cr.M.P.(M) No. 85 of 1995 vide F.I.R. No. 135/91 dated 8th December, 1991 under Sections 147, 149, 323, 506, 325 and 365 of the Indian Penal Code. After filing of the challan, in this case also charges had been framed against the accused persons. During the trial of the case, in this case also, an application u/s 321 of the Code of Criminal Procedure was filed by the learned Assistant Public Prosecutor on 2nd August, 1994 which was contested by the informant Ram Singh and after hearing the parties, learned trial Magistrate, came to the conclusion that reasons disclosed in the application for withdrawal by the learned Assistant Public Prosecutor were not genuine and necessary permission was not given. The trial Magistrate, dis-allowed the prayer on 20th August, 1994. This order was assailed in a revision petition before the learned Sessions Judge, who after hearing the parties, dismissed the revision petition.

4. The State as well as the present Petitioners who happened to be the accused, on the basis of the F.I.R. No. 135/91, have assailed the order passed by the learned Sessions Judge and that of the learned trial Magistrate, dis-allowing the Prosecutor for withdrawal of the case, through the present petitions on various grounds.

5. I have heard the learned Counsel for the parties and also Shri. Ram Singh Respondent in person have also minutely scrutinised the entire record.

6. There is no dispute to the proposition that u/s 321 of the Code of Criminal Procedure, any 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. That means the option lies with the learned Prosecutor. This Section 321 does not give any indication as to on what grounds the Public Prosecutor may make application. The provision of law is also silent as to what would be the grounds for considerations on which the Court is to grant its consent for withdrawal. However, while applying the aforesaid provision of law, two main aspects thereof have always to be kept in mind. The first being the initiation for withdrawal should come from the Public Prosecutor and the Court is to give its consent and not to determine any matter judicially. It may not be out of place to mention here that withdrawal by the Prosecutor and consent by the Court should not be a mechanical method. The Court while granting or refusing consent under the section performs supervisory function. It is not necessary for the Court to assess the evidence to discover whether the case would end in conviction or acquittal. The Court has to see whether the application is made in good faith and has been preferred in the interest of public policy and justice and not to thwart the process of law.

7. Again, there is no dispute to the proposition that the learned Prosecutor, who is the sole incharge of the case, has been empowered under the aforesaid provision of law, seeking permission for withdrawal. It is his prerogative to be used in a set of circumstances present in an individual case. In order to appreciate the circumstances, present in this case, this Court summoned the files of District Magistrate, Una, where the applications of two complainant parties in two different cases were dealt with for withdrawal of the cases. So far as the present case is concerned, Shri. Ram Singh who is Wing Commander in the Indian Army, submitted an application on 6th January, 1992 to the District Magistrate, Una. However, that application for the sake of convenience is being reproduced here as under:

To

The District Magistrate, Una Distt. Una (HP)

Sub: Application for withdrawal of case FIR No. 135/91 dated 8/12/1991 u/s 147/325/324/323/506/342/365 IPC PS. Amb.

Sir,

I have honour to submit the following for favourable consideration:

1. That the application(sic. applicant) is complainant in the aforesaid case and S/ Shri. Madan Mohan, Jiwan Singh, Jarnail Singh, Jagdev Singh and Harbans Lal are accused facing trial in the Court of Ld.JMIC-I Ind. Amb.
2. That the aforesaid incident has occurred due to some misunderstanding on the part of both the complainant and accused. Both the parties are related to each other and have bridged the differences. The applicant in order to stay peacefully and amicably have compounded the offences with the accused. The accused has also agreed to withdraw the case pending against me (FIR 134/91)

It is, therefore, prayed that the case against the accused persons may be ordered to be withdrawn and oblige.

Yours faithfully,

Sd/- Complainant wing Commander, (Ram Singh) V and PO. Bhangal, Teh. Amb, Distt. Una (H.P.)

8. This application is signed by the Complainant Shri. Ram Singh. It has been referred in the application that accused had also agreed to withdraw the case pending against the informant (F.I.R. No. 134/91).

9. Admittedly, insofar as the case against the complainant and other co-accused in F.I.R. No. 134/91 was concerned, that was withdrawn, as has been referred earlier and this complainant along with other co-accused were ordered to be acquitted.

10. Learned Assistant Public Prosecutor preferred an application u/s 321 of the

Code of Criminal Procedure, on the ground that parties had compromised their differences and agree to withdraw both the cases as the incident had occurred due to some misunderstanding between them. It has also been pleaded in the application that case F.I.R. No. 134/91 has been withdrawn from the Court on 20th November, 1993 but case F.I.R. No. 135/91 could not be withdrawn inadvertently. It was also averred that parties were closely related with each other and wanted to maintain good relations and harmony and do not want to continue differences between them and in the larger interest of the administration of public justice in general, this case needs to be withdrawn.

11. When this application was preferred for withdrawal, the present Respondent Shri. Ram Singh contested the same and the trial Court disallowed the said application on the ground that case instituted vide F.I.R. No. 134/91 was allowed to be withdrawn as it was found false and without merit after enquiry conducted at the high level, firstly by Deputy Inspector General of Police, Northern Range and then by Deputy Superintendent of Police, Una and not on the basis of any compromise.

12. It may be referred here that the District Magistrate vide memo dated 4th February, 1993 asked the District Attorney, Una to withdraw the above case, which included F.I.R. No. 134/91. There is nothing in the "memo that withdrawal was being ordered because case had been found to be false after later inquiry. On the other hand, it may be referred here that complainant in F.I.R. 134/91 had also made similar request to the District Magistrate as was so done in writing by the complainant of F.I.R. No. 135/91. For the sake of convenience this letter is also being reproduced hereunder:

To The Distt. Magistrate, Una District Una (HP)

Sub: Application for withdrawal case

F.I.R. No. 134/91 dated 7/12/1991 Under Sections 147/323/506 IPCPS. Amb.

Sir,

I have honour to submit the following for favourable consideration:

1. That the applicant is complainant in the aforesaid case and S/Shri. Ram Singh Rattan Chand, Kala Ram, Tarlok Chand, Kamlesh Devi Udami Devi, Santosh Devi and Raj Kumari are accused facing trial in the Court of Ld.JMIC-IIInd. Amb.

2. That the aforesaid incident has occurred due to some misunderstanding on the part of both the complainant and accused. Both parties are related to each other and have bridged the differences. The applicant in order to stay peacefully and amicably have compounded the offence with the accused persons. The applicant does not want to continue with the Prosecution of this case. The accused has also agreed to withdraw the case pending against me (F.I.R.135/91).

It is, therefore, prayed that the case against the accused persons may be ordered to be withdrawn and obliged.

Yours faithfully,

Sd/- Complainant, Ram Singh S/o Dayal Ram, r/o village and P.O. Bhargal, Teh. Amb, Distt. Una (HP)

13. As pointed out earlier, in both the cases, charges had been framed. There is no doubt that case registered vide F.I.R. No. 134/91 was permitted to be withdrawn on the basis of the application, preferred by the learned Assistant Public Prosecutor, on the ground that on the representation of accused Ram Singh, matter was again enquired and allegations against the accused were found to be false and therefore, on that ground permission for withdrawal was sought and was granted by the Magistrate.

14. It is being contended in the present proceedings that case vide F.I.R. No. 134/91 was not withdrawn on the basis of some compromise but the matter having been found false, therefore, in that view of the matter order passed by the trial Magistrate and affirmed by the learned Sessions Judge not permitting the learned Prosecutor to withdraw the present case registered vide F.I.R. No. 135/91 were correct and valid. It is not so simple a matter as has been contended. In the case instituted vide F.I.R. No. 134/91, charges against the accused persons had been framed, meaning thereby that a prima-facie case existed against the accused persons. There was nothing before the Court placed on behalf of the State or on behalf of the accused Ram Singh that result of investigation proved complaint to be a false one. Simply the learned Assistant public Prosecutor made such a reference in his application it will not amount to that actually case was a false one. If it was so, it could have been reflected from the order of the District Magistrate whereby the learned Prosecutor was asked to withdraw the case.

15. The actual facts as revealed from the records were that both the complainant in both the cases, preferred petitions to the District Magistrate for withdrawal of both the cases, as the parties had compromised the cases. It may not be out of place to mention here that case vide F.I.R. No. 134/91 had been ordered to be withdrawn but the present case registered vide F.I.R. No. 135/91 was not withdrawn at that time, but later on an application was preferred by the learned Prosecutor wherein compromise and close relation of the parties had been made the base seeking permission to withdraw from the prosecution. This aspect is supported by the State also.

16. Shri. Ram Singh Respondent No. 1, who happened to be the complainant has disputed his application, made to the District Magistrate for withdrawal of the case, which has been already detailed above. His simple contention has been that he was under the injuries at that particular time and was in a way forced to make that application and he never consented or volunteered to make that type of application to the District Magistrate. This Wing Commander Ram Singh has tried to brought (sic.) on record that at the relevant time he was being treated for various injuries.

17. It may be very specifically mentioned here that application for withdrawal, preferred by this Ram Singh Respondent, to the District Magistrate was not from an illiterate person. He is an important officer of the Indian Army. There is nothing on record to suggest that during this period when he preferred this application, he was on medical leave. This Wing Commander Ram Singh during the proceedings admitted that he did not proceed on leave on account of injuries. There is no medical certificate produced by the Respondent Ram Singh that his mental capabilities at that particular time had been adversely effected by those injuries, to this extent that he could not know what he had written during that period. In the aforesaid background, it does not appeal to reasoning at all that application, preferred by Wing Commander Ram Singh praying for withdrawal of the case to the District Magistrate, was a result of any coercion or pressure upon him, more so such application was an involuntary one submitted by an injured person who could not at that time because of injuries distinguish between right and wrong.

18. The totality of the entire circumstances brought on record and as discussed above clearly reflected that parties were related and in order to maintain their relations, they selected to amicably settle the dispute amongst themselves and in pursuance of that they moved separate applications to the District Magistrate for withdrawal of two cases. The learned Assistant Public Prosecutor taking note of all these circumstances filed application u/s 321 of the Code of Criminal Procedure for withdrawal of the case, which under the circumstances, should have been allowed by the trial Magistrate, order of the trial Magistrate refusing the said permission should have been interfered by the learned Sessions Judge. Both the Courts below not only acted illegally in dis-allowing the prayer of withdrawal made by the learned Prosecutor but their orders have resulted in causing substantial injustice to the present Petitioners especially when case instituted at their instance against the present Respondent Ram Singh had also been withdrawn.

19. In view of the foregoing reasons, both the petitions are accepted and as a consequence thereof, learned Prosecutor is permitted to withdraw from the prosecution of the case instituted vide F.I.R. No. 135/91 and as a consequence thereof present Petitioners who were accused in that case stand acquitted. However, proceedings in the trial be filed. Both the petition stand disposed of accordingly.