
(1986) 06 SIK CK 0001
In the Sikkim High Court

Om Prakash Bajoria

APPELLANT

Vs

Public Prosecutor and Others

RESPONDENT

Date of Decision : 13-06-1986

Acts Referred:

Citation : (1987) CriLJ 1234

Hon'ble Judges : Jugal Kishore Mohanty, C.J

Bench : Single Bench

Judgement

J.K. Mohanty, C.J.—The petitioner, Om Prakash Bajoria along with six others, namely Gyalpo Tshering Tamang, Arun Rai, Lakpa Bhutia, Samdup Bhutia, Ghan Shyam Agarwala and Chhatri Dewan (who is absconding) were charge sheeted by the Police for committing offence punishable under Sections 120(b)/ 420/ 511/ 465/ 467/ 468/ 471/ 201/ 204, I.P.C. and u/s 5(1) (d) and Section 4(2), Prevention of Corruption Act. The learned Sessions Judge, Gangtok took cognizance of the offences and framed charges against all the accused persons under various sections of I.P.C. and in addition four respondents namely Gyalpo Tsering Tamang, Arun Rai, Lakpa Bhutia and Samdup Bhutia were charged u/s 5(1)(d), Prevention of the Corruption Act. The Sessions Judge after framing the charges, by his order dated 7-8-1984, transferred the case on 6-4-1985 to the Judicial Magistrate, East Gangtok for trial. While the case was pending before the Magistrate an application was submitted by the Public Prosecutor u/s 494, Criminal P.C., 1898 for withdrawal from prosecution of the case with respect to the accused, Gyalpo Tshering Tamang, Arun Rai, Lakpa Bhutia and Samdup Bhutia. The Magistrate vide his Order dated 6-12-1985 gave his consent to withdraw from prosecution as prayed for. This revision is filed by one of the accused persons, Om Prakash Bajoria challenging the aforesaid order. He has also prayed for a direction to the Public Prosecutor, respondent 1 to withdraw from the prosecution of all the offences for which he is being tried.

2. During the course of arguments, Mr. J. C. Ghosh, the learned Counsel for the petitioner submitted that the offence u/s 467, I.P.C. is exclusively triable by the

Sessions Judge as per Criminal Procedure Code, 1898 (which is still in force in the State of Sikkim) and the Judicial Magistrate has no jurisdiction to try this case. This case is triable by the learned Sessions Judge who has mistakenly transferred it to the Judicial Magistrate for disposal. Thus, the Magistrate having no jurisdiction to try the case has no power to give consent for withdrawal from the prosecution u/s 494, Criminal P.C., 1898. The learned Advocate-General appearing for the State submitted that the learned Magistrate who was in seisin of the case has the power to grant permission u/s 494, Criminal P.C., 1898. Further, it was contended that this revision is not maintainable at the instance of the petitioner. He, has cited Rajender Kumar Jain and Others Vs. State Through Special Police Establishment and Others, in support of his contention.

3. As per the Criminal Procedure Code, 1898, the offence u/s 467, I.P.C. is triable exclusively by the Sessions Judge. It appears that the learned Sessions Judge has confused by transferring the case to the Magistrate by applying the new Criminal Procedure Code, 1973 wherein the offence u/s 467 is triable by the Judicial Magistrate, 1st Class. In this case, the question for determination is whether the Magistrate was competent to give his consent u/s 494, Criminal P.C., 1898 for withdrawal from prosecution.

4. There is no doubt that under Criminal Procedure Code, 1898 which is still in force in the State of Sikkim, the offence u/s 467, I.P.C. is triable by the Sessions Judge who has erred in transferring the case to the Judicial Magistrate who had no jurisdiction to try the case. Regarding the maintainability of this petition at the instance of the petitioner, I am of the view that even if this petitioner has no locus standi to file this revision, once the matter has come to the knowledge of this Court and when it is found that an illegality has been committed by the learned Sessions Judge, there is no bar to entertain the revision and dispose it of according to law.

5. The decision reported in Rajender Kumar Jain and Others Vs. State Through Special Police Establishment and Others, has no application to the facts and circumstances of this case as in that case the proceeding was pending before the Metropolitan Magistrate who as the Committing Magistrate had jurisdiction over the matter. At that stage an application was filed seeking permission to withdraw from the prosecution by the Public Prosecutor and the learned Magistrate gave his consent and this order was challenged by an Advocate in the High Court. The High Court dismissed the revision petition and an appeal was carried to the Supreme Court against this decision of the High Court. The Supreme Court held, "Therefore, the Magistrate has to be satisfied that an offence is prima facie disclosed and the offence so disclosed is triable exclusively by the Court of Session. If no offence is disclosed the Magistrate may refuse to take cognizance of the case or if the offence disclosed is one not triable exclusively by the Court of Session he may proceed to deal with it under the other provisions of the Code. To that extent the Court of the Committing Magistrate does discharge a judicial function. We, therefore, overrule the first submission of Shri Ram Panjwani. We

do not agree with the view taken by the High Court of Andhra Pradesh in A. Venkatramana v. Sanjeeva Ragudu 1976 A LT 317, that the Court of the Committing Magistrate is not competent to give consent to the Public Prosecutor to withdraw from the prosecution." In this case the charges against the accused were framed by the Sessions Judge who alone was competent to try this case and had no business to transfer the case to the Judicial Magistrate who is not competent to try the case. As the Magistrate lacks jurisdiction to try the case, there is no question of exercising the power u/s 494, Criminal P.C., 1898.

6. In this view of the matter, I am of the opinion that the order dated 6-12-1985 passed by the Magistrate giving consent to withdraw from prosecution is illegal and the same is, therefore, set aside. The records of the case be sent to the Sessions Judge who will proceed with the case against all the accused persons from the stage it was before it was transferred by him on 6-4-1985.

If an application u/s 494, Criminal P.C., 1898 is filed before the Sessions Judge, he will dispose of the same according to law.