

(1995) 02 AHC CK 0003

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 4673 of 1994

Pramod Kumar Gupta and Others

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 07-02-1995

Acts Referred:

Constitution of India, 1950 — Article 14

Criminal Procedure Code, 1973 (CrPC) — Section 203, 227, 245, 255, 257

Essential Commodities Act, 1955 — Section 3, 7

Citation : (1995) 19 ACR 75

Hon'ble Judges : K.L. Sharma, J

Bench : Single Bench

Advocate : V.M. Zaidi, for the Appellant;

Judgement

K.L. Sharma, J.—This petition u/s 482. Code of Criminal Procedure has been preferred by Pramod Kumar Gupta and others who stand charged u/s 3/7, Essential Commodities Act for quashing the order dated 2.6.1994 passed by the Special Judge as well as the proceedings of Case No. 2 of 1994 pending in the Court of Special Judge (E.C. Act), Bijnor.

2. I have heard the learned Counsel for the applicant as well as the learned A.G.A. and perused the materials brought on record.

3. It has been contended that Sri. Irshad Husain, Special Judge (E.C. Act), Bijnor, in exercise of his jurisdiction has acted in a wholly discriminatory manner in rejecting the application of the Public Prosecutor u/s 321, Code of Criminal Procedure for withdrawal of the case against the applicants whereas an identical application on same facts moved for withdrawal of case No. 6 of 1994: State v. Shakeel Ahmad u/s 3/7, E.C. Act has been allowed vide order dated 29.6.1994.

4. A copy of the order dated 29.6.1994 has been placed before me in the Court by the learned Counsel of the applicants. It has been urged that if two orders, one impugned in the case and the other passed in Shakeel Ahmad's case are

compared then it would lead to irresistible conclusion that the Special Judge is adopting pick and choose policy in deciding similar applications.

5. Another point emphasised by the learned Counsel of applicants is that the applications for withdrawal of cases u/s 3/7, E.C. Act are being moved in compliance of the policy decision of U.P. Government. The policy decision envisages that provisions of E.C. Act in its application to U.P. shall remain suspended and prosecution launched and/or pending shall be withdrawn. So if applications had been moved by the Public Prosecutor in this regard in two cases of identical nature, then the Special Judge could not have legally taken one decision favouring Shakeel Ahmad and another quite contrary decision in applicants' case.

6. In order to appreciate the controversy better, certain relevant facts may be stated.

7. I find that the Government of Uttar Pradesh had taken a policy decision that the provisions of E.C. Act shall be suspended in its enforcement in the State and the prosecutions already launched and pending, shall be withdrawn on the application of the Public Prosecutor and accordingly a Government order was issued. Acting upon that order the District Magistrate instructed the Public Prosecutor to move applications before the Court for withdrawal of the prosecution u/s 3/7, E.C. Act. The learned Public Prosecutor acting on the general policy of the Government moved the applications for withdrawal of the prosecution, but the learned Special Judge has allowed the application for withdrawal in the case of Shakeel Ahmad whereas he has rejected the application moved in applicants' case. The policy decision of the Government is one and has to be uniformly applied.

8. When now the merits of case is considered in the above back-ground, I notice that on one hand the learned Special Judge has talked of the promotion of public justice in the larger sense. While allowing the application of Shakeel Ahmad on the other he has taken an about turn in the case of applicants and rejected the application on wholly untenable considerations. This discriminatory action on the part of the learned Special Judge cannot be justified by any judicial standard. I am not impressed by the verbiage used by the learned Special Judge to justify his order passed in the case of Shakeel Ahmad. The policy of the Government is common and general and has to be applied in each case u/s 3/7, E.C. Act uniformly. No distinction much less discrimination is to be tolerated when the Public Prosecutor makes applications in this regard.

9. In the case of Sheonandan Paswan Vs. State of Bihar and Others, , the Hon''ble Supreme Court has observed as follows:

When the application u/s 321 is made, it is not necessary for the Court to assess the evidence to discover whether the case would end in conviction or acquittal. The Court's Junction is to give consent. This section does not obligate the Court to record reasons before consent is given. However, it does not mean that

consent of Court is a matter of course. When the Public Prosecutor makes the application for withdrawal after taking into consideration all the materials before him, the Court exercises its judicial discretion by considering such materials and on such consideration, either gives consent or declines consent. The section should not be construed to mean that the Court has to give a detailed reasoned order when it gives consent. All that is necessary to satisfy the section is to see that the Public Prosecutor acts in good faith and that the Magistrate is satisfied that the exercise of discretion by the Public Prosecutor is proper. This will be clear on perusal of some other provisions in the Code such as Sections 203, 227, 245, 257 and 258 which relate to the manner in which Courts have to exercise their jurisdiction in pending cases when applications are made for their withdrawal or when the Court finds that there is no ground to proceed with the case and Section 320 which is a kindred section. While Sections 203, 227, 245, 257 and 255 require the Magistrate to record his reasons for the order he passed Section 320 contemplates consent by the Court only in a supervisory manner and not in an adjudicatory manner.

(italics has been done by this Court.)

10. Applying this principle laid down by the Hon"ble Supreme Court, it is apparent that the Public Prosecutor has acted in good faith by filing the application u/s 321, Code of Criminal Procedure for withdrawal of the prosecution u/s 3/7, E.C. Act in accordance with the general policy decision of the Government. There is no impropriety in the action of the Public Prosecutor in moving the application. In this case it appears that it is the Special Judge who is making discrimination in refusing and in permitting such applications. The function of the Court to give consent for withdrawal is to be exercised only in a supervisory manner and not in an adjudicatory manner. It is not correct on the part of the Court to say that if it permits the withdrawal of the prosecution, public justice will not be promoted in the larger sense, when the Government, as a matter of policy, has taken a decision to be applied uniformly in the cases of all similarly situated persons.

11. There is yet another aspect of the case. The State is a master of the litigation in any case and it is the State which takes steps in the prosecution of the cases. If the State itself decides not to proceed with the case u/s 3/7, E.C. Act. it is doubtful whether the Court will be able to decide the case in absence of the evidence by the prosecution and shall promote the public Justice in a larger sense. Section 321, Code of Criminal Procedure is virtually a step by way of composition of the offence by the State. If the Public Prosecutor, acting in good faith in pursuance of the general policy decision of the Government moves an application for withdrawal of the prosecution and if it is rejected, the Court cannot, by Itself, continue with the prosecution and cannot succeed in holding and concluding the trial. The demand of Justice under Article 14 of the Constitution is to be shared by all equally. Therefore, in my opinion, the impugned order suffers from impropriety and will cause failure of Justice, if

discrimination is permitted in the case of the Petitioners. It is also abuse of the process of the Court.

12. For the aforesaid reasons, the petition u/s 482, Code of Criminal Procedure succeeds and is hereby allowed and the impugned order dated 2.6.1994 passed by the Special Judge (E.C. Act). Bijnor in Special Case No. 2 of 1994: State v. Pramod Kumar and Ors. u/s 3/7, E.C. Act is hereby quashed. Consequently the application of the Public Prosecutor for withdrawal of the prosecution u/s 321. Code of Criminal Procedure is hereby allowed and consent is given. The aforesaid Criminal Case No. 2 of 1994 of the Court of Special Judge (E.C. Act), Bijnor stands hereby withdrawn and the Petitioners hereby stand discharged of the offence u/s 3/7 of E.C. Act.