
(1984) 02 P&H CK 0063
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 1245 of 1982

Shaklanand

APPELLANT

Vs

Prem Chand

RESPONDENT

Date of Decision : 14-02-1984

Acts Referred:

Citation : (1984) 02 P&H CK 0063

Hon'ble Judges : A.S.Bains, J

Advocate : V.K. Jain, I.S. Saini, Surjit Kaur, Advocates for appearing Parties

Judgement

Ajit Singh Bains, J.—The petitioner and three others, namely, Jaidev Hakim, Jarnail Singh chemist, and Babu Ram shoe seller, were tenants and running their respective business on the shops under the respondents and were regularly paying the rent to them. The Military Estate Office, Delhi, had directed the petitioner and the above said three persons not to give any rent to the respondents in future as leases in their favour were not likely to be renewed. Admittedly, the Military Estate Office, New Delhi, is the owner of the property in dispute. The respondents, fearing nonrenewal of their leases by the Military Estate Office, wanted to actually occupy the shop from the petitioner and the above said three persons. With a view to forcibly occupy the shops, the respondents in the early hours of 16th October, 1979 committed criminal trespass into the shops and caused mischief and extensive damage to the goods/belongings of the petitioner and the above said three persons and threw out all the goods/belongings outside the shops. The respondents forcibly occupied the shops.

2. On the aforesaid allegations, the petitioner lodged FIR with the Police Station, Thanesar. The trial Court charged the respondents under sections 448/34 and 427. Indian Penal Code, vide its order dated 17th October, 1980. Thereafter, the prosecution witnesses have been appearing on various dates but their evidence could not be recorded by the Court for one reason or the other. The case was next fixed for prosecution evidence for 27.7.1982.

3. It is further alleged that the public prosecution on 2.7.1982, i.e. before the date fixed for the prosecution evidence, moved the following application under section 321, Code of Criminal Procedure, for the withdrawal of the case:

"The prosecution submits as under:

That the aforesaid case was registered at Police Station Sadar, Thanesar, against the accused.

2. That the accused are involved in case of trivial nature and not involved in prejudice to the public in large.

3. That it is in the public interest that if the case is withdrawn from the prosecution.

It is, therefore, requested that the applicant may kindly be allowed to withdraw the case."

4. The trial Court allowed the aforesaid application on the same day and passed the impugned order which is in the following terms:

"The learned A.P.P. has moved this application for the withdrawal of the case on the ground that the case is of trivial nature and that it is in the public interest to withdraw the case from the prosecution. In view of the request of learned A.P.P., he is allowed to withdraw the Case. The accused are hereby acquitted."

5. It is against the aforesaid impugned order dated 2.7.1982 that the present petition has been filed by the petitioner.

6. It was canvassed by Mr. I.S. Saini, learned counsel for the petitioner, that the Public Prosecution had no authority in law to file the application dated 2.7.1982 without applying his mind to the facts of the case and that the trial Court also erred in allowing the said application without recording any reasons. I find merit in the contention of Mr. Saini.

7. A perusal of the application dated 2.7.1982 shows that the grounds given for withdrawal of the case was that the offence was of a trivial nature and did not involve any prejudice to the public at large and that it was in the public interest that the case be withdrawn. None of the aforesaid grounds was available to the Public Prosecutor for submitting the application. He has to discharge a public duty under section 321 of the Code of Criminal Procedure. It is true that the withdrawal from the prosecution is an executive function of the public Prosecution but the discretion vested in him that the statute is neither absolute nor unreviewable but it is subject to the judicial review. In the present case, it seems that the Prosecutor abdicated his function under section 321 of the Code of Criminal Procedure. He did not apply his mind. It is not understood as to how the matter, in dispute, is of trivial nature. The allegations against the respondents were very serious. They had forcibly taken the possession of the shops and threw the goods and other household articles outside the shops. Such an act is not of a trivial nature. The respondents took the law into their own hands. The allegations

against them prima facie disclose a very serious offence. They should have recourse to law for ejecting the petitioner and the other three persons. Thus, it was neither a matter of triavial nature nor in the public interest to withdraw from the prosecution. Such acts adversely affects the society and encourages lawlessness.

8. In Sheonandan Paswan v. State of Bihar and others, AIR 1983 Supreme Court 194 (the authority relied upon by both the parties), it was observed as under:

"Though withdrawl from prosecution is an executive function of the Public Prosecutor for which statutory discretion is vested in him, the discretion is neither absolute nor unreviewable but it is subject to the Court's supervisory function. In fact, being an executiive function it would be subject to a judicial review on certain limited grounds like and other executive action, the authority with whom the discretion is vested "must genuinely address itself to the matters before it, must not act under the dictactes of another body, must not do what it has been forbidden to do, must act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant considereations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it powers to act, and must not act arbitrarily or capriciously."

9. In Subhash Chander v. The State (Chandigarh Admn.) and others, AIR 1980 Supreme Court 423, it was observed as under:

"The consent of the Court under section 321 as a condition for withdrawal is imposed as a check on the exercise of that power. Consequent will bne given only if public justice in the large sense is promoted rather than subverted by such withdrawal. That is the essence of the nolle prosequi jurisprudence. Invested by the statute with a discretion to withdraw or not to withdraw, it is for him to apply an independent mind and exercise his discretion. In doingt so, he acts as a limb of the judicative process, not as an extension of the executive. The decision to withdraw must be of the public prosecutor, not of other authorities, even of those where displeasure may affect his continuance in office."

10. Thus, it is plain from the above observations of the Supreme Court that the discretion of withdrawal from prosecution, vested in the ;public Prosecutor, is neiter absolute nor unreviewable but it is subject to the Court's supervisory function. The consent of the Court under section 321, Criminal Procedure Code, as a condition for withdrawl is imposed as a check on the exercise of discretion of the Public Prosecutor. Consent will be given only if the public justice in the large sense is promoted and is not subverted by such withdrawal.

11. In the instant case, the public Prosecutor gave the application in a casual manner for withdrawal as a matter of course on that very date without notice to the complainant. It seems that the Court failed to discharge it duties to consider whether the Public Prosecutor had applied has mind as a free agent uninfluenced by any irrelevant and extraneous consideration. The allegation against the respondents are very serious as they took the law into their own hands and

forcibly ejected the petitioner and others. As observed earlier, withdrawal from prosecution in such case cannot promote justice rather it subverts the justice and the offence cannot be said to be of trivial nature as it affects the public at large and such law breakers must be brought to justice.

For the reason recorded, the petition is allowed and the impugned order is set aside. The trial Court is directed to proceed in the matter in accordance with law.