
(2015) 07 CHH CK 0031

In the Chhattisgarh High Court

Case No : Criminal M.P. Nos. 849, 854 of 2013, 678 and 676 of 2014

Shakrajeet Nayak and Others

APPELLANT

Vs

State of C.G. and Others

RESPONDENT

Date of Decision : 02-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 321

Penal Code, 1860 (IPC) — Section 147, 186, 320, 320(1), 320(2)

Citation : (2015) 4 CGLJ 150

Hon'ble Judges : Goutam Bhaduri, J.

Bench : Single Bench

Advocate : R.S. Patel, Advocate, for the Appellant; S.C. Khakharia, Dy. A.G., for the Respondent

Final Decision : Allowed

Judgement

Goutam Bhaduri, J.—Challenge in this petition is to the order dated 27.07.2013 passed in Criminal Revision No. 24/2013 & 35/2013 with respect to Cr.M.P. No. 849/2013 & 678/2014 and Criminal Revision No. 27/2013 and 36/2013 with regard to Cr.M.P. No. 676/2014 & 854/2013, whereby the order passed by the Judicial Magistrate First Class, Sarangarh dated 23.04.2013 in Criminal Case No. 1108/2005 {State v. Dr. Shakrajeet Nayak & Others) and the other order dated 23.04.2013 passed in Criminal Case No. 768/2007 {State v. Prakash Nayak & Others) was affirmed by the Court of Additional Session Judge, Sarangarh. By such order, the Judicial Magistrate First Class has dismissed the application filed by the Public Prosecutor under Section 321 of Cr.P.C. The said order of Judicial Magistrate First Class when was subject of revision before the Additional Session Judge, the same was dismissed by the order dated 27.07.2013.

2. A Criminal Case bearing No. 1108/2005 {State v. Dr. Shakrajeet Nayank & Others) was filed by the State wherein the petitioners along with others in Cr.M.P. No. 849/2013 were charge-sheeted under Section 147 , 186 , 353 , 332 , 427 of IPC. Similarly, the petitioners in Cr.M.P. No. 854/2013 i.e. Prakash Nayak &

Others were also charge sheeted for the same offence by the State in Criminal Case No. 768/2007. While the cases were pending, an application under Section 321 of Cr.P.C. was filed by the Public Prosecutor on the ground that the Home Department, State of Chhattisgarh, vide its letter dated F-4-52/Home-C/2012 dated 26.02.2013 decided to withdraw the said cases against the petitioners.

3. Pursuant thereto the Public Prosecutor for State filed the application and stated that the cases filed since were found to be outcome of a political vendetta and since the interest of the public at large is involved, consequently after examination, the State Government has decided to withdraw the prosecution. It was further stated that after receipt of the said order from the State Government, the Public Prosecutor after application of his mind has decided to withdraw the prosecution and by withdrawal of such prosecution, it will advance the peace and harmony in the society and therefore the prayer was made for withdrawal of the prosecution by the State.

4. Learned Judicial Magistrate First Class by the order dated 23.04.2013 dismissed the said application by holding that considering the allegation made that since the petitioners stormed into a program of opening ceremony whereby the foundation stone was to be laid at Electricity Sub Center of Baramkela at Village Khichari and forcefully entered and disturbed the public tranquility and peace. Consequently considering the gravity of the offence permission to withdraw the prosecution is dismissed.

5. The said order was subject of challenge in a criminal revision by the petitioners as also the State. Both the petitioners in the said cases i.e. Dr. Shakrajeet Nayak & Prakash Nayak alongwith others preferred the revision and stated that order passed by the learned Judicial Magistrate First Class, Sarangarh failed to exercise its jurisdiction vested in it by law. The State Government too lamented the case of the petitioners and also voiced the same before the revisional Court and preferred the revision against the dismissal of order whereby the prayer of the prosecution was denied for withdrawal of prosecution. The said order of revision and the order of Judicial Magistrate First Class are subject of challenge before this Court by way of the instant Cr.M.P. The Cr.M.P. are being preferred by both the petitioners i.e. Dr. Shakrajeet Nayak & Prakash Nayak and also by the State Government questioning the order of the Court as also the order of the Judicial Magistrate First Class. Since common question of law arises for consideration in these cases, as such, these are being heard analogously and decided by this common order.

6. Mr. R.S. Patel, learned counsel appeared and made his submission on behalf of the petitioners in Cr.M.P. No. 849/2013 & 854/2013 and Mr. S.C. Khakharia, Dy. A.G. also challenged the said order and appeared on behalf of the State in Cr.M.P. No. 678/2014 and Cr.M.P. No. 676/2014. Both the counsels would submit that while considering the application under Section 321 of Cr.P.C., the trial Magistrate is not required to assess the evidence to discover whether the case would end in acquittal or conviction. The Court is required to see whether the application is

made in good faith in the interest of public policy and justice and not to thwart or stifle the process of law.

7. Since the argument advanced is on the common cause by both the petitioners as also by the State, which primarily revolves around to Section 321 of Cr.P.C. about refusal of power from withdrawal of the prosecution, therefore, the submission made by the petitioners are perused in the light of law laid down by their Lordship in different cases.

8. Since the predominant Section applicable in this cases is 321 of Cr.P.C., therefore, the same is reproduced as under:

"321. For withdrawal from prosecution--The 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 and upon such withdrawal, --

(a) If it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;

(b) If it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences;"

9. It would be proper to notice paras 73, 85, 86 and 90 of the judgment of Constitution Bench of the Supreme Court in Sheonandan Paswan Vs. State of Bihar and Others, , which are as under:

"73. Section 321 gives the Public Prosecutor the power for withdrawal of any case at any stage before judgment is pronounced. This presupposes the fact that the entire evidence may have been adduced in the case, before the application is made. When an application under Section 321 Cr.P.C. is made, it is not necessary for the court to assess the evidence to discover whether the case would end in conviction or acquittal. To contend that the court when it exercises its limited power of giving consent under Section 321 has to assess the evidence and find out whether the case would end in acquittal or conviction, would be to rewrite Section 321 Cr.P.C. and would be to concede to the court a power which the scheme of Section 321 does not contemplate. The acquittal or discharge order under Section 321 are not the same as the normal final orders in criminal cases. The conclusion will not be backed by a detailed discussion of the evidence in the case of acquittal or absence of prima facie case or groundlessness in the case of discharge. All that the Court has to see is whether the application is made in good faith, in the interest of public policy and justice and not to thwart or stifle the process of law. The Court after considering these facets of the case, will have to see whether the application suffers from such improprieties or illegalities as to cause manifest injustice if consent is given. In this case, on a reading of the application for withdrawal, the order of consent and the other attendant circumstances, I have no hesitation to hold that the application for withdrawal

and the order giving consent were proper and strictly within the confines of Section 321 Cr.P.C.

85. The scope of Section 321 can be tested from another angle and that is with reference to Section 320 which deals with "compounding of offences". Both these sections occur in Chapter 24 under the heading "General Provisions as to Enquiries and Trials." Section 320 (1) pertains to compounding of offences, in the table, which are not of a serious nature while Section 320 (2) pertains to offences of a slightly serious in nature but not constituting grave crimes. The offences in the table under Section 320(1) may be compounded by the persons mentioned in the third column of the table without the permission of the court and those given in the Table II, under Section 320(2) can be compounded only with the permission of the court. Under sub-section 4(a), when a person who would otherwise be competent to compound an offence under Section 320 , is under the age of 18 years or is an idiot or a lunatic, any person competent to contract on his behalf may, with the permission of the court, compound such offence. Sub-section 4(b) provides that when a person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, of such person may, with the consent of the court, compound such offence.

86. These two sub-sections use the expression "with the permission of the court" and "with the consent of the court" which are more or less ejusdem generis. On a fair reading of the above mentioned subsections it can be safely presumed that the sections confer only a supervisory power on the court in the matter of compounding of offences in the manner indicated therein, with this safeguard that the accused does not by unfair or deceitful means, secure a composition of the offence. Viewed thus I do not think that a plea can be successfully put forward that granting permission or giving consent under sub-section (4)(a) or (4)(b) for compounding of an offence, the court is enjoined to make a serious detailed evaluation of the evidence or assessment of the case to be satisfied that the case would result in acquittal or conviction. It is necessary to bear in mind that an application for compounding of an offence can be made at any stage. Since Section 321 finds a place in this chapter immediately after Section 320 , one will be justified in saying that it should take its colour from the immediately preceding section and in holding that this section, which is a kindred to Section 320 , contemplates consent by the court only in a supervisory manner and not depending upon a detailed assessment of the weight or volume of evidence to see the degree of success at the end of the trial. All that is necessary for the Court to see is to ensure that the application for withdrawal has been properly made, after independent consideration, by the Public Prosecutor and in furtherance of public interest.

90. Section 321 Cr.P.C. is virtually a step by way of composition of the offence by the State. The State is the master of the litigation in criminal cases. It is useful to remember that by the exercise of functions under Section 321 , the

accountability of the concerned person or persons does not disappear. A private complaint can still be filed if a party is aggrieved by the withdrawal of the prosecution but running the possible risk of a suit of malicious prosecution if the complaint is bereft of any basis."

10. In *Ghanshyam Vs. State of M.P. and Others*, , the Supreme Court while interpreting Section 321 of the Cr.P.C. held that discretion to withdraw from prosecution is that of Public Prosecutor and none else, he may withdraw from prosecution not merely on ground of paucity of evidence but on other relevant factors as well as in order to further the broad ends of justice, public order, peace and tranquility. In *Balwant Singh and Others Vs. State of Bihar*, , the Supreme Court observed:

"The statutory responsibility for deciding upon withdrawal squarely vests in the Public Prosecutor. It is non-negotiable and cannot be bartered away favour of those who may be above him on the administrative side. The Criminal Procedure Code is the only master of the Public Prosecutor and he has to guide himself with reference to Criminal Procedure Code only. So guided, the consideration which must weigh with him is, whether the broader cause of public justice will be advanced or retarded by the withdrawal or continuance of the prosecution."

11. Therefore, by application of the said principles, in the given facts, if the application filed by the Public Prosecutor is perused, it shows that the Public Prosecutor after receipt of the order/decision of the Home Department of State, decided to withdraw from the prosecution after examination of the case. It also records the satisfaction of the Public Prosecutor that after examination of the facts of the case, he fortified that the view of the Government, thereafter, considering the broad ends of justice, order of peace and taking into account that by such withdraw no law and order situation will be damaged, moved such application for withdrawal. Therefore, taking the case in the terms of the principles of law laid down by their Lordship and after perusal of application of the Public Prosecutor, it appears that the application was made after proper application of mind. Consequently, the trial Court and the revisional Court both fell into error to dismiss the said application.

12. In the result, I am of the opinion that the impugned order passed by the Judicial Magistrate First Class dated 23.04.2013 in Criminal Case No. 768/2007 in between State of C.G. v. Prakash Nayak & Others and similar order dated 23.04.2013 passed in Criminal Case No. 1108/2005 in between State of C.G. v. Dr. Shakrajeet Nayak & Others, which was further affirmed by the revisional Court by an order dated 27.07.2013 deserves to be set aside.

13. Consequently, the application for withdrawal of the prosecution filed by the Public Prosecutor dated 23.03.2013 in Criminal Case No. 768/2007 {State of C.G. v. Prakash Nayak & Others} and Criminal Case No. 1108/2005 (State of C.G. v. Dr. Shakrajeet Nayak & Others) are allowed.

14. Accordingly, the prosecution is permitted to withdraw the Criminal Case No.

768/2007 & 1108/2005 pending before the Court of Judicial Magistrate First Class, Sarangarh, against the petitioners. In the result, all the petitions are allowed.