

(1970) 01 P&H CK 0044
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 254 of 1969

Shri. Virendra

APPELLANT

Vs

The State Of Punjab

RESPONDENT

Date of Decision : 07-01-1970

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 494

Citation : (1970) 01 P&H CK 0044

Hon'ble Judges : Manmohan Singh Gujral, J

Bench : Single Bench

Advocate : Rajender Sachar and R.K. Chhibber, for the Appellant; K.S. Kwatra and I.S. Tiwana, for the Respondent

Final Decision : Allowed

Judgement

Gujral, J.—This is a revision petition against the order of Additional Sessions Judge, Jullundur, dated 6th January, 1969. whereby the application of the Public Prosecutor u/s 494 Criminal Procedure Code for permission to withdraw from the prosecution of the accused was dismissed.

2. The facts giving rise to this petition are as follows: -

The State of Punjab through Public Prosecutor Jullundur filed a Complaint against the Editor, Printer and Publisher of Urdu Dady Partap published at Jullundur, u/s 500 and 501 Indian Penal Code on the allegation that the issue of the Paper dated 10th August, 1967 contained defamatory news item which gave the impression as if Shri Surinder Singh Giani, General Assistant to the Deputy Commissioner was one of the accused in a passport scandal case and had been sent to Special Interrogation Centre, Amritsar, though in fact only Shri Harbans Lal, Stamp Vendor and Gurbax Rai, peon of Shri Surinder Singh Giani, General Assistant had been arrested and remanded to police custody. The news item was considered defamatory of Surinder Singh Giani and the prosecution was then launched after sanction u/s 198 B Criminal Procedure Code had been obtained. After the close of

the prosecution evidence and while the defence was being examined the Public Prosecutor made an application u/s 494 of Code of Criminal Procedure for permission to withdraw from the prosecution mainly on the ground that a contradiction of the defamatory news item had been published along with an apology on behalf of the accused in the very next issue of the Partap and this fact was not brought to the notice of the Government while sanction was sought for launching Prosecution against the accused. It was also stated in that application that it was the policy of the Government not to sanction prosecution of the Editors of the news papers where contradiction and apology were published by them in respect of any publication contained in the news paper which appeared to be defamatory provided if the apology was published without any delay.

3. The application of the Public Prosecutor was opposed by Surinder Singh Giani and was dismissed by the impugned order. Being aggrieved Shri Virendra, Editor, Printer and Publisher of the Partap containing the alleged defamatory article has come up in revision to this Court.

4. While canvassing that the order of the learned Additional Sessions Judge is illegal, improper and unjust, it is pointed out by the learned Counsel appearing for the accused-Petitioner that the application by the Public Prosecutor was dismissed on erroneous grounds and that as the application had been made for bona fide reasons it ought to have been allowed. Support for these arguments is sought from the following observations of the Hon'ble Supreme Court in *The State of Bihar Vs. Ram Naresh Pandey*,

Section 494 is an enabling one and vests in the Public Prosecutor the discretion to apply to the Court for its consent to withdraw from the prosecution of any person. The consent, if granted, has to be followed up by his discharge or acquittal, as the case may be. The section gives no indication as to the grounds on which the Public Prosecutor may make the application, or the considerations on which the Court is to grant its consent. There can be no doubt, however, that the resultant order, on the granting of the consent, being an order of "discharge" or "acquittal" would attract the applicability of correction by the High Court under Sections 435, 436 and 439 or Section 417. Criminal Procedure Code. The function of the Court, therefore, in granting its consent may well be taken to be a judicial function. It follows that in granting the consent the Court must exercise a judicial discretion. But it does not follow that the discretion is to be exercised only with reference to material gathered by the judicial method. Otherwise the apparently wide language of Section 494. Criminal Procedure Code, would become considerably narrowed down in its application. In understanding and applying the section, two main features thereof have to be kept in mind. The first initiative is that of the Public Prosecutor and what the Court has to do is only to give its consent and not to determine any matter judicially. The section gives a general executive discretion to the Public Prosecutor to withdraw from the prosecution subject to the consent of the Court, which may be determined on

many possible grounds. The judicial functions, therefore, implicit in the exercise of the judicial discretion for granting the consent would normally mean that the Court has to satisfy itself that the executive function of the Public Prosecutor has not been improperly exercised, or that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes. In this context it is right to remember that the Public Prosecutor though an executive officer is, in a larger sense, also an officer of the Court and that he is bound to assist the Court with, his fairly considered view and the Court is entitled to have the benefit of the fair exercise of his function. It has also to be appreciated that in this country the scheme of the administration of criminal justice is that the primary responsibility of prosecuting serious offences (which are classified as cognizable offences) is on the executive authorities. Once information of the commission of any such offence reaches the constituted authorities the investigation, including collection of the requisite evidence and the prosecution for the offence with reference to such evidence, are the functions of the executive. But the Magistrate also has his allotted functions in the course of these stages. For instance, in the course of investigation, a person arrested must be brought before him within 24 hours. Continuance of the arrested person in detention for purposes of investigation from time to time has to be authorised by him. A search can be conducted on the issue of warrant by him. Statements of witnesses and confessions may be recorded by him. In an appropriate case he can order investigation or further investigation. In all these matters he exercised discretionary functions in respect of which the initiative is that of the executive but the responsibility is his. His discretion in such matters has necessarily to be exercised with reference to such material as is by then available and is not a prima facie judicial determination of any specific issue. The Magistrate's functions in these matters are not only supplementary, at a higher level, to those of the executive but are intended to prevent abuse. Section 491 Code of Criminal Procedure requiring the consent of the Court for withdrawal by the Public Prosecutor is more in line with this scheme, than with the provisions of the Code relating to inquiries and trials by Court. It cannot be taken to place on the Court the responsibility for a Prima facie determination of a triable issue, for instance the discharge that results therefrom need not always conform to the standard of no prima facie case" under Sections 209(1), and 253(1), Criminal Procedure Code, or of groundlessness" u/s 209(2) and 283(2), Criminal Procedure Code. This is not to say that a consent is to be lightly given on the application of the Public Prosecutor, without a careful and proper scrutiny of the grounds on which the application for consent is made. What the Court has to determine, for the exercise of its discretion in granting or withholding consent, is not a triable issue on judicial evidence. It is not correct to say that where the application is on the ground of inadequacy of evidence requiring judicial consideration, it would be manifestly improper for the Court to consent to withdrawal before recording the evidence and taking it into consideration. To hold so would be engrafting on the wide terms of Section 494 Code of Criminal Procedure an exception or a proviso limited to such a case. This would not be a permissible construction of the

section. But such evidence as may already have been recorded by the time the application is made can be looked into and considered in such cases, in order to determine the impro-piety of the withdrawal as amounting to abuse or an improper interference with the normal course of justice. Hence where an application for withdrawal u/s 494 Code of Criminal Procedure is made on the ground of insufficiency or meagerness of reliable evidence that is available, it is not an improper exercise of discretion for the Court to grant consent before evidence is taken, if it was reasonably satisfied, otherwise, that the evidence, if actually taken is not likely to result in conviction.

5. From the above observations it emerges that the order passed by the Magistrate granting or refusing to grant the consent u/s 4s4 Code of Criminal Procedure would attract the applicability of correction by the High Court under Sections 435, 436 and 439 Criminal Procedure Code. It is further observed that the function of the Court granting or refusing to grant consent is judicial function and the discretion has to be exercised on judicial considerations. It also follows that while exercising the discretion u/s 494 Criminal Procedure Code, the Court is not only bound to consider the material gathered by the judicial method but is free to consider other material available on the record- It further follows that while granting or refusing to grant consent. Court may be exercising judicial discretion but does not determine any matter judicially and the Court has only to satisfy itself that the executive function of the Public Prosecutor was not being improperly exercised and no attempt to interfere with the normal course of justice was being made for illegitimate reasons. The primary function of the Magistrate in considering this matter is to prevent the abuse of the process of law and it is not the responsibility of the Court to give a Prima Jacie determination of a triable issue. It also emerges from the above decision of the Supreme Court that though consent is not lightly to be given on the application of the Public Prosecutor but the scrutiny of the grounds on which the application for consent is based has to be exercised in the context of the functions of the Public Prosecutor and for satisfying itself that there was no illegitimate basis for the application.

6. In the light of the above observations I proceed to examine the grounds on the basis of which the application was dismissed by the learned Additional Sessions Judge. The first ground given by the learned trial Court is that the publication of the contradiction of the defamatory news item was no ground for giving permission u/s 494 Criminal Procedure Code to withdraw from the prosecutioD. It is observed that if the publication of the contradiction was a complete defence, the accused will be acquitted and if it was extenuating circumstance it would be considered at the time of the passing of the sentence. It is also observed that once the matter comes to the Court, it is not to consider the genera) policy of the State but the case has to be decided only judicially. In my opinion the view taken by the learned Sessions Judge is wholly erroneous. While considering the question of granting or refusing to grant the permission to the Public Prosecutor it would not only be legitimate but proper to take into

consideration the policy of the State with respect to the matters connected with the case as this would be an indication of the fact that the permission to withdraw was not for ulterior or illegitimate purposes. In the view of the learned Sessions Judge, that "once the case has come to the Court it is to be decided judicially and the judicial function of the Court cannot be usurped by the State through application by the Public Prosecutor u/s 494 Criminal Procedure Code", is accepted, it will have the effect of making Section 494 Code of Criminal Procedure redundant. This provision only comes into play where after the case has been instituted in the Court, the Public Prosecutor considers it necessary, for good reasons, to withdraw from the prosecution.

7. The second ground by the learned Additional Sessions Judge is that from the evidence it appeared that the case against the accused was strong. This view of the learned Additional Sessions Judge would imply that the application for withdrawal could only be made in a case where there is absence or paucity of evidence and not in a case where there was good evidence against the accused and there was likelihood of conviction. This view would have the effect of considerably narrowing down the application of Section 494 Code of Criminal Procedure and of introducing restrictions to the apparently wide language of this provision, which otherwise do not appear from the language of this provision,

8. Another reason advanced by the learned Additional Sessions Judge for disallowing the application is that Giani Surinder Singh would have to file a fresh complaint which would necessitate a fresh trial and would result in the wastage of Court time. It is also added that a fresh complaint might be barred u/s 403 Criminal Procedure Code. The reasons appear to be somewhat inconsistent as on this reasoning, on the one hand permission should not be given as it would lead to wasting of the time of the Court by recording evidence again and on the other hand because the complainant will not be allowed to file a fresh complaint. Leaving this inconsistency apart, these reasons, if accepted, would considerably restrict the applicability of Section 494 of the Criminal Procedure Code. According to this provision, where the Public Prosecutor withdraws from the prosecution of any person with the consent of the Court, the withdrawal has the effect of discharge if the charge has not been framed and of acquittal if the charge has been framed, there is nothing in the language of Section 494 of the Code of Criminal Procedure suggestive of a restriction that the withdrawal could only be permitted in those cases where a fresh complaint by the complainant is not barred. On the other hand, it appears that the legislature intended to put an end to the prosecution by providing for the acquittal of the accused if the Public Prosecutor withdraws after the charge has been framed without leaving any scope for further prosecution of the accused for the same charge. It was, therefore, not open to the trial Court to refuse permission on the ground that the defamed person would lose the right of filing a complaint.

9. For the foregoing reasons, I am of the view that the learned Additional Sessions judge has failed to exercise discretion judicially and has rejected the

application without properly scrutinising the reasons urged by the Public Prosecutor. As observed earlier, the main reason on which the withdrawal is sought is that the accused hit puhshed contradiction and apology in the very next issue of the paper. It has not been contended on behalf of the Respondent that factually this was not the correct position. The application for withdrawal having been made in furtherance of the policy of the State Government to preserve the freedom of the Press by saving it iron unnecessary harassment there is no reason to assume that the withdrawal would amount to abuse or improper interference with the normal course of justice. It was, therefore, legitimate for the Public Prosecutor to urge for the grant of permission to withdraw on the ground that the accused had published a contradiction and apology without delay and this fact was not within the notice of the State Government when prosecution was launched against the accused. There being legitimate basis for the application, I hold that the learned Additional Sessions Judge has erred in not allowing the application of the Public Prosecutor. I, therefore, allowing the- revision petition set aside the order of the learned lower Court dated 6th January 1969, and allow the application of the Public Prosecutor u/s 494 of the Criminal Procedure Code. The result is that the accused is acquitted of the charges under Sections 500 and 501 of the Indian Penal Code