
(2012) 11 AHC CK 0032
In the Allahabad High Court
Case No : Criminal Revision No. 2343 of 2010

Smt. Noor Jahan and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 09-11-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 321
Penal Code, 1860 (IPC) — Section 147, 148, 149, 188, 307
Representation of the People Act, 1951 — Section 130(2)

Citation : (2012) 11 ADJ 664 : (2013) 2 ALJ 403

Hon'ble Judges : Aditya Nath Mittal, J

Bench : Single Bench

Advocate : S.M.G. Asghar, Sami Ullah Khan and V.M. Zaidi, for the Appellant;

Final Decision : Dismissed

Judgement

Aditya Nath Mittal, J.—List has been revised. None present for the revisionists.

Heard learned A.G.A. and perused the relevant record.

This criminal revision has been filed by the revisionists against the order dated 1.4.2010 passed by learned Additional Sessions Judge, Fast Tract Court No. 2, Bijnor, by which application u/s 321 Cr.P.C. has been rejected.

The grounds taken in the revision are that while considering the application u/s 321 Cr.P.C. for withdrawal of the prosecution case, the merits of the case cannot be looked into and the application for withdrawal u/s 321 Cr.P.C. can be filed at any stage prior to the pronouncement of the judgment. The State Government after holding the enquiry came to the conclusion that in the interest of justice and public peace, there should be withdrawal of the case. The applicants are innocent persons and they are not involved in the alleged incident hence the order of the Court below is wholly illegal and not sustainable under the law.

2. The revisionists were being prosecuted for the offences punishable u/s 147, 148, 149, 307, 332, 353, 188 and 504 I.P.C. and Section 130(2) of

Representation of Peoples Act. The allegations against the revisionists are that they formed an unlawful assembly and were armed with deadly weapons. In furtherance of their unlawful intention the revisionists have opened fire on Station Officer Sri Surendra Pal Singh and other police officials and they voluntarily caused injuries to the public servants who were engaged in their duty.

3. The prosecution has examined nine witnesses and the statement of the accused persons u/s 313 Cr.P.C. has also been recorded. The revisionists have also adduced evidence of defence. Further more Court witness No. 1 H.C.P. Mukharam Singh has also been examined and after that the additional statement u/s 313 Cr.P.C. has been recorded.

After this whole exercise, the Government of U.P. vide letter dated September, 2009 decided to withdraw the prosecution of this case upon which the ADGC (CrI.) moved an application before the Court for withdrawal of the prosecution.

After hearing both the parties, the Court rejected the application of the prosecution vide impugned order dated 1.4.2010.

4. Section 321 of Cr.P.C. provides that 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 or more of the offences for which he is tried. This Section has been amended by the U.P. Amendment Act 18 of 1991 by which the written permission of the State Government to that effect has been made compulsory.

5. It is settled position of law that it is not the right of the State Government or the Public Prosecutor to withdraw any case without the consent of the Court concerned. The consent of the Court in this matter plays an important role and the satisfaction of the Court cannot be ignored. The letter of the Government of U.P. by which the said prosecution has been withdrawn do not mention any such ground upon which the State Government was satisfied to withdraw the prosecution. It is also not relevant to mention that most of the criminal prosecutions are withdrawn for the political benefits.

6. The power of the State Government or the Public Prosecutor to withdraw from the prosecution is not an unfettered power. The consent of the Court is required to withdraw the prosecution. The consent of the Court does not mean the consent in a routine way but it must be substantiated with cogent reasons. The Public Prosecutor at the instance of the State Government must satisfy the Court that why the prosecution requires withdrawal. No doubt the State Government is a Chief Prosecutor and has every power to proceed with the prosecution or not but that does not mean that the State Government should take such decision in an arbitrary manner. Such decision must be taken in the public interest and certainly the public interest is not confined to the interest of the accused persons who are facing the trial. The public interest means the interest of the public at large which also includes the Government officials. In this case the police

personnels have been attacked by the accused persons and they have caused hindrance in discharge of their official duties. Such action of the State demoralizes the police officials in discharge of their official duties if such cases are withdrawn without mentioning any cogent reason.

7. The consent of the Court is not 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. Permission for withdrawal of the prosecution cannot be granted mechanically, or simply because the State desires so. The withdrawal must be for proper administration of justice.

8. Where withdrawal is sought on the ground of public interest but no material is placed on record in support of the ground, the rejection of the application for withdrawal of the case cannot be said to be illegal.

9. The consideration weighing with the prosecuting authority may be either that it will not be able to produce sufficient evidence to sustain the charge or subsequent information before it with falsified prosecution evidence or other circumstances. It is the duty of the Court to see that the permission is not sought on grounds extraneous to the interest of justice or that offences which are offences against the State go unpunished merely because the Government as a matter of general policy directs the Public Prosecutor to withdraw from the prosecution.

10. In the present case all the prosecution witnesses and defence witnesses as well as the Court witnesses have been examined and the case is absolutely at the final stage of hearing the arguments.

In these circumstances, it cannot be said that the prosecution will not be able to adduce the reliable evidence.

11. Hon'ble Supreme Court in *Ghanshyam Vs. State of M.P. and Others*, has held that the Public Prosecutor may withdraw from the prosecution when there is paucity of evidence, to further the broad ends of justice, public order, peace and tranquillity. The object of the consent of the Court would normally mean that it 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 purposes. The Court has discretion to permit or not to permit the application for withdrawal of prosecution presented by the Public Prosecutor. Interest of administration of justice is the paramount consideration for grant of consent for withdrawal of prosecution.

12. Hon'ble Supreme Court in *Rahul Agarwal Vs. Rakesh Jain and Another*, has held that the Court must consider all relevant circumstances and find out whether the withdrawal of prosecution would advance the cause of justice.

13. Delayed F.I.R., weak chances of conviction, inadequate material are some of the reasons for withdrawal from prosecution. For withdrawal of prosecution the decision of the Public Prosecutor/State Government (as in the case of U.P.) must

be independent and the Public Prosecutor should not act merely as a rubber stamp for the State Government which instructed it to withdraw or to sign on the dotted lines.

14. It is the duty of the State Government to supply with the entire file so that if necessary, it can be produced before the Court for its perusal to give consent. If this procedure is followed, chances of favouritism or extraneous political consideration would be carved out to a great extent and the Court giving consent shall also have the opportunity to see the Government Secretariat's instructions. In the present matter no such grounds were disclosed before the Court below who could consider such grounds before according its consent.

In this case, the prosecution evidence as well as defence evidence has been concluded and the case is at the stage of final argument. The Court below has considered all aspects of the matter and has refused the consent to withdraw the prosecution. In my opinion the impugned order do not suffer from any error of law and there is no reason to interfere with the impugned order. The revision is accordingly dismissed.

Let the original record be sent to the Court concerned at an early date to proceed with the trial.