
(1963) 03 AP CK 0014
In the Andhra Pradesh High Court

State of Andhra Pradesh

APPELLANT

Vs

G. Sanjeeva Reddy and Others

RESPONDENT

Date of Decision : 19-03-1963

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 202, 345
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 324

Citation : (1963) CriLJ 708

Hon'ble Judges : Sharfuddin Ahmed, J

Bench : Single Bench

Judgement

Sharfuddin Ahmed, J.—These two revision cases arise out of the orders of the Sessions judge, Adilabad u/s 494 Criminal Procedure Code on his refusal to accord permission to the proposed withdrawal by the Public Prosecutor pending before him. It appears that in the first case which forms the subject matter of Sessions Case No. 9 of 1961 in all 29 accused are involved while in the second case, the subject matter of SC No. 8 of 1961, 31 accused are facing trial. A perusal of the charge sheet and the committal order will indicate that the offence with which the accused were charged are of sufficiently grave nature viz., rioting armed with deadly weapons attempt to commit murder, dacoity, voluntarily causing hurt and grievous hurt etc., under Sections 147, 148, 149, 307, 324 and 395 I.P.C. In the other case, equally grave allegations are made. Both the offences are alleged to have been committed on the same date viz, 27-12-1959.

2. Briefly, the allegations are that on the date of incident one worker who was suffering from epilepsy was drowned in a cistern in Bungalow No. 5 occupied by one of the officers in the Sir Silk Colony. Taking advantage of it, the accused who are mainly workers of the said factory, led by their union president and other office bearers, took law into their hands and started an orgy of loot and arson damaging the factory properties and that of the General Secretary of the Sir Silk Factory against whom they were nursing a grievance for the rejection of their demands from a considerable time. Later in the day they seem to have burnt the huts of some loyal workers and thus caused considerable damage to the property

of the factory and of the officers of the Colony, particularly of the General Secretary.

3. These cases after a chequered careers with which we are not immediately concerned came to be committed in the Court of Sessions, Adilabad for trial and at this stage petitions were filed by the Public Prosecutor, Adilabad u/s 494 Criminal Procedure Code for the withdrawal. This was vehemently opposed to by the administration who were the complainants in the case. The learned Sessions Judge on a consideration of the arguments advanced refused to accord his consent for the withdrawal. The revisions are directed against this order.

4. Before considering the elaborate arguments advanced on either side it is necessary to examine the scope of Section 494 Criminal Procedure Code with reference to the obligation imposed by it on the court and public prosecutor. It reads as under:

Any public prosecutor may with the consent of the court, in cases tried by jury before the return of the verdict, and in other cases 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.

5. It is dear therefore that the initiative to withdraw from prosecution is that of the public prosecutor and the court is merely required to give its consent. But it is well settled that the intendent of introducing this condition viz., the consent: of the court is to place an embargo on the powers of the public prosecutor with a view to prevent any abuse. Wherever this consent of the court or permission of the court has been made a condition precedent for this termination of the proceedings the avowed object of legislature seems to be that the power vested in the parties should not be abused so as to impede the natural course of justice. u/s 345(2) Criminal Procedure Code certain offences of fairly grave nature have been made compoundable with the permission of the court the element of permission being reduced merely to ensure that the parties do not make improper use of it to the detriment of the normal course of justice. It follows therefrom that the courts should exercise the discretion vested in them judicially bearing in mind the object of the legislature in imposing this obligation on them.

This aspect of the case has been considered by various High Courts and there is a general concurrence of opinion that in granting or withholding consent under this section the court is performing a judicial function and that the discretion vested in the court has to be exercised judicially, vide *Ranjha v. Emperor* AIR 1948 Lah 74. *The King Vs. Parmanand and Others*, and *The State of Bihar Vs.*

Ram Naresh Pandey, . This section does not however specify the grounds on which the public prosecutor may withdraw a case from prosecution nor mentions the considerations which should weigh with the court in granting or withholding the consent. It only empowers the public prosecutor to make an application and it is for the court to consider whether the same has been properly made, or it is merely an attempt to interfere with the normal cause of justice with an oblique motive. In the case last cited. The State of Bihar Vs. Ram Naresh Pandey, there is a permanent observation by the Supreme Court in the following words:

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.

6. The next question for consideration is how the judicial discretion vested in the court is to be exercised i.e., whether it should be based on the material placed before the court or on the ipse dixit of the public prosecutor i.e. even on extraneous considerations. There may be causes in which the exercise of this function could be based on the material on record. For example, when an application is filed to withdraw from prosecution on the ground that there is no evidence or there is paucity of evidence the court may look into the material on record and arrive at a conclusion. But a number of cases can be envisaged in which the court may be called upon to exercise their discretion merely on the grounds urged by the public prosecutor and which are not capable of judicial scrutiny. Cases arising out of communal and factional disputes are often sought to be withdrawn to restore harmony and secure goodwill of the contending parties. It is common experience that such cases are often of a grave nature involving loss of life and property, but occasionally it is found that cases of this type are allowed to be withdrawn by courts in the largest interest of the parties as a measure for restoring goodwill and harmony.

The grounds urged in such cases are not capable of determination from the material available to the court and naturally the courts have to accept the reasons given by the authorities responsible for the maintenance of law and order either on the ground of public policy or for reasons of State. It would be too much to hold that it was in such cases before granting consent an inquiry should be held on the lines contemplated u/s 202 Criminal Procedure Code and the final order should be based on the result thereof. As observed by the Supreme Court in The State of Bihar Vs. Ram Naresh Pandey, this would be engrafting on the wide terms of Section 494 Criminal Procedure Code. an exception or a proviso limited to such a case and this would not be permissible construction of the section. Therefore it has to be held that in certain cases the discretion in granting or withholding the consent will have to be exercised not on purely judicial evidence. The position has been summed up by the Supreme Court in the case cited above, The State of Bihar Vs. Ram Naresh Pandey, in the following words:

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.

7. Adverting to the facts of the present case, it appears that on 27-4-1962 an application was filed by the Public Prosecutor as under:

The petition of Public Prosecutor most respectfully showed as follows:

1. The accused involved in the above case are either workers in the Sirsilk or Sirpur Papers Mills Ltd. situated at Kagaznagar, Since some time past, the relations between the Management of the above Mills and the Labour Union (INTUC) of which the accused are the members have be-come bitter and unpleasant which are detrimental to the industry as well as workers. The spirit to have existed between the employer" and employee is lacking between them.

2. The Government after carefully studying the situation have come to conclusion, on the ground of public policy and reasons of State that it is inexpedient to continue the prosecution.

3. Further in order to restore industrial peace and to promote better relations and to create a feeling of trust in each other it has be-come necessary to drop the case.

PRAYER

That your Honour may be pleased to accord permission to withdraw the case from prosecution.

8. An affidavit of nearly 10 or 12 pages was filed by one B. L. Dada, Factory Manager, opposing the grant of consent and the impugned order dated 3rd August 1962 seems to have been passed on a consideration thereof.

9. The first point urged before the lower court was that the application was filed by the Public Prosecutor not on his own initiative as a result of the exercise of his own discretion but in consequence of the instructions given by the Government and as such the petition was not maintainable. The learned Sessions Judge did not accept this contention as in his opinion the State Government was empowered to give instructions. I think, the conclusion of the Sessions Judge on this aspect is not correct. No doubt the Govt. can give instructions or make a request to the public prosecutor but the discretion to withdraw from prosecution is that of the public prosecutor alone, In fact the application dated 27-4-1962 is unhappily worded in the sense that it reveals to the court the instructions given by the Government to the public prosecutor.

In a case in which the District Magistrate has directed the Public prosecutor to withdraw the case and the Public Prosecutor had merely shown the instructions to the Magistrate and the Magistrate thereupon permitted withdrawal of the case it was held that the Public Prosecutor was wrong in showing the instructions of

the. District Magistrate to the trying court and the Magistrate was equally wrong in referring to the said directions. So that if as urged by the learned Counsel for the respondents, the application has been filed merely under the directions of the Government and the Public pro-secutor has not exercised the discretion vested in him the petition will be untenable. This is based on the fact that u/s 494 Criminal Procedure Code the initiative is that of the Public Prosecutor who is also an officer of the court and Is in duty bound to assist the court with his considered views so as to enable the court to exercise its functions properly.

If therefore the Public Prosecutor merely acts as a post office the court would be deprived of the benefit of his considered views and such an application would . not be acceptable from whatever quarters it might proceed.

The same point has been urged before this Court but on a careful consideration of the application I think it would not be correct to hold that the said application does not reflect the views of the Public Prosecutor. No doubt in para 2 the views of the Government have been recorded but para 3 seems to be based on an appreciation of the position by the Public Prosecutor himself. It has been further supplemented by the fact that the Public Prosecutor throughout the proceedings has appeared on behalf of prosecution and pressed for the acceptance of the contentions put forth by him in the said application. In the long affidavit submitted by the management, there is no specific allegation against the Public Prosecutor that he had abused the powers vested in him u/s 494 Criminal Procedure Code; the tirade is against Government alone. It cannot, therefore be held that the application dated 27-4-1962 does not reflect the considered views of Public Prosecutor.

10. The next question is whether the grounds urged by the Public Prosecutor viz., the restoration of industrial peace promotion of better relations and creation of a feeling of trust could be deemed sufficient for according consent for withdrawal.

The learned Sessions judge on a consideration of the history of the state of relations between the parties has come to the conclusion that there was never any cordiality between them from 1953 on-wards till now and in spite of the State accommodation the workers on former occasions once in 1955 and again in 1957 in a large hearted manner there appears to be no change of heart. He therefore inferred that to any reasonable and cogent thinking mind the proposed withdrawal will clearly appear to be incapable of achieving the desired object. In that view, he upheld the consent.

No doubt it is on record that twice on previous occasions cases against the workers were withdrawn but it would be taking too pessimistic a view of the state of affairs to conclude therefrom that any further attempt in that direction was bound to fail and it. was an Utopia which could never be achieved. Further, as urged by the learned Public Prosecutor, it was not a triable issue capable of determination on judicial evidence. The Court should have accepted the assurances contained in the application filed by the Public Prosecutor on its face

value without casting aspersions on the bona fide of the executive unless it was convinced that there was an oblique motive in withdrawing the prosecution.

11. The other side has come forward with the allegation that the move to withdraw was based merely on political reasons and it was nothing more than an attempt to save Respondent No. 2 one Sanjiva Reddy from being prosecuted in a Court of law. The allegation seems to be that out of party affiliations as the individual has been returned to the Assembly Government have taken this step to save themselves from the criticism of giving a ticket to a person involved in grave offences. No doubt certain acts of this individual have been brought on record which show his defiant and arrogant attitude towards Public Prosecutor and Courts in regard to which timely action had been taken it would probably have resulted in the end of his career. But there is nothing to warrant an inference that in order to save this individual and out of sense of comradeship and camaraderie the cases are sought to be withdrawn for the move seems to have been made even before the said individual was given a ticket and the election had actually commenced. Moreover, it is not an attempt to single him out and to proceed against the test of the accused. If that was so, it could reasonably be urged that the attempt was merely aimed at saving Sanjiva Reddy but when the prosecution has sought to withdraw against a large number of workers it could not reasonably be concluded that the entire machinery of the State was moved to save an individual-

12. The order of the learned Sessions Judge, as stated supra is merely on the consideration that the industrial peace is nothing more than a delusion but in the course of arguments it has been urged by the learned Counsel for the accused that concrete steps to bring about reconciliation have been taken and there is data available to show that the industrial peace which was the objective of the executive to achieve has been in some measures brought about. The learned Counsel appearing on behalf of the management has strongly resisted the filing of affidavits to substantiate the arguments at that stage. However, it was conceded by him that disputes between the management and labour which were the real sources of friction have been referred to a competent tribunal.

In the circumstances, having regard to the state of emergency to which no Courts can be blind I think the continuance of prosecutions would certainly hamper the rapprochement between the parties and management and avoiding further trouble and sabotage has been held to be a good ground for withdrawal in a number of cases (Vide *The King Vs. Moule Bux and Others*, . I am therefore of the opinion that the discretion vested in the Court has been properly exercised. This would meet the argument of the learned Counsel for the management advanced with reference to the decision In *Re: R.V. Kaliappa Goundan and Others*, viz., that if the discretion had been exercised the High Court would not interfere with such discretion. This is a case in which discretion does not seem to have been properly exercised. I therefore allow the revision case.