
(1996) 07 OHC CK 0019
In the Orissa High Court
Case No : Criminal Revision No. 190 of 1995

State of Orissa

APPELLANT

Vs

Michel Joseph and Others

RESPONDENT

Date of Decision : 08-07-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 321

Citation : (1996) 2 OLR 195

Hon'ble Judges : D.M. Patnaik, J

Bench : Single Bench

Advocate : Indrajit Ray, General, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

D.M. Patnaik, J.—This revision at the instance of the State is against the order dated 6-4-1995 passed by the Judicial Magistrate, First Class, R. Udayagiri, refusing the prayer of the Assistant Public Prosecutor on a petition filed u/s 321, CrPC for withdrawal from the prosecution against the accused persons in G. R. Case No. 42 of 1995 of the said Court.

2. Shortly speaking prosecution case is, the Adivasi community had organised a camp to cure all types of diseases with the healing touch of accused persons headed by Dr. K. Ahmed Paul. The venue fixed was village Badapada under Seranga Police Station in the district of Gajapati and the date in between 28-3-1995 and 31-3-1995. Wide publicity was given to attract thousands people to benefit from the miracle. The organisers sought for permission to hold the camp from the Collector which was refused and to prevent any law and order situation there was a prohibitory order u/s 144(2), CrPC. In spite of this, on the appointed date i.e., 24-3-1995 there was a huge congregation. The Block Development Officer and the entire administrative machinery of the district including the police personnel were present. At that time when the accused persons who are foreign missionaries came out of the Church, all the people gathered there shouted slogans in the name of Jesus Christ. When the police

tried to disburse the crowd there was brick-batting and there prevailed a law and order situation. It was alleged that the accused opposite parties took the law into their own hands and assaulted and injured the police people.

For this, charge-sheet was submitted against the opposite parties for the offence under Sections 307, 333, 148 etc. of the Indian Penal Code.

3. Heard learned Advocate-General, perused the FIR and the impugned order rejecting the prayer for withdrawal from prosecution.

From the impugned order it is found that the Magistrate has given his reasons that no permission was obtained for the Government for such withdrawal, the offence u/s 3 of the Explosive Substance Act being an offence triable by Court of Session he had no jurisdiction to permit such withdrawal, the proceeding terminating in an ultimate acquittal would not be a ground for withdrawal, the statement of witnesses recorded u/s 161. Cr PC showed prima facie evidence against the opposite parties and lastly, the withdrawal sought for was not a bona fide one.

4. The learned Advocate-General on the other hand referred to various decisions of the apex Court but, however, relied on the decision reported in Sheonandan Paswan Vs. State of Bihar and Others, . Sheonandan Paswan v. State of Bihar and Ors. The learned Advocate-General further submitted that in the present case the accused, opp. parties 1 to 10 are all foreign missionaries from the United States of America. They became victim of the circumstance. The way the incident occurred it could be well imagined that those missionaries neither had a hand nor committed the offences alleged. The learned counsel further submitted that it would be difficult for the prosecution to prove the case against the opposite parties to the hilt for the offences alleged against them and if trial proceeds in such a case it would be a futile exercise of the administrative as well as judicial function of the State and would not give any desired result.

Secondly, with reference to para 56 at page 324 of the case referred to (supra) the learned Advocate-General submitted that object of Section 321. Cr PC according to the apex Court is to reserve power to the "Executive Government" to withdraw any criminal case on larger grounds of public policy such as inexpediency of the prosecution, broader public interest, maintenance of public peace and harmony etc.

5. Having gone through the impugned order of the Magistrate it is clear that the order does not deal with the essential aspect of the provisions u/s 321, Cr PC. It would not be appropriate for the Magistrate while dealing with a petition u/s 321 to reason whether the case would ultimately succeed in a conviction of the accused persons. It would be very difficult to catalogue the various other reasons those may justify for withdrawal in the facts and circumstances in a given case. But the most important consideration should be absence of bona fide on the part of the State authorities in praying for withdrawal and if such withdrawal is allowed whether it would affect the administration of justice. Having heard the

learned Advocate-General and having gone through various decisions relied on by the learned counsel for the State this Court is no doubt satisfied that the prayer for withdrawal is a bona fide one and that withdrawal of the prosecution in the facts and circumstances of the case would not affect the administration of justice.

6. In the case of M. N. Sankaranarayanan Nair V. P. V. Balakrishnan and Ors: AIR 1973 SC 496 the apex Court while dealing with this provision u/s 496 of the old Code held in para 5 of the judgment as follows :

"...The section does not, however, indicate the reasons which should weigh with the Public Prosecutor to move the Court for permission nor the grounds on which the Court will grant or refuse permission. Though the section is in general terms and does not circumscribe the powers of the Public Prosecutor to seek permission to withdraw from the prosecution the essential consideration which is implicit in the grant of the power is that it should be in the interest of administration of justice which may be either that it will not be able to produce sufficient evidence to sustain the charge or that subsequent information before prosecuting agency would falsify the prosecution evidence or any other similar circumstances which it is difficult to predicate as they are dependent entirely on the facts and circumstances of each case. Nonetheless it is the duty of the Court also to see in furtherance of justice 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 or expediency unconnected with its duty to prosecute officers under the law, directs the Public Prosecutor to withdraw from the prosecution and the Public Prosecutor merely does so at its behest."

For the reasons indicated above, there is no material to show that prayer for withdrawal of the prosecution by the Assistant Public Prosecutor was made for any extraneous reason and that there would be failure of administration of justice if such permission is given. Therefore, \\ set aside the impugned order and allow the prayer for withdrawal of the prosecution.

7. In the result, the criminal revision is allowed. The lower Court order dated 6-4-1995 is set aside. Withdrawal from prosecution sought for is permitted.