

(1992) 11 AP CK 0012

In the Andhra Pradesh High Court

Case No : Criminal R.C. No. 575 of 1991 and Criminal R.P. No. 569 of 1991

T. Venkat Ram Reddy

APPELLANT

Vs

D. Gopalakrishnam Raju and Another

RESPONDENT

Date of Decision : 23-11-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 199, 203, 227, 245, 257

Citation : (1994) CriLJ 1247

Hon'ble Judges : G. Radhakrishna Rao, J

Bench : Single Bench

Advocate : C. Padmanabha Reddy, for the Appellant; Public Prosecutor, for the Respondent

Judgement

1. This Criminal Revision Case is directed, at the instance of the petitioner, against the order of the II Additional Metropolitan Sessions Judge, Hyderabad dated 13th August, 1991 passed in Cri. M.P. Nos. 621 and 783 of 1991 in C.C. No. 3 of 1990, on his file, refusing to grant permission for withdrawal of the prosecution against the petitioner-accused.

2. The facts leading to the filing of this revision are briefly as follows : Defamatory material (Ex. P. 2) was published against the Ist respondent herein viz., Mr. D. Gopalakrishnam Raju, I.P.S. Deputy Commissioner of Police, Administration, Hyderabad City Police Hyderabad, who is a public servant. He is the aggrieved person. Pursuant to the application filed by him, the State Government accorded sanction u/s 199 of the Code of Criminal Procedure to prosecute the accused and Special Public Prosecutor, Sri Sitapathi was also appointed to conduct prosecution. The sanction was given as per G.O. No. 3623 dated 15-9-1986 which was later clarified by amended G.O. issued on 20-9-1986 in G.O. Nos. 3023 and 3708. Thereafter G.O. Rt. No. 4279 dated 21-11-1990 was issued by the Government instructing the Special Public Prosecutor to withdraw the case against the accused. Ultimately the lower Court refused permission to withdraw the prosecution. It is against that order the present

revision preferred by the Petitioner-accused.

3. Mr. C. P. Padmanabha Reddy, learned counsel appearing for the petitioner vehemently contended that since the Government is the sanctioning authority u/s 199 of the Code of Criminal Procedure to sanction prosecution in cases of defamation of any public servant employed in connection of the affairs of the State, it is equally competent to accord permission for withdrawal of the prosecution, and that the same cannot be refused by the Court. He also contended that u/s 321 of the Code of Criminal Procedure no reasons need be given by the Public Prosecutor for withdrawing the prosecution. He has also cited the decision of the Supreme Court reported in Sheonandan Paswan Vs. State of Bihar and Others, in support of his contention, that the court has to give its consent for withdrawal of the prosecution without looking for any reasons. It was held in the above said decision by the Supreme Court as follows :

"Section 321 providing for withdrawal from prosecution gives in 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. The 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. Function 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. When an application u/s 321 is made, it is not necessary for the court to assess the evidence to discover whether the case would end in conviction or acquittal. The Court's function is to give consent. This section does not obligate the court to record reasons before consent is given. However, it does not means that consent of the court is a matter of course. When the Public Prosecutor makes the application for withdrawal after taking into consideration all the materials before him, the court exercises its judicial discretion by considering such materials and on such consideration, either gives consent or declines consent. The section should not be construed to mean that the court had to give a detailed reasoned order when it gives consent. All that is necessary to satisfy the section is to see that the Public Prosecutor acts in good faith and that the Magistrate is satisfied that the exercise of discretion by the Public Prosecutor is proper. This will be clear on perusal of some other provisions in the Code such as Sections 203, 227, 245, 257 and 258 which relate to the manner in which courts have to exercise their jurisdiction in pending cases when applications are made for their withdrawal or when the court finds that there is no ground to proceed with the cases and Section 320 which is a kindred section. While Sections 203, 227, 245, 257 and 255 require the Magistrate to record his reasons for the order he passed, Section 320 contemplates consent by the court only in a supervisory manner and not in an adjudicatory manner."

4. It may be noted that the as seen from the G.O. instructing the Public

Prosecutor to withdraw the prosecution against the petitioner-accused, the State Government has not applied their mind no reasons are given in the said G.O. for withdrawing the prosecution. Since the Government have given reasons in the G.O. for sanctioning prosecution against the accused, similarly, reasons have to be given for withdrawal of the prosecution. In the case of the Supreme Court, referred to above, it was further observed that public policy, interests of the administration, inexpediency to proceed with the prosecution for reasons of State and paucity of evidence were considered good grounds for withdrawal in many cases and not good grounds for withdrawal in certain other cases depending upon the peculiar facts and circumstances. The Court has to see whether there are good grounds for according sanction to withdraw the prosecution. Since the matter is pending from a long time and as the Government employee's reputation had been affected by virtue of the publication made by the accused, it is not desirable for the Government to revoke the sanction order in which detailed reasons are given, with a stroke of pen simply because it is the master of the litigation in Criminal cases. The reasoning given by the learned Sessions Judge is perfectly sound. By the way in which the Government asked the Public Prosecutor to withdraw the prosecution, can it be said that the discretion is properly exercised ? Definitely it has not exercised its discretion properly. The discretion exercised is only arbitrary one. The Court is not expected to give its consent automatically for the withdrawal of the case especially when nothing is spelt out in the Government Order. The right given to the public servant by granting sanction u/s 199 of the Code of Criminal Procedure cannot be taken away without recording reasons in the order. Sri C. Padmanabhareddy, learned counsel for the petitioner contends that Section 199(6) of the Code of Criminal Procedure gives a right to the affected party to make a complaint in respect of the same offence and that his right is not taken away. After a lapse of six years simply because the Government wants to withdraw the case against the accused arbitrarily without assigning any reasons, it cannot be said that because the affected party has got a right to make a complaint, the Court should give consent for the withdrawal of the case. When once the prosecution has been launched by following the procedure laid down u/s 199 of the Code of Criminal Procedure, that is, by according sanction by the Government for prosecution of the accused by giving detailed reasons, similarly the Government has to apply its mind after consultation with the Public Prosecutor while withdrawing the case. That has not been done in this case. In the above cited Supreme Court decision reported in *Sheonandan Paswan Vs. State of Bihar and Others*, the Supreme Court has summarised the true legal position on the subject thus (Para 44) :

- "1. Under the scheme of the Code prosecution of an offender for a serious offence is primarily the responsibility of the Executive.
2. The withdrawal from the prosecution is an executive function of the Public Prosecutor.
3. The discretion to withdraw from the prosecution is that of the Public

Prosecutor and none else and so he cannot surrender that discretion to some one else.

4. The Government may suggest to the Public Prosecutor that he may withdraw from the prosecution but none can compel him to do so.

5. The Public Prosecutor may withdraw from the prosecution not merely on the ground of paucity of evidence but on other relevant grounds as well in order to further the broad ends of public justice, public order and peace. The broad ends of public justice will certainly include appropriate social, economic and political purposes, sans Tammany Hall enterprise.

6. The Public Prosecutor is an officer of the court and responsible to the Court.

7. The Court performs a supervisory function in granting its consent to the withdrawal.

8. The Court's duty is not to reappreciate the grounds which led the Public Prosecutor to request withdrawal from the prosecution but to consider whether the public prosecutor applied his mind as a free agent, uninfluenced by irrelevant and extraneous consideration. The court has a special duty in this regard as it is the ultimate repository of legislative confidence in granting or withholding its consent to withdrawal from the prosecution."

It was further observed by the Supreme Court as follow (Para 44) :

"We may add it shall be the duty of the Public Prosecutor to inform the court and it shall be the duty of the court to apprise itself of the reasons which prompt the public prosecutor to withdraw from the prosecution. The court has a responsibility and stake in the administration of criminal justice and so has the Public Prosecutor, its "Minister of Justice." Both have a duty to protect the administration of criminal justice against possible abuse or misuse by the Executive by resort to the provisions of Section 321, Criminal Procedure Code. The independence of the Judiciary requires that once the case has travelled to the Court, the Court and its officers alone must have control over the case and decide what is to be done in each case."

On a close scrutiny of the G.O. permitting withdrawal of the prosecution in the light of the observations made by the Supreme Court I find it difficult to say that neither the Government nor the Public Prosecutor concerned has applied their mind before according permission to withdraw the prosecution by giving detailed reasons and the order passed by the Government is an arbitrary one. As already stated, simply because the State is the master of litigation in criminal cases as is contended by the learned counsel for the petitioner, it does not mean that the decision taken by the Government arbitrarily without assigning any reasons has to be upheld by the court forgetting the fact that reasoned order has been given at the time of the according sanction of the prosecution.

5. The learned Sessions Judge has given cogent and convincing reasons for

refusing permission to withdraw the prosecution against the petitioner and in view of my above detailed discussion. I see no reasons to interfere with the finding recorded by him.

6. The Criminal Revision case is, therefore, dismissed.

7. Revision dismissed.