

(2016) 04 JH CK 0151

In the Jharkhand High Court

Case No : Cr. Revision No. 213 of 2016

**The State of Jharkhand, through it's Public Prosecutor, Palamau -
Petitioner @HASH Umesh Jee @ Dinesh Yadav, son of Tapeswar Yadav,
Resident of Bhitdiha, P.O. and P.S. Manatu District-Palamau - Opposite
Parties**

Date of Decision : 22-04-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 321, Section 397, Section 401
Penal Code, 1860 (IPC) — Section 147, Section 148, Section 149, Section 307, Section 341, Section 342, Section 353, Section 379, Section 511

Citation : (2016) 4 ECrC 157

Hon'ble Judges : Ravi Nath Verma, J.

Bench : Single Bench

Advocate : Mr. Rajesh Shankar, Government Advocate and Mr. Abhay Prakash, Advocate, for the Petitioner; None, for the Opposite Party

Final Decision : Allowed

Judgement

Mr. Ravi Nath Verma, J. - The State of Jharkhand herein challenges the order dated 05.01.2016 passed by learned Additional Sessions Judge-VII, Palamau in S.T. Case No. 456A/ 12 whereby the learned court has rejected the petition filed by the Public Prosecutor, Palamau under Section 321 of the Code of Criminal Procedure (hereinafter referred to as "the Code") for withdrawal of the prosecution case against the present opposite party-accused, Umesh Jee @ Dinesh Yadav.

2. The facts of the case, which is based on the fardbeyan of Sub-Inspector-cum-Officer-in-Charge, Panki Police Station, in short, is that after getting instruction of Superintendent of Police, Palamau on 17.05.2001 while he along with armed police constables and reserve guards and police personnel of neighboring districts, Chatra after conducting raid were returning back and reached near village Shildag at about 6.45 p.m., suddenly the extremists started indiscriminate firing upon the police party where after on the instruction of the Superintendent of Police, the police personnels took positions and retaliated and firing from both

sides continued for a long. The extremists finding themselves in weak position tried to escape from there but the police party went in search of the extremists. Another police party standing near village Shildag reported that the extremists had fired several rounds on them also. In total, 625 round were fired by the police party against the extremists. On enquiry from villagers the informant came to know that this petitioner along with 17 named accused persons and 2025 unknown M.C.C. extremists were involved in the firing. On the basis of the said fardbeyan, Manatu P.S. Case No. 22 of 2001 was instituted against 17 named accused including this petitioner under Sections 147, 148, 149, 341, 342, 353, 307, 379 and 511 of the Indian Penal Code, under Section 27 of the Arms Act and also Section 17 of the C.L.A. Act. The police after investigation, submitted the charge-sheet on 30.09.2008. Accordingly, cognizance of offence was taken and as the matter was exclusively triable by the court of Sessions, the same was committed for its trial. Subsequently on 06.10.2015, the Public Prosecutor filed a petition under Section 321 of the Code for withdrawal of the prosecution against present petitioner. The court below after hearing the Public Prosecutor and examining the letter of the District Magistrate, Palamau as well as the letter of Additional Chief Secretary, Department of Home, Government of Jharkhand, Ranchi and the case diary, rejected the prayer by the order impugned holding that it would not be proper and just for the ends of justice to accord permission to the prosecution to withdraw the case against the petitioner. The court below further held that the petitioner has been declared absconder vide order dated 11.07.2014 and permanent warrant with red ink has been issued against him. Being aggrieved, the State has moved this Court under revisional jurisdiction.

3. Learned Government Advocate, Mr. Rajesh Shankar, assailing the order impugned as perverse and bad in law seriously contended that the court below without applying its judicial mind in a mechanical manner passed the order impugned though the withdrawal of a case against an accused is an executive function and the Public Prosecutor considering the interest of public policy and justice, on the instruction of the State of Jharkhand had filed the application for withdrawal. It was also submitted that to achieve the larger objective of connecting the Naxal outfits or individuals Naxals to the mainstream of democratic set up, the said petition was filed as the same would motivate and persuade other Naxals also to give up the violence and it was the duty of the State to ensure that the national security as well as public tranquility be maintained. Learned counsel further submitted that the Government in order to maintain the social peace and tranquility is holding a campaign to make the outlaws understand that their joining in the mainstream would improve the social conditions and safety of common people and on the assurance of the accused that he will motivate others also to surrender and join the mainstream the State framed the policy to facilitate and rehabilitate the Maoist outlaws in society and some of the outlaws have shown their keen interest in joining the mainstream of the society and for that the consent for withdrawal becomes more relevant but

the court below ignored the very objective of the provision of 321 of the Code and in complete disregard to the public policy, refused to exercise its judicial discretion. Learned counsel by filing photocopy of memo of arrest of the accused-Umesh Jee @ Dinesh Yadav submitted that only today he has received the information from the officer-in-charge, Manika Police Station, Latehar that the accused has been arrested on 12.04.2016 at 10.00 a.m. Even the court below while rejecting the prayer has nowhere whispered that the evidence collected during investigation was either sufficient or not sufficient to frame charge or to convict the accused.

4. Before I consider the submissions of the learned State counsel, it is necessary to examine the mandates and guidelines given by the Hon''ble Supreme Court on a petition filed under Section 321 of the Code in different cases. The law as to when consent to withdrawal of prosecution should be accorded under Section 321 of the Code is well settled as a result of several decisions of the Hon''ble Supreme Court first of which *The State of Bihar v. Ram Naresh Pandey and Another*; AIR 1957 SC 389 and subsequently explained in *State of Orissa v. Chandrika Mohapatra & Others*; (1976) 4 SCC 250. In the above case of *State of Orissa (Supra)* in Paragraph 10 the Hon''ble Supreme Court has held as follows:

"We have already discussed the principles which should govern cases of this kind where an application is made by the Public Prosecutor for grant of consent to the withdrawal of prosecution under Section 494 of the Criminal Procedure Code. We have pointed out that the paramount consideration in all those cases must be the interest of administration of justice. No hard and fast rule can be laid down nor can any categories of cases be defined in which consent should be granted or refused. It must ultimately depend on the facts and circumstances of each case in the light of what is necessary in order to promote the ends of justice, because the objective of every judicial process must be the attainment of justice. Now, in the present case, the application made by the Public Prosecutor clearly shows that the incident had arisen out of rivalry between two trade unions and since the date of the incident calm and peaceful atmosphere prevailed in the industrial undertaking. In these circumstances, the State felt that it would not be conducive to the interest of justice to continue the prosecution against the respondents, since the prosecution with the possibility of conviction of the respondents would rouse feelings of bitterness and antagonism and disturb the calm and peaceful atmosphere prevailing in the industrial undertaking. We cannot forget that ultimately every offence has a social or economic cause behind it and if the State feels that the elimination or eradication of the social or economic cause of the crime would be better served by not proceeding with the prosecution, the State should clearly be at liberty to withdraw from the prosecution. We, are, therefore, of the view that in the present case the learned Sessions Judge was right in granting consent to the withdrawal of the prosecution and the High Court was in error in setting aside the order of the learned Sessions Judge."

5. In the instant case, it appears that while considering the petition, the court below has not considered the object of administration of justice and mainly relied on the fact that the accused has not surrendered in court and has been declared absconder and permanent warrant of arrest has been issued.

The paramount consideration in cases where petition has been filed by the Public Prosecutor to withdraw the prosecution against an accused, the court has to examine that the prayer for withdrawal should be in the interest of administration of justice being an executive function but nonetheless, 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 against the State go unpunished merely because the Government as a matter of general policy directs the Public Prosecutor to withdraw the prosecution. It is not sufficient for the Public Prosecutor to say that in the interest of society at large it is not expedient to proceed with the prosecution. The Public Prosecutor has to make out some ground which would show that the prosecution is sought to be withdrawn because inter alia the prosecution may not be able to produce sufficient evidence to sustain the charge or that there are other circumstances which clearly show that the object of administration of justice would not be advanced or furthered by going on with the prosecution. Undoubtedly, the ultimate guiding consideration must always be the interest of administration of justice.

6. In view of the ratio decided by the Hon''ble Supreme Court it was incumbent upon the court below to consider the interest of administration of justice, the social cause, the fact to bring the Naxals outlaws in the mainstream of the society in order to maintain public peace and tranquility but as the court below has not considered those factors in my opinion, the order impugned cannot sustain and is fit to be set aside.

7. In the result, this revision application is allowed. The order impugned dated 05.01.2016 passed by the learned Additional Sessions Judge-VII, Palamau in S.T. Case No. 456A/ 12 is, hereby, set aside and the matter is remanded to the court concerned to consider and pass the order in accordance with law on the petition filed by Public Prosecutor for withdrawal of prosecution against the accused-Umesh Jee @ Dinesh Yadav afresh keeping in mind that the said accused has already been arrested by the police.