

(1990) 04 OHC CK 0044

In the Orissa High Court

Case No : Criminal Revision No. 557 of 1986

Trilochan Rout and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 09-04-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 321
Penal Code, 1860 (IPC) — Section 147, 148, 149, 321, 337

Citation : (1990) 1 OLR 512

Hon'ble Judges : K.P. Mohapatra, J

Bench : Single Bench

Advocate : D. Nayak, for the Appellant; R.B. Mohapatra, A.S.C., for the Respondent

Final Decision : Allowed

Judgement

K.P. Mohapatra, J.—This revision is directed against the order passed by the learned Sub-Divisional Judicial Magistrate, Anandapur, refusing to permit withdrawal of the prosecution of G.R. Case No. 180 of 1985.

2. On the information of one Nilamani Swain and after investigation, charge-sheet was submitted against the Petitioners for having committed offences u/s 147, 148, 337 and 321 read with Section 149, I.P.C. on the allegations that on 10-6-1985 at about 6.30 p.m. the Petitioners formed an unlawful assembly being armed with deadly weapons and assaulted the informant and some others causing simple injuries to them at village Janardanpur Pat owing to previous land disputes. After commencement of trial, charges were framed against them and as many as seven prosecution witnesses were also examined. When the prosecution evidence was still on the State Government by letter dated 5-8-1986 instructed the District Magistrate, Keonjhar, to withdraw the prosecution, because both parties to the case had already effected a compromise at the instance of the gentlemen, and it was desirable that they should keep good relationship in the village. Accordingly, the District Magistrate was directed the Assistant Public

Prosecutor to take steps for withdrawal of the prosecution. A copy of the letter was also sent to the Assistant Public Prosecutor in charge of the case. The Assistant Public Prosecutor on 17-9-1986 prayed for withdrawal of the prosecution on the grounds that in order to keep and continue cordial relationship between the parties and to maintain good social life in the area, it was necessary to withdraw the prosecution. The petition came up for hearing before the learned Court below. There was no opposition from any quarters, yet on the ground that the offences were grave in nature, the learned Court below did not permit withdrawal.

3. The materials of the case record reveal that substantially it was a case of assault by a group of persons to another group of the same village on account of previous land disputes. The injured received only simple injuries. None of the injuries endangered human life. By no stretch of imagination, the offences could be said to be of a grave nature. In 1987(II) O.L.R. 516 Sri Madhu Sudan Patnaik v. State and Anr. it was held that all that is necessary to satisfy Section 321, Code of Criminal Procedure is to see that the public prosecutor acts in good faith and that the Court is satisfied that the exercise of discretion by the public prosecutor is proper. In this case, the State Government had instructed the District Magistrate to withdraw the prosecution so as to maintain good relationship between the parties belonging to the same village in an ordinary case of assault. The District Magistrate obviously instructed the Assistant Public Prosecutor to withdraw the prosecution which he accordingly did. It was a fit case for the Court to afford permission to withdraw. But the learned Court below did not consider the facts of the case, as well as the consequences that would arise if withdrawal of the prosecution was not permitted, and so in improper exercise of discretion, it passed the impugned order which according to law cannot be supported.

4. For the aforesaid reasons, the Criminal Revision is allowed and the Assistant Public Prosecutor is hereby permitted to withdraw the prosecuting of G.R. Case No. 180 of 1985.

Crl. revision allowed.