

RAHUL AGARWAL
v.
RAKESH JAIN AND ANR.

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JANUARY 18, 2005

[K.G. BALAKRISHNAN AND B.N. SRIKRISHNA, JJ.]

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Code of Criminal Procedure, 1973:

S.321—Withdrawal from prosecution—Trial of accused under ss. 341, 295 and 506(2) r/w s.34 IPC— Case posted for examination of accused— Application for withdrawal of prosecution by Asstt. Public Prosecutor contending that accused was not a habitual criminal—Rejected by trial court and revisional court but allowed by High Court for delay at the trial—Held, reason given by High Court is not correct—When trial was to be over, High Court should not have allowed it to be withdrawn—High Court's order set aside.

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Pending a land dispute between appellant and respondent No. 1, the former filed a complaint against the latter which gave rise to trial of the respondents in the Court of Judicial Magistrate for offences punishable under ss. 341, 294 and 506(2) read with s.34 IPC. When the case was posted for examination of the accused, an application was moved by the Assistant Public Prosecutor for withdrawal of the prosecution. The Judicial Magistrate dismissed the application. The revision was dismissed by the Additional Sessions Judge. However, the High Court allowed withdrawal of prosecution observing that the accused had been harassed mentally and suffered continuously for seven years during the trial. Aggrieved, the complainant filed the present appeal.

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Disposing of the appeal, the Court

HELD: 1.1. Withdrawal of prosecution can be allowed only in the interest of justice. Even if the Government directs the Public Prosecutor to withdraw the prosecution and an application is filed to that effect, the Court must consider all relevant circumstance and find out whether the withdrawal of prosecution would advance the cause of justice. The discretion under s.321 of the Code of Criminal Procedure, 1973 is to be

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A carefully exercised by the Court having due regard to all the relevant facts and shall not be exercised to stifle the prosecution which is being done at the instance of the aggrieved parties or the State for redressing their grievance. Therefore, the withdrawal of the prosecution shall be permitted only when valid reasons are made out for the same. [525-G-H; 526-A-C]

B *Abdul Karim v. State of Karnataka*, [2000] 8 SCC 710 and *Sheonandan Paswan v. State of Bihar*, [1987] 1 SCC 288, relied on.

State of Bihar v. Ram Naresh Pandey, AIR (1957) SC 389; *State of Orissa v. Chandrika Mohapatra*, [1976] 4 SCC 250 and *Balwant Singh v. State of Bihar*, AIR (1977) SC 2265, referred to.

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1.2. In the instant case, the order passed by the High Court permitting withdrawal of the prosecution is not legally sustainable. The reasons given therein are either irrelevant or incorrect and when the trial was posted for examination of the accused and the case was about to be over the same should not have been allowed to be withdrawn by holding that the trial had been pending for over seven years. The impugned order is set aside and the Judicial Magistrate is directed to restore the case to the file and dispose of the same on merits at an early date.

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[523-G-H; 526-D-E]

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 559 of 2003.

From the Judgment and Order dated 18.10.2000 of the High Court in Judicature at Jabalpur, Madhya Pradesh in M. CrI. C. No. 6973 of 2000.

F Prashant Bhushan, Vishpal Gupta, N. Verma and Ms. Shavangi for the Appellant.

Hari Shankar, K., Ms. Kamakshi S. Mehlwal, Karan Singh, B.S. Banthia, P.C. Sen and Satish K. Agnihotri for the Respondents.

G The Judgment of the Court was delivered by

H **K.G. BALAKRISHNAN, J.** The appellant herein challenges the order passed by the learned Single Judge of the High Court of Madhya Pradesh whereby he allowed the withdrawal of a case pending against the first respondent herein before the Judicial First Class Magistrate, Katni, Madhya Pradesh. The appellant herein is the de-facto complainant in the police-charged

case. The appellant's case is that he purchased an extent of 1.30 acres of land in 1987 in the name of his mother, Lacchu Nai. The first respondent and one Dinesh Chaudhary had settled rights over this property and they, according to the appellant, manipulated certain village records. Appellant's father filed a civil suit through the appellant, who was a power of attorney holder. An order of injunction was passed in favour of the plaintiff in the suit and the same was confirmed by the Additional District Judge. The appellant further contended that the first respondent and Dinesh Chaudhary along with 20-25 persons came to the suit property and removed a shed constructed there and caused damage to the boundary wall. It was also alleged that in December 1992, the first respondent and his friend Dinesh Chaudhary assaulted the appellant and held a revolver against the chest of the appellant and threatened him. The appellant filed a complaint and on that basis a case was registered. After investigation, the police filed a final report alleging the commission of offences under Section 341, 294 and 506(2) read with Section 34 of the Indian Penal Code.

On the appellant's side, five witnesses were examined and the case was posted for examination of the accused. Then the Assistant Public Prosecutor moved an application for withdrawal of the prosecution. The Magistrate dismissed that application and a revision was filed by the first respondent. The Additional Sessions Judge dismissed the revision whereupon the first respondent moved the High Court and by the impugned judgment the learned Single Judge allowed the withdrawal of the prosecution.

We heard the appellant's learned counsel and the learned counsel for the respondents.

Not many reasons are given in the impugned order as to why the court allowed the withdrawal of the prosecution under Section 321 Code of Criminal Procedure. It is only stated that looking at the facts and circumstances of the case, permission should have been granted for withdrawal as the petitioner therein had been harassed mentally and suffered continuously for seven years during the trial. The fact that the trial was not over and the case was posted for the examination of the accused was not noticed by the High Court. In the application filed by the Public Prosecutor, the only reason given for withdrawal of the prosecution was that the accused was not a habitual criminal and, therefore, the prosecution must be withdrawn.

The order passed by the High Court permitting the withdrawal of the prosecution is not legally sustainable. The reasons given in the impugned

A rder are either irrelevant or incorrect. The learned Single Judge did not verify the facts and also did not make any inquiry as to why the case was pending for over seven years. It may be noticed that after the appellant filed the complaint, police took about three years to file a final report. Though the appellant had been cooperating with the completion of the prosecution, the case was being adjourned from time to time and ultimately when the prosecution evidence was about to be over at any point of time, the withdrawal of the prosecution at the instance of the Public Prosecutor had been rightly rejected by the Magistrate as well as the Sessions Court and the High Court should not have interfered with such an Order. The law regarding withdrawal of prosecution has been explained in detail in a series of decisions rendered by this Court.

In *State of Bihar v. Ram Naresh Pandey*, AIR (1957) SC 389, this Court held:-

D “.....The function of the court, therefore, in granting its consent may well be taken to be a judicial function. It follows that in granting its consent may well be taken to be a judicial function. It follows that in granting the consent the court must exercise a judicial discretion. But it does not follow that the discretion is to be exercised only with reference to material gathered by the judicial method. “

E In *State of Orissa v. Chandrika Mohapatra*, [1976] 4 SCC 250, *P.N. Bhagwati, J.*, as he then was, speaking for the three-Judge Bench, observed:-

F “The paramount consideration in all those cases must be the interest of administration of justice. No hard and fast rule can be laid down not can any categories of cases be defined in which consent should be granted or refused. It must ultimately depend on the facts and the 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 the justice.”

G In *Balwant Singh v. State of Bihar*, AIR (1977) SC 2265, it was observed:

H “The statutory responsibility for deciding upon withdrawal squarely vests on the public prosecutor. It is non-negotiable and cannot be bartered away in favour of those who may be above him on the administrative side. The Criminal Procedure Code is the only master of the public prosecutor and he has to guide himself with reference to Criminal Procedure Code only. So guided, the consideration which

must weigh with him is whether the broader cause of public justice will be advanced or retarded by the withdrawal or continuance of the prosecution.” A

Recently, in *Abdul Karim v. State of Karnataka*, [2000] 8 SCC 710, relying on the earlier decision of the Constitution Bench in *Sheonandan Paswan v. State of Bihar*, [1987] 1 SCC 288, this Court made the following observations regarding withdrawal of case under Section 321 Code of Criminal Procedure: B

“.....What the court has to see is whether the application is made in good faith, in the interest of public policy and justice and not to thwart or stifle the process of law. The court, after considering the facts of the case, has to see whether the application suffers from such improprieties or illegalities as would cause manifest injustice if consent was given. When the Public Prosecutor makes an application for withdrawal after taking into consideration all the material before him, the court must exercise its judicial discretion by considering such material before him, the court must exercise its judicial discretion by considering such material and, on such consideration, must either give consent or decline consent. The section should not be construed to mean that the court has to give a detailed reasoned order when it gives consent. If, on a reading of the order giving consent, a higher court is satisfied that such consent was given on an overall consideration of the material available, the order giving the consent has necessarily to be upheld. Section 321 contemplates consent by the court in a supervisory and not an adjudicatory manner. What the court must ensure is that the application for withdrawal has been properly made, after independent consideration by the Public Prosecutor to withdraw from the prosecution of any accused. The discretion exercisable under Section 321 is fettered only by consent from the court on a consideration of the material before it. What is necessary to satisfy is to see that the Public Prosecutor has acted in good faith and the exercise of discretion by him is proper.” C
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From these decisions as well as other decisions on the same question, the law is very clear that the withdrawal of prosecution can be allowed only in the interest of justice. Even if the Government directs the Public Prosecutor to withdraw the prosecution and an application is filed to that effect, the court must consider all relevant circumstances and find out whether the withdrawal of prosecution would advance the cause of justice. If the case is G
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- A likely to end in an acquittal and the continuance of the case is only causing severe harassment to the accused, the court may permit withdrawal of the prosecution. If the withdrawal of prosecution is likely to bury the dispute and bring about harmony between the parties and it would be in the best interest of justice, the court may allow the withdrawal of prosecution. The discretion under Section 321 Code of Criminal Procedure is to be carefully exercised by the Court having due regard to all the relevant facts and shall not be exercised to stifle the prosecution which is being done at the instance of the aggrieved parties or the State for redressing their grievance. Every crime is an offence against the society and if the accused committed an offence, society demands that he should be punished. Punishing the person who perpetrated the crime is an essential requirement for the maintenance of law and order and peace in the society. Therefore, the withdrawal of the prosecution shall be permitted only when valid reasons are made out for the same.

- D In the instant case, the reason given by the learned Single Judge in the impugned order is not correct, and when the case was about to be over the same should not have been allowed to be withdrawn by holding that the trial had been pending for over seven years.

- E In the result, we set aside the impugned order and direct the Judicial First Class Magistrate, Katni, to restore the case to the file, proceed in accordance with law and dispose of the same on merits at an early date. The appeal is disposed of accordingly.

R.P.

Appeal disposed of.