

A SRI YERNENI RAJA RAMCHANDER @ RAJABABU

v.

STATE OF A.P. & ORS.

(Criminal Appeal Nos. 1414-1415 of 2009 etc.)

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AUGUST 4, 2009

[S.B. SINHA AND DEEPAK VERMA, JJ.]

Code of Criminal Procedure, 1973 – s. 321 – Prosecution of member of Legislative Assembly u/s 420, 463, 468 and 471 r/w s. 120 B IPC – Application for withdrawal of prosecution failed – Matter referred to Ethics Committee of State Legislature – Committee recommending withdrawal of prosecution – Application for withdrawal dismissed by trial court – State as well as the Member filing criminal revision – Revision dismissed – Writ petition seeking Mandamus declaring the action of the State in protecting the Member as illegal, allowed – On appeal, held: Action on the part of the State suffers from malice on facts – Ethics Committee had no jurisdiction to make recommendation for withdrawal – Recommendation being unauthorized, the action of the State would attract doctrine of malice in law – State has vitiated doctrine of public trust as it was acting in private interest.

Appellant-a member of Legislative Assembly, made several medical claims for himself and his wife and the same were reimbursed by the State. Respondent Nos. 3 and 4 levelled charges of misappropriation against the appellant on the premise that he had obtained a huge amount on the basis of false and fabricated medical bills. The matter was referred to Ethics Committee of State Legislature. Appellant tendered apology before the Committee and refunded a sum which he had received for his last claim. The Committee accepted the apology and in view of the refund of the amount, recommended

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for withdrawal of the criminal case pending against the appellant. Pursuant to recommendation, State issued a Government Order directing the District Collector to direct the Public Prosecutor to withdraw the same. Public Prosecutor, thereafter, filed an application u/s. 321 Cr.P.C. for withdrawal of the case. Trial court dismissed the application. Earlier attempts for withdrawal had also failed. The State as well as the appellant filed criminal revision petitions. During pendency of the revision petitions, respondent Nos. 3 and 4 filed writ petition in the nature of mandamus declaring the action of the State in trying to protect the appellant and tampering with the course of justice by getting the prosecution withdrawn, was illegal, unjust, discriminatory and contrary to the doctrine of Rule of Law. High Court allowed the writ petition. Revision petitions were eventually dismissed. Hence the present appeals.

Dismissing the appeals, the Court

HELD: In the instant case, the trial court rejected the prayer for withdrawal made on the part of the Public Prosecutor. The High Court, therefore, could interfere therewith only if an error of law was found to have been committed. Furthermore, an earlier attempt made on the part of the Public Prosecutor also failed to yield any result. [Para 14] [505-A-B]

Sheonandan Paswan v. State of Bihar and Ors. 1987 (10) SCC 288, distinguished.

2. The Ethics Committee of the Legislature of the State was empowered to deal with the disciplinary action or otherwise which may be taken against the Members of the Legislative Assembly. A criminal case against a Member of the Legislative Assembly, ordinarily, should be allowed to be continued on its own merit, particularly, in

A the light of the facts of the present case wherein the High Court had refused to interfere at the earlier stages of the proceedings. The High Court, in fact, had not only been monitoring the investigation, but also directed the Trial Judge to complete the trial within a period of three months. The action on the part of the State to issue the Government Order for withdrawing the prosecution despite the earlier orders of the High Court must be considered keeping in view the said factual matrix. [Para 15] [505-B-D]

C 3. Even otherwise, the action on the part of the State, suffers from malice on facts as well. The State is the protector of law. When it deals with a public fund, it must act in terms of the procedure established by law. In respect of public fund, the doctrine of public trust would also be applicable so far as the State and its officers are concerned. It could not save and except very strong and cogent reasons have issued the G.O. despite the orders of the High Court. [Para 18] [507-A-C]

E 4. The Ethics Committee had no jurisdiction to make such recommendations. If the State had acted on the basis of recommendations made by a body who had no role to play, its action would be vitiated in law. Recommendations of the Ethics Committee being unauthorized, the action of the State would attract the doctrine of malice in law. [Para 17] [506-F-G]

G *The Manager, Govt. Branch Press and Anr. v. D.B. Belliappa* AIR 1979 SC 429; *M.P. State Co-operative Dairy Federation Ltd. and Anr. v. Rajnesh Kumar Jamindar and Ors.* 2009 (6) SCALE 17; *Swaran Singh Chand v. Punjab State Electricity Board and Ors.* 2009 (7) SCALE 622, relied on.

H 5. The State was not acting in public interest but in

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private interest. The State has shown unusual interest in the appellant, which is not expected of an executive which believes in good governance. It is a matter of great surprise that the State independently filed a revision application before the High Court. It did not stop at that. It has also filed a Special Leave Petition before this court against the judgment of the High Court. [Para 19] [507-C-D]

Epru Sadhakar and Anr. v. Govt. of A.P. and Ors. (2006) 8 SCC 161; M.P. Special Police Establishment v. State of M.P. (2004) 8 SCC 788, referred to.

6. However, there cannot be any doubt whatsoever that the High Court, committed an error in entering into the merit of the matter. [Para 20] [507-F]

Vijaykumar Baldev Mishra @ Sharma v. State of Maharashtra 2007 (12) SCC 687, relied on.

Case Law Reference:

1987 (10) SCC 288	Distinguished.	Para 14
AIR 1979 SC 429	Relied on.	Para 17
2009 (6) SCALE 17	Relied on.	Para 17
2009 (7) SCALE 622	Relied on.	Para 17
2006 (8) SCC 161	Referred to.	Para 19
(2004) 8 SCC 788	Referred to.	Para 19
2007 (12) SCC 687	Relied on.	Para 20

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 1414-1415 of 2009.

From the Judgment and Order dated 20.04.2009 of the High Court of Andhra Pradesh at Hyderabad in W.P. No. 15039 of 2008 and Crl. Rev. Case No. 457 of 2008.

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Crl. Nos. 1418-1420 of 2009.

B R. Sundaravaradhan, D. Bharathi Reddy, Anuradha Rustagi, D. Rama Krishna Reddy, T. Anamika, for the Appellant.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

C 2. These appeals involving common question of law and fact were taken up for hearing together and are being disposed of by this common judgment.

D 3. Appellants are before us aggrieved by and dissatisfied with a judgment and order dated 20.4.2009 passed by a Division Bench of the High Court of Judicature of Andhra Pradesh at Hyderabad allowing their writ petitions; the prayer made wherein reads as under:

E "... to issue an appropriate writ, order or direction, more particularly, one in the nature of Writ of Mandamus declaring the action of the Respondents in trying to protect the 4th Respondent, who has misappropriated the public funds to the tune of Rs.4,14,566/- by fabricated documents and cheating from being prosecuted for the offences committed under Section 420, 463, 468 and 471 read with Section 120B of IPC, by issuing consecutive G.Os., i.e., G.O. Rt. No.1617, Home (Legal.II) Department, dt.3.11.2007 and G.O. Rt.No.407, Home (Legal.II) Department, dt. 5.3.208 and tampering with the course of justice by getting filed consecutive petitions to withdraw the prosecution and interdicting the due process of law by invoking the power conferred on them under Section 321 of the Criminal Procedure Code, 1973 as illegal, unjust, arbitrary, discriminatory, capricious, irrational whimsical and unconstitutional, apart from contrary to the doctrine of

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Rule of Law and a blatant attack on the criminal justice system of this country and is the result of favoritism and based on collateral extraneous, political and partisan considerations and violative of Article 14 of the Constitution of India, after declaring Section 321 of the Criminal Procedure Code, 1973 as violative of Article 14 of the constitution of India and also violative of Rule of Law and contrary to the Doctrine of Separation of Powers and has the effect of scuttling the judicial process by enabling the State Executive to interfere with the adjudicative process and a constitutional anachronism and colonial legislation which is not in conformity with the Constitution of India and consequentially set aside G.O. Rt. No.407, Home (Legal.II) Department dated 5.3.2008 and pass such other order or orders as are deemed fit and proper in the circumstances of the case."

4. The basic fact of the matter is not in dispute.

The appellant was a member of the Legislative Assembly from Kaikalur Assembly Constituency in Krishna District (Andhra Pradesh). In the year 1998, he underwent a heart operation. It is alleged that in the year 2000, he along with one Sri Veera Swamy, who is said to be an employee of the Medical Hospital, Secretariat Hyderabad, fabricated bogus hospital records. Claiming that he underwent Cardiac Surgery in the Medicity Hospital, medical reimbursement for a sum of Rs.2,89,489 was submitted to the Government which was sanctioned vide G.O. Rt.No.569 dated 10.5.2002.

Again on 21.03.2002 he claimed reimbursement of an amount of Rs.1,33,939.80 towards medical expenses stating that his wife had undergone Angiogram operation at the Medical Hospital. An amount of Rs.60,000/- was sanctioned vide G.O. Rt.No.833 dated 18.7.2002

Yet again on 3.7.2002, the appellant claimed reimbursement of an amount of Rs.1,22,825.80/- stating that

A he was hospitalized at the Medicity Hospital during the month of April 2002 on account of generalized Scissors Disorder CAD and Hypertension under emergency circumstances. Again an amount of Rs.60,000/- was sanctioned vide G.O.Rt. No.1339 dated 21.11.2002.

B 5. On or about 18/19.8.2005, Respondent Nos.3 and 4 herein levelled charges of misappropriation against the appellant on the premise that he had obtained a huge amount on the basis of false and fabricated medical bills.

C 6. The appellant being a Member of the Legislative Assembly, the matter was referred to the Ethics Committee. Before the Ethics Committee, the appellant, inter alia, contended that he has withdrawn the amount in question, relying on or on the basis of the documents produced before him by his Personal Assistant. He tendered an apology before the Ethics Committee. He refunded a sum of Rs.60,000/- to the Government.

E 7. The Ethics Committee accepted the said apology and having regard to the fact that the said amount had been refunded, recommended for withdrawal of the criminal case pending against the appellant. Pursuant to the said recommendations, the State Government issued the aforementioned GO directing the District Collector to direct the Public Prosecutor to withdraw the case. Thereafter only, the Public Prosecutor filed the aforementioned application under Section 321 of the Code of Criminal Procedure before the learned Trial Judge for withdrawal of the case. We may, however, place that an earlier attempt was made to the same effect but the application for withdrawal of the prosecution was dismissed.

G 8. Section 321 of the Code of Criminal Procedure reads as under :

H "321. *Withdrawal from prosecution.*—The Public

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Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and upon such withdrawal,-

(a) If it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;

(b) if it is made after a charge has been framed, or when under this Code no charge is required he shall be acquitted in respect of such offence or offences:

Provided that where such offence-

(i) was against any law relating to a matter to which the executive power of the Union extends, or

(ii) was investigated by the Delhi Special Police Establishment under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or

(iii) involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or

(iv) was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty,

and the prosecutor in charge of the case has not been appointed by the Central Government he shall not, unless he has been permitted by the Central Government to do so, move the Court for its consent to withdraw from the prosecution and the Court shall, before according consent, direct the Prosecutor to produce before it the permission granted by the Central Government to withdraw from the

A prosecution.”

9. The learned Additional Public Prosecutor, in his application, stated as under :

B “3. That the petition filed by the Addl. Public Prosecutor under Section 321 Cr.P.C. for withdrawal of case was not accepted by this Hon’ble Court vide Judgment dated 7.11.2007 as well as the Hon’ble High Court vide judgment dated 13.12.2007, obviously for not assigning the reasons thereof.

C Subsequently, on reconsideration of the facts and circumstances the Government is pleased to issue G.O.Rt. No.407 dated 5.3.2008 requesting the Additional Public Prosecutor to file the Petition under Section 321 Cr.P.C.

D The petitioner, upon going through the entire material on record, oral and documentary evidence adduced before this Hon’ble Court, as well as the Report and Recommendations of the Ethics Committee and on re-appraisal of facts independently, unhindered or

E uninfluenced by the dictate of the Executive Authorities, it is felt that it is a fit case for withdrawal. It is observed in the GO Rt.No.407, the Government has accepted the Pardon of the Accused No.1 and thereby pardoned the acts of the Accused.”

F 10. The learned VI Additional Chief Metropolitan Magistrate, Hyderabad in her order dated 17.3.2008 refused to grant sanction for withdrawal of the case as the Court was not satisfied that any case for passing such order has been made out on the basis of the material placed before it. It was

G also stated :

H “In the present case also there is no satisfactory material placed before the court to withdraw the prosecution against A1 and A2. Moreover when once orders passed by the court on the same subject matter, for the same relief, filing

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similar petition for the same relief is not maintainable.” A

11. Both the State as also the appellant filed Criminal Revision Petitions before the High Court of Andhra Pradesh thereagainst. During the pendency of the above Criminal Revision Petitions, Respondent Nos.3 and 4 filed a writ petition as stated hereinbefore. The High Court by way of the impugned judgment, allowed the writ petition filed by Respondent Nos.3 and 4 and dismissed the Criminal Revision Petitions filed by the State as also the appellant. B

12. Mr. R. Sundaravaradhan, learned senior counsel appearing on behalf of the State of Andhra Pradesh and Mr. Rama Krishna Reddy, learned counsel appearing on behalf of the Appellant, urged : C

(1) The High Court committed a serious error in passing the impugned judgment insofar as it entered into the merit of the matter which is impermissible in law having regard to the decision of this Court in *Vijaykumar Baldev Mishra @ Sharma v. State of Maharashtra* [(2007) 12 SCC 687] D E

(2) In view of the Constitution Bench decision of this Court in *Sheonandan Paswan v. State of Bihar & Ors.* [(1987) 1 SCC 288], the High Court ought to have held that the action taken by the Public Prosecutor being an independent one, the scope of judicial review was limited. F

13. The State of Andhra Pradesh passed an executive order contained in G.O. No.407 requesting the District Collector to instruct the Public Prosecutor to withdraw the prosecution. The High Court, in its judgment, relied on a number of decisions including *Sheonandan Paswan* (supra) to opine: G

(i) The Public Prosecutor could not have filed an application for withdrawal of the prosecution case H

- A relying on or on the basis of the impugned Government Order.
- (ii) B The recommendations of the Ethics Committee of the Legislative Assembly and its report dated 7.10.2007 could not have formed the basis for filing the application for withdrawal by the learned Public Prosecutor.
- (iii) C The records of the case show that the mandatory requirements of independent examination of the matter were merely by way of lip service as he had acted only upon the said Government Order.
- (iv) D No material was placed before the Court to indicate that the Personal Assistant of the appellant was solely responsible for the alleged misappropriation. The petitioner being the sole beneficiary of the alleged misappropriated amount, the learned Trial Judge was correct in refusing to grant sanction.
- (v) E The fact that all earlier applications filed by the appellants herein had been dismissed by the High Court and it having been monitoring over the investigation and having directed the Trial Court to conclude the trial within three months, the action of F the Government in issuing the impugned Government Order amounted to interference with the judicial process.

G 14. In view of the decision of this Court in *Sheonandan Paswan* (supra), the High Court's power of judicial review is limited. We may, however, at the outset, notice that in that case, the learned Trial Court was satisfied that the application for withdrawal filed by the Public Prosecutor was not based on his own independent application of mind. The scope of limited jurisdiction on the part of the High Court was stated in the H

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aforementioned situation. In the instant case, the learned trial court also rejected the said prayer made on the part of the learned Public Prosecutor. The High Court, therefore, could interfere therewith only if an error of law was found to have been committed. Furthermore, an earlier attempt made on the part of the learned Public Prosecutor failed to yield any result.

15. The Ethics Committee of the Legislature of the State of Andhra Pradesh was empowered to deal with the disciplinary action or otherwise which may be taken against the Members of the Legislative Assembly. A criminal case against a Member of the Legislative Assembly, ordinarily, should be allowed to be continued on its own merit, particularly, in the light of the facts of the present matter wherein the High Court had refused to interfere at the earlier stages of the proceedings. We have also noticed hereinbefore that the High Court, in fact, had not only been monitoring the investigation, but also directed the learned Trial Judge to complete the trial within a period of three months. The action on the part of the State to issue the said G.O. despite the earlier orders of the High Court must be considered keeping in view the said factual matrix.

16. It is on the aforementioned premise, we may notice the GO No.407 dated 5.3.2008 issued by the State of Andhra Pradesh. The GO mentions representation of Y. Raja Ramchandrar, MLA dated 12.10.2007, report of the Ethics Committee of 12th Legislative Assembly, GO Rt. No.1617, Home (Legal.II) Department dated 3.11.2007, Government Memo No.812/Legal.II/A1/2008 dated 23.1.2008 from the Addl. DGP, CID, AP, Hyderabad Lr.C. No.3106/C16/2005 dated 28.1.2008, Government Memo No.812/Legal.II/A1/2008 dated 26.2.2008 and from the Additional DGP, CID, AP, Hyderabad, Lr.C. No.3106/C16/2005 dated 1.2.2008.

Despite noticing that earlier attempts on the part of the State to withdraw the prosecution resulted in futility, the Government proceeded to examine the matter carefully purported to be on the ground specified therein. Grounds A and

A B referred to the report of the Ethics Committee and the fact that the Members of Legislative Assembly had tendered apology for the misconduct of his Personal Assistant. The GO was issued even according to the State in terms of the recommendations made by the Ethics Committee alone. It was stated :

C "4. Accordingly, Sri Y. Raja Ramchandar, MLA (A1) has submitted his written apology to the Committee and remitted to the Government an amount of Rs.60,000/- (Rupees Sixty Thousand only) vide Cghallan 1234, dated 3.10.2007, towards medical reimbursement claim which was wrongly obtained for the angioplasty operation of his wife, and the Committee further recommended to the case against Sri Y. Raja Ramchandar, MLA.

D 5. Now, the Government after careful examination of the representation of Sri Y. Raja Ramchandar, MLA (A1) Kaikaluru, and also taking into consideration of the report of the Ethics Committee, have decided to accept the recommendations of the Ethics Committee, and accordingly, decided to withdraw prosecution against Sri E Y. Raja Ramchander, MLA, Kaikaluru in Cr.No.18/2005 under Section 468, 471 and 420 read with 120-B of CID Police Station, Hyderabad and also decided to withdraw the prosecution against Sri J. Veeraswamy (A2) in F Cr.No.18/2005 under Section 468, 471 and 420 read with 120-B of CID Police Station, Hyderabad."

G 17. The Ethics Committee had no jurisdiction to make such recommendations. If the State had acted on the basis of recommendations made by a body who had no role to play, its action would be vitiated in law, Recommendations of the Ethics Committee being unauthorized, the action of the State would attract the doctrine of malice in law. [(See *The Manager, Govt. Branch Press & Anr. v. D.B. Belliappa* [AIR 1979 SC 429]; *M.P. State Co-operative Dairy Federation Ltd. & Anr. v. H Rajnesh Kumar Jamindar & Ors.* [2009 (6) SCALE 17]; and

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→ 18. Even otherwise, the action on the part of the State, in our opinion, suffers from malice on fact as well. The State is the protector of law. When it deals with a public fund, it must act in terms of the procedure established by law. In respect of public fund, the doctrine of public trust would also be applicable so far as the State and its officers are concerned. It could not save and except very strong and cogent reasons have issued the said G.O. despite the orders of the High Court. B
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→ 19. The State was not acting in public interest but in private interest. The State has shown unusual interest in the appellant which is not expected of an executive which believes in good governance. It is really a matter of great surprise that the State independently filed a revision application before the High Court. D
→ It did not stop at that. It has also filed a Special Leave Petition before us against the judgment of the High Court. This Court has times without number noticed the unusual interest shown and unusual orders passed by the State Governments to protect its own ministers and Members of Legislative Assembly. We E
→ may in this regard notice *Epru Sadhakar & Anr. v. Govt. of AP & Ors.* [(2006) 8 SCC 161] and *M.P. Special Police Establishment v. State of M.P.*, [(2004) 8 SCC 788],

→ 20. We, therefore, are of the opinion that the impugned judgment is unassailable. However, there cannot be any doubt whatsoever that the High Court committed an error in entering into the merit of the matter. In *Vijaykumar Baldev Mishra* (supra), this Court held : F

→ “17. While refusing to grant permission, the Designated Court, in our opinion, was not correct in expressing its opinion on the merits of the matter and the effect of confessions made in terms of the provisions of TADA. It was, however, also not necessary to consider as to whether the action of the Public Prosecutor as also the H

A State was bona fide or not. Moreover, bona fide on the part of the Public Prosecutor itself cannot automatically lead to grant of consent. There are other circumstances also which are required to be taken into consideration.”

B 21. In view of the aforementioned decision of this Court, it is directed that the learned Magistrate shall proceed to deal with the matter independently and without in any way being influenced by any observations or findings made therein as if they do not exist.

C 22. These appeals are dismissed.

D 23. We, however, in the peculiar facts and circumstances of this case, also direct that the State shall pay a sum of Rs.1,00,000/- to the Andhra Pradesh State Legal Services Authority within four weeks from date.

K.K.T.

Appeals dismissed.