



CRL.REV.PET NO. 437 OF 2009

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2024:KER:74890

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

WEDNESDAY, THE 9TH DAY OF OCTOBER 2024 / 17TH ASWINA, 1946

CRL.REV.PET NO. 437 OF 2009

AGAINST THE ORDER/JUDGMENT DATED 20.12.2008 IN CC NO.663 OF
2004 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,KATTAKADA

REVISION PETITIONER/S:

STATE OF KERALA
PUBLIC PROSECUTOR, HIGH COURT OF KERLA,, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.G.SUDHEER

RESPONDENT/S:

- 1 SREENATH & OTHERS
THULASEEDHARAN, SREEJITH BHAVAN, UDIYANNOOR,,
THOTTAMBRAMURIYIL, VEERANAKAVU VILLAGE.
- 2 SREEJITH SO. THANKACHAN
THULASEEDHARAN DO....DO....
- 3 REJIMON SO. JAYASANKAR
REJI NIVAS, NEAR CHERIYAKONNI,, KALUNKU,
CHERIYAKONNIMURIYIL,, ARUVIKKARA VILLAGE.
- 4 ARUNRAJ SO. ELEESA HOUSE NO.
EL-12 GRADE COTTAGE, CRINDHAVAN, GARDENS, AMBALAMUKKU,
AMBALAMUKKU, DESOM, KOWDIAR VILLAGE.



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**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 09.10.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**



JUDGMENT

This revision is at the instance of the State. The challenge in this revision is to the order dated 20.12.2008 passed by the Judicial First Class Magistrate Kattakkada in C.M.P.No.6259/2008 in C.C.No.663/2004.

2. The prosecution case in the Calender case is as follows:

On 23.07.2004 at 1.15 pm, the accused, four in numbers, who were students of a local college, in furtherance of their common intention, committed criminal trespass by entering into the compound of the Treasury office at Kattakkada and destroying the window glasses of the Treasury building by pelting stone, causing a loss of Rs.250/- to the Government. They are alleged to have committed the offences punishable under Section 447 r/w Section 34 of the Indian Penal Code, 1860 and Section 3(2)(c) of the PDPP Act, 1984.



3. On the appearance of the accused, the court below posted the case for framing charges. The Assistant Public Prosecutor filed an application under Section 321 of the Cr.P.C. seeking withdrawal of the prosecution case.

4. The learned Magistrate dismissed the application, holding that the learned Assistant Public Prosecutor had not applied his mind and that he had filed the petition only in obedience to the orders of the government.

5. I have heard the learned Public Prosecutor.

6. The learned Public Prosecutor submitted that on the relevant date, the students were leading a procession in protest of the death of one student, Rajani, who committed suicide, for the reason that she was denied bank loan for higher education. The local people obstructed the procession. A scuffle occurred at the scene of occurrence. Some pelted stones towards the Treasury building, which resulted in a minor damage to the window of the building.



7. It is submitted that there is a lack of evidence to conclude that the accused had committed the offences. The *mensrea* of the accused in the commission of the offence is also doubtful. The learned Public Prosecutor submitted that the procession contained a large number of students, who were prevented by the local people. A commotion occurred when the students tried to enter the Treasury building. Some persons assembled there pelted stones. The students who led the procession are the accused in the crime. It is further submitted that the accused had no criminal antecedents. Long back, they completed their studies and settled to in their lives. It is also submitted that the students had a genuine cause for raising the protest.

8. The learned Assistant Public Prosecutor pleaded in the petition that he had applied his mind judiciously, and independently arrived at a conclusion that the withdrawal of the prosecution was in 'the public interest'.



9. The relevant statutory provision is Section 321 of Cr.P.C, which reads thus:

“321. Withdrawal from prosecution.—The Public 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 prosecution.

10. The Constitution Bench of the Supreme Court in

Sheonandan Paswan v. State of Bihar [(1987) 1 SCC 288], on the scope of Section 321 of Cr.P.C. observed thus:

“77.....This section enables the Public Prosecutor, in charge of the case to withdraw from the prosecution of any person at any time before the judgment is pronounced, but this application for withdrawal has to get the consent of the court and if the court gives



consent for such withdrawal the accused will be discharged if no charge has been framed or acquitted if charge has been framed or where no such charge is required to be framed. It clothes the Public Prosecutor to withdraw from the prosecution of any person, accused of an offence both when no evidence is taken or even if entire evidence has been taken. The outer limit for the exercise of this power is “at any time before the judgment is pronounced”.

78. The section gives no 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. The judicial 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.

79. The court's function is to give consent. This section does not obligate the court to record reasons before consent is given. However, I should not be taken to hold 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 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 materials available, the order giving consent has necessarily to be upheld.”



11. In ***R.M.Tewari v. State (NCT of Delhi) [(1996) 2 SCC 610]***, the Supreme Court held as follows:

“7. It is, therefore, clear that the Designated Court was right in taking the view that withdrawal from prosecution is not to be permitted mechanically by the court on an application for that purpose made by the public prosecutor. It is equally clear that the public prosecutor also has not to act mechanically in the discharge of his statutory function under Section 321 CrPC on such a recommendation being made by the Review Committee; and that it is the duty of the public prosecutor to satisfy himself that it is a fit case for withdrawal from prosecution before he seeks the consent of the court for that purpose.

8. It appears that in these matters, the public prosecutor did not fully appreciate the requirements of Section 321 CrPC and made the applications for withdrawal from prosecution only on the basis of the recommendations of the Review Committee. It was necessary for the public prosecutor to satisfy himself in each case that the case is fit for withdrawal from prosecution in accordance with the settled principles indicated in the decisions of this Court and then to satisfy the Designated Court of the existence of a ground which permits withdrawal from prosecution under Section 321 CrPC.”

12. In ***Abdul Karim v. State of Karnataka [(2000) 8 SCC 710]***, the Apex Court held as follows:

“19. The law, therefore, is that though the Government may have ordered, directed or asked a Public Prosecutor to withdraw from a prosecution, it is for the Public



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Prosecutor to apply his mind to all the relevant material and, in good faith, to be satisfied thereon that the public interest will be served by his withdrawal from the prosecution. In turn, the court has to be satisfied, after considering all that material, that the Public Prosecutor has applied his mind independently thereto, that the Public Prosecutor, acting in good faith, is of the opinion that his withdrawal from the prosecution is in the public interest, and that such withdrawal will not stifle or thwart the process of law or cause manifest injustice.

20. It must follow that the application under Section 321 must aver that the Public Prosecutor is, in good faith, satisfied, on consideration of all relevant material, that his withdrawal from the prosecution is in the public interest and it will not stifle or thwart the process of law or cause injustice. The material that the Public Prosecutor has considered must be set out, briefly but concisely, in the application or in an affidavit annexed to the application or, in a given case, placed before the court, with its permission, in a sealed envelope. The court has to give an informed consent. It must be satisfied that this material can reasonably lead to the conclusion that the withdrawal of the Public Prosecutor from the prosecution will serve the public interest; but it is not for the court to weigh the material. The court must be satisfied that the Public Prosecutor has considered the material and, in good faith, reached the conclusion that his withdrawal from the prosecution will serve the public interest. The court must also consider whether the grant of consent may thwart or stifle the course of law or result in manifest injustice. If, upon such consideration, the court accords consent, it must make such order on the application as will indicate to a higher court that it has done all that the law requires it to do before granting consent." [Emphasis supplied]

13. In ***Bairam Muralidhar v. State of Andhra***



Pradesh [(2014) 10 SCC 380], the Supreme Court held as

follows:

“18. The central question is whether the Public Prosecutor has really applied his mind to all the relevant materials on record and satisfied himself that the withdrawal from the prosecution would subserve the cause of public interest or not. Be it stated, it is the obligation of the Public Prosecutor to state what material he has considered. It has to be set out in brief. The court as has been held in *Abdul Karim case [Abdul Karim v. State of Karnataka, (2000) 8 SCC 710 : 2001 SCC (Cri) 59 : AIR 2001 SC 116]* , is required to give an informed consent. It is obligatory on the part of the court to satisfy itself that from the material it can reasonably be held that the withdrawal of the prosecution would serve the public interest. It is not within the domain of the court to weigh the material. However, it is necessary on the part of the court to see whether the grant of consent would thwart or stifle the course of law or cause manifest injustice. A court while giving consent under Section 321 of the Code is required to exercise its judicial discretion, and judicial discretion, as settled in law, is not to be exercised in a mechanical manner. The court cannot give such consent on a mere asking. It is expected of the court to consider the material on record to see that the application had been filed in good faith and it is in the interest of public interest and justice. Another aspect the court is obliged to see is whether such withdrawal would advance the cause of justice. It requires exercise of careful and concerned discretion because certain crimes are against the State and the society as a collective demands justice to be done. That maintains the law and order situation in the society. The Public Prosecutor cannot act like the post office on behalf of the State Government. He is required to act in good faith, peruse the materials on record and form an



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independent opinion that the withdrawal of the case would really subserve the public interest at large. An order of the Government on the Public Prosecutor in this regard is not binding. He cannot remain oblivious to his lawful obligations under the Code. He is required to constantly remember his duty to the court as well as his duty to the collective.

19. In the case at hand, as the application filed by the Public Prosecutor would show that he had mechanically stated about the conditions precedent, it cannot be construed that he has really perused the materials and applied his independent mind solely because he has so stated. The application must indicate perusal of the materials by stating what are the materials he has perused, may be in brief, and whether such withdrawal of the prosecution would serve public interest and how he has formed his independent opinion. As we perceive, the learned Public Prosecutor has been totally guided by the order of the Government and really not applied his mind to the facts of the case. The learned trial Judge as well as the High Court has observed that it is a case under the Prevention of Corruption Act. They have taken note of the fact that the State Government had already granted sanction. It is also noticeable that the Anti-Corruption Bureau has found there was no justification of withdrawal of the prosecution.”

14. In ***Abdul Wahab v. State of Kerala [2018 (4) KHC 705]***, the Supreme Court held that the Public Prosecutor or an Assistant Public Prosecutor, as the case may be, has a vital role under the statutory scheme and is expected to act as an independent person. He/she has to apply his/her mind and



consider the effect of withdrawal on society in the event such permission is granted.

15. The learned Public Prosecutor has relied on the following factors while coming to a conclusion that the withdrawal of the prosecution was in public interest

(i) The alleged incident occurred when a group of students led by the accused led a procession in protest of the death of the one of the students, who committed suicide due to the reason that she was denied bank loan for higher studies.

(ii) The accused were the student leaders who led the procession.

(iii) A scuffle occurred when the local people prevented the procession.

16. There is a lack of evidence to specifically pinpoint the role of each accused in the commission of the offences. The accused have had no criminal antecedents. The loss sustained is only to the tune of Rs.250.

17. Relying on the above circumstances, the learned Assistant Public Prosecutor has submitted that he had applied



his mind judiciously and independently, and arrived at a conclusion that the withdrawal of prosecution will serve public interest.

18. The idea of public interest is a protean one. It is certainly not static but rather evolves over time and gains its content from the context in which it is used.

19. The Black's Law Dictionary (*Bryan A. Garner (ed.), 7th ed., St. Paul, Minn.: West Publishing Co., 1979*) defines public interest as “(1) The general welfare of the public that warrants recognition and protection, and (2) something in which the public as a whole has stake; especially an interest that justifies government regulation”. One of the elements that constitutes the construct of public interest includes: Maintaining conditions that support an ongoing social order.

20. The protest movement of the students, led by the accused, was for a justified cause. The students, including the accused, were in their early twenties. The procession was



peaceful throughout.

21. It is submitted that the students only intended to sit in a dharna before the Treasury building. However, local people interfered and prevented them. The mob went out of control. Some pelted stones causing a loss of Rs. 250/- to the Treasury building. The criminal case launched by the police in 2004 is still pending. In 2008, the Government decided to withdraw the prosecution. The learned public prosecutor submitted that the accused have become responsible citizens. Most of them are political and social leaders. Some of them are committed social workers.

22. It is pertinent to note that there is nothing to show that the accused had the necessary *mensrea* for the commission of the offences alleged. The reformed growth of the accused is reflected in the fact that most of them have become dedicated social workers.



23. Given this situation, would not the withdrawal of the prosecution serve the public interest ?

24. In my view, withdrawal of the prosecution will benefit the society, the community or the public as a whole. It will also help maintain an ongoing social order. It will only serve the public interest.

25. The trivial nature of the offence, the lack of *mensrea* on the part of the accused in the commission of the offence and the reformed growth of the accused, transforming himself into as dedicated social worker are some of the positive factors the Court can consider for granting consent to withdraw prosecution.

26. I have considered all the materials on the touchstone of the above-mentioned principles. There is nothing to show that the Assistant Public Prosecutor has improperly exercised his discretion, and there is no attempt to interfere with the



normal course of justice for illegitimate reasons or purposes.

27. I am of the considered view that the learned Magistrate should have consented to withdraw the prosecution. The order impugned, therefore, stands set aside. C.M.P.No.6259/2008 in CC.No.663 of 2004 of the Judicial First Class Magistrate Court, Kattakkada, is allowed. CC.No.663 of 2004 on the file of the Judicial First Class Magistrate Court stands withdrawn.

The accused in CC.No.663 of 2004 are discharged in respect of the offences alleged.

The Criminal Revision Petition is allowed as above.

sd/

**BABU
JUDGE**

jm/