

Court No. - 79

Case :- CRIMINAL REVISION No. - 4693 of 2023

Revisionist :- Narendra Dhvaj Singh

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Rajeev Kumar Singh

Counsel for Opposite Party :- G.A., Abhishek Kumar Shahi

Hon'ble Vipin Chandra Dixit, J.

Sri Abhishek Kumar Shahi, learned counsel has put in appearance on behalf of opposite party no.2 by filing his vakalatnama and short counter affidavit, which are taken on record.

Heard Sri Rajeev Kumar Singh, learned counsel for the revisionist, learned AGA for the State and Sri Abhishek Kumar Shahi, learned counsel appearing for opposite party no.2, and perused the record.

This criminal revision has been filed against the impugned order dated 5.6.2023 passed by Additional Civil Judge(J.D.), Court No.4, Gorakhpur in Case No.737 of 2008(State of U.P. vs. Narendra Singh and others) arising out of Case Crime No. 37 of 2007 under section 143, 295, 341, 427, 436 IPC and Section 7 Criminal Law Amendment Act, Police Station Gagaha, District Gorakhpur by which application under Section 321 Cr.P.C. filed by Public Prosecutor was rejected.

Brief facts of the case are that an FIR was lodged by Bakridan, father of opposite party no.2 against seven accused persons including revisionist which was registered as Case Crime No.37 of 2007 under Sections 143, 295, 436, 427, 341 IPC and Section 7 Criminal Law Amendment Act. The Investigating Officer after completing investigation, has submitted charge sheet on 31.3.2007 against nine accused persons including revisionist. During trial, the prosecution has moved an application under Section 321 Cr.P.C. which was rejected by the Additional Civil Judge(Sr. Div.)1st/A.C.J.M., Gorakhpur vide order dated 8.3.2021. The State Government has preferred Criminal Revision No. 126 of 2021 against the order dated 8.3.2021 which was allowed by the lower revisional Court vide judgment and order dated 21.2.2023 and the matter was remanded to the learned Magistrate for deciding afresh. The learned lower revisional court has recorded finding that withdrawal application was filed by Public Prosecutor in good faith and in compliance of Government Order dated 23.5.2020 and

withdrawal from the prosecution would subserve the cause of public interest. After remand, the Additional Civil Judge(Junior Division), Court No.4, Gorakhpur rejected the application vide order dated 5.6.2023 which is impugned in the present revision.

It is submitted by learned counsel for the revisionist that the revisionist is innocent and has been falsely implicated in this case. The Investigating Officer without proper investigation has submitted charge-sheet against the revisionist. The State Government after considering entire evidence and materials which were collected by the Investigating Officer during investigation, has found that there is no sufficient ground to prosecute the revisionist. The application under section 321 Cr.P.C. was filed by the prosecution in good faith and in public interest. The withdrawal from prosecution would subserve the cause of public interest. More than 15 years have passed and the prosecution has not produced any witness before the trial court. It is further submitted that during pendency of trial, the informant has died and his son-opposite party no.2 in the present revision has no objection if the criminal case against the revisionist is withdrawn.

The opposite party No.2 has also filed short counter affidavit before this Court stating therein that opposite party no.2 has no objection if the instant criminal revision is allowed and the Case No. 737 of 2008 against the revisionist is withdrawn.

Considered rival submission of learned counsel for the parties and perused the record.

The public prosecutor can withdraw the prosecution of any person with the consent of the Court. For ready reference, Section 321 Cr.P.C. is quoted herein below :-

"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.

Hon'ble Apex Court in the case of **Sheonandan Paswan vs. State of Bihar and others** reported in (1987) 1 SCC 288 has laid down certain guidelines in respect of withdrawal of criminal case. Relevant paragraph 28 is reproduced herein below:-

"28. Now let us consider the question as to what are the grounds on which the Public Prosecutor can apply for withdrawal from the prosecution. These grounds have been variously stated in the decisions of this Court but the basic principle under lying all these grounds is that the withdrawal can be sought only for furthering the cause of public justice. If we may repeat what we have said before, the paramount consideration must always be the interest of administration of justice. That is the touch-stone on which the question must be determined whether an application for withdrawal of the prosecution can be sustained. This Court tried to formulate several instances where the cause of public justice would be served better by withdrawal from the prosecution. It was observed by this Court in M.N. Sankaravaraya v. P.V. Balakrishnan (supra) that an application for withdrawal from the prosecution may be made on the ground that "it will not be possible to produce sufficient evidence to sustain the charge or that subsequent information before prosecuting agency would falsify the prosecution evidence or in any other similar circumstances which it is difficult to predicate as they are dependent entirely on the facts and circumstances of each case". This Court also pointed out in State of Orissa V. C. Mohapatra (supra) that "it is not sufficient for the Public Prosecutor merely to say' that it is not expedient to proceed with the prosecution. He 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 the prosecution does not appear to be well-founded or that there are circumstances which clearly show that the object of administration of justice would not be advanced or furthered by going on with the prosecution." It was also emphasised by this Court in Subhash Chander v. State (supra) that

"justice cannot be allowed to be scuttled by the Public Prosecutor or the State because of hubris affection or other noble or ignoble considerations." This Court also observed in R.K. Jain v. State (supra):

"In the past we have often known how expedient and necessary it is in the public interest for the public Prosecutor to withdraw from prosecutions arising out of mass agitations, communal riots, regional disputes, industrial conflicts, student unrest etc. Wherever issues involve the emotions and there is a surcharge of violence in the atmosphere it has often been found necessary to withdraw from prosecutions in order to restore peace, to free the atmosphere from the surcharge of violence, to bring about a peaceful settlement of issues and to persist with prosecutions where emotive issues are involved in the name of vindicating the law even be utterly counter productive. An elected Government, sensitive and responsive to the feelings and emotions of the people, will be amply justified if for the purpose of creating an atmosphere of goodwill or for the purpose of not disturbing a calm which has descended it decides not to prosecute the offenders involved or not to proceed further with prosecutions already launched."

It will thus be seen that the Public Prosecutor cannot maintain an application for withdrawal from the prosecution on the ground that the Government does not want to produce evidence and proceed with the prosecution against the accused or that the Government considers that it is not expedient to proceed with the prosecution. The Public Prosecutor has to make out some ground which would advance or further the cause of public justice. If the Public Prosecutor is able to show that he may not be able to produce sufficient evidence to sustain the charge, an application for withdrawal from the prosecution may be legitimately made by him. But there are two clarifications which we would like to introduce where the prosecution is sought to be withdrawn on this ground."

Record shows that the chargesheet was filed in the year 2008 and 15 years have passed but till date prosecution has not produced any prosecution witness and opposite party no.2 had already filed affidavit that he does not want to prosecute the revisionist in this case and there is no chance of conviction. Due to passage of time the relations between the parties have become cordial. The application was filed by the Public Prosecutor under Section 321 Cr.P.C. in good faith and would subserve the public interest.

In view of above, the criminal revision is liable to be allowed. The criminal revision is allowed. The impugned order dated 5.6.2023 is hereby set aside.

Order Date :- 3.11.2023

P.P.