

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 3712 of 2007 ()

AGAINST THE ORDER IN CRL.M.P.NO.1328/2007IN SC 138/2004 of ADDITIONAL
SESSIONS COURT (ADHOC)-I, KASARAGOD (CRIME NO.196/2001 OF BAKEL
POLICE STATION) DATED 17.9.2007

REVISION PETITIONER(S)/RESPONDENT/ACCUSED:

K.S.SALI, S/O.M.SHAFI, KIZHOOR,
KALANAD VILLAGE.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENT(S)/COMPLAINANTS & STATE:

- 1. S.I. OF POLICE, BAKEL POLICE STATION.
2. STATE OF KERALA,
REP: BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

ADDL.R3: MOHAMMED SHAFI, S/O. KUNJAMMU,
KUNJAMMU HOUSE, NEAR KEEZHOOR JUMA MASJID,
KEEZHOOR WEST, CHANDRAGIRI P.O.,
KALANADU, KASARAGOD- 671 317.

ADDL.R4: MOHAMMED ZAHIR, S/O. ZIRAR,
M.A.HOUSE, KEEZHOOR WEST, CHANDRAGIRI P.O.,
KALANADU, KASARAGOD- 671 317.

(IMPLEADED AS PER ORDER DATED 29.10.2015 IN
CRL.M.A.NO.5820/15 IN CRL.R.P.NO.3712/07.)

R1, BY PUBLIC PROSECUTOR SR. N. SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 17-12-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

acd

C.R.

P.D. RAJAN, J.

Crl.R.P.No.3712 of 2007

Dated this the 17th day of December, 2015

ORDER

This revision petition is preferred against the order in Crl.M.A. 1328/2007 in S.C. No.138/2004 of the Additional Sessions Judge, Adhoc-I, Kasaragod. He was charge sheeted in S.C.No.138/2004 before Additional Sessions Judge (Adhoc) I, Kasaragod for having committed an offence punishable u/s.341, 324, 307 r/w.34 IPC. The charge against him was that on 15.5.2001 at 10 'O' clock , while the injured, who are respondents 3 and 4 standing near Beal store shop on the side of Kizhur Juma Mazjid road, A1 and A2 wrongfully restrained the injured and A1 assaulted the injured (the 4th respondent) with a sharp edged knife with the intention to kill him, as a result, he sustained serious injuries on the face

and on the stomach. When 3rd respondent intervened the accused attacked him and he also sustained serious injury. Both of them were removed to hospital. In this incident, Bakel Police registered a Crime NO.196/2001 and after completing investigation, laid charge before Judicial First Class Magistrate Court, Kasaragod, from there it was committed to Sessions Court for trial.

2. During trial, the learned Public Prosecutor filed a petition u/s.321 of the Code of Criminal Procedure to withdraw the case on the ground that the injured and the accused are maintaining cordial relationship in the locality and in the interest of justice warrant to withdraw the petition from further prosecution. The learned Judge, after considering Crl.M.P.No.1328/2007 dismissed the petition filed u/s.321 of Cr.P.C. Being aggrieved by that, the accused preferred this revision.

3. The revisional jurisdiction u/s.397 and 401 of the Code of Criminal Procedure (hereinafter referred to as the 'Code') is conferred as a supervisory jurisdiction in order to correct any illegality or irregularity arising from any sentence or order passed by the courts below. The High Court can examine the record of any proceeding before any inferior criminal Court situate within its local jurisdiction for the purpose of satisfying itself to the correctness, legality or propriety of any finding, sentence or order, recorded or passed by that Court. The error, occurred from any misconception of law or misconception of any fact or misreading of any evidence is also a relevant ground for interference. This power conferred by the Statute is a discretionary one and can be exercised only in rare occasion when it feels that there is miscarriage of justice.

4. According to Section 321 of the Code, the Public

Prosecutor or the Asst. Public Prosecutor in charge of a case may withdraw from the prosecution of any proceedings with the consent of the Court at any time before the judgment is pronounced. The withdrawal from the prosecution is a stepping back from the prosecution or refrain from conducting further prosecution. When Court is consent to withdraw from the prosecution, the accused person shall be discharged or acquitted u/s.321(a) and (b). If withdrawal is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences. If it is made after charge has been made or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences.

5. The present grievance of the revision petitioner is that the incident was occurred long back due to political rivalry. The injured are members of Indian Union Muslim

League (IUML) and the accused is a member of the Indian National League (INL). The incident was occurred during general election campaign of 2001. The statement given to the Police also discloses that the incident occurred due to political rivalry. The learned counsel appearing for the revision petitioner contended that both parties merged together and functioning as a single party. The IUML and INL merged together into a single party and now they are working as a single party. The notice was served on the injured, who are respondents 3 and 4 in this matter. There was no dispute with regard to the averments made in the petition, more over, there is no necessity to hear the injured while invoking Section 321 of Cr.P.C. The learned Public Prosecutor has no objection in considering the petition u/s.321 of Cr.P.C in the light of the new situation.

6. The guidelines for withdrawing from the prosecution has been explained by the Apex Court in Rajender Kumar Jain Manohar Lal Attorney General of India V.

State (AIR 1980 SC 1510). It was held as follows:-

" 13A. We may add, it shall be the duty of the Public Prosecutor to inform the Court and it shall be the duty of the Court to appraise itself of the reasons which prompt the Public Prosecutor to withdraw from the prosecution. The Court has a responsibility and a stake in the administration of criminal justice and so has the Public Prosecutor, its 'Minister of Justice'. Both have a duty to protect the administration of criminal justice against possible abuse or misuse by the Executive by resort to the provisions of S.321, Criminal Procedure Code. The independence of the judiciary requires that once the case has travelled to the Court, the Court and its officers alone must have control over the case and decide what is to be done in each case.

14. We have referred to the precedents of this Court where it has been said that paucity of evidence is not the only ground on which the Public Prosecutor may withdraw from the prosecution. 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

preserve the calm which may follow the storm. To persist with prosecutions where emotive issues are involved in the name of vindicating the law may 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. In such matters who but the Government can and should decide, in the first instance, whether it should be baneful or beneficial to launch or continue prosecutions. If the Government decides that it would be in the public interest to withdraw from prosecutions, how is the Government to go about this risk?

15. Under the Code of Criminal Procedure it is the Public Prosecutor that has to withdraw from the prosecution and it is the Court that has to give its consent to such withdrawal. Rightly too, because the independence of the judiciary so requires it, as we have already mentioned. Now, the Public Prosecutor is an Officer of the Court. He sets the criminal law in motion in the Court. He conducts the prosecution in the Court for the people. So it is he that is entrusted with the task of initiating the proceeding for withdrawal from the prosecution. But, where such large and sensitive issues of public policy are involved, he must, if he is right minded, seek advice and guidance from the policy-makers. His sources of information and resources are of a very limited nature unlike those of the policy-makers. If the policy-makers themselves move in the matter in the first instance, as indeed it is proper that they should where matters of momentous public policy are involved, and if they advise the Public Prosecutor to withdraw from the prosecution, it is not for the Court to

say that the initiative came from the Government and therefore the Public Prosecutor cannot be said to have exercised a free mind. Nor can there be any quibbling over words. If ill-informed but well meaning bureaucrats choose to use expressions like " the Public Prosecutor is directed" or " the Public Prosecutor is instructed", the Court will not on that ground alone stultify the larger issue of public policy by refusing its consent on the ground that the Public Prosecutor did not act as a free agent when he sought withdrawal from the prosecution. What is at stake is not the language of the letter or the prestige of the Public Prosecutor but a wider question of policy. The Court, in such a situation is to make an effort to elicit the reasons for withdrawal and satisfy itself, that the Public Prosecutor too was satisfied that he should withdraw from the prosecution for good and relevant reasons".

7. The facts and circumstances in this case show that the petitioners and the injured have settled the matter and nothing survives now. After the incident, both parties merged together and working as a single party for preserving peace and harmony and for promoting cordial relationship among the members, withdrawal of the case is essential. Administration of public justice is the primary factor while considering the withdrawal application. The

court has to look into the necessity of public interest while granting or rejecting consent for withdrawing from the prosecution. When issues involved are settled by the parties and the atmosphere is found necessary to withdraw from the prosecution in order to restore peace it is a good ground. Here the concerned parties assured that they have refrained from violence, taking initiative to maintain peaceful atmosphere in the society, is a good sign for withdrawal. In this case, the learned Magistrate observed that without settling a dispute between the parties through negotiation, withdrawal of the case will not bring the said dreams to reality. Considering the larger interest of the society in the matter of public justice, the guidelines issued by the apex court in Rajender Kumar Jain Manohar Lal Attorney General of India's case (supra) is relevant and the court has to look into the public policy

with regard to maintaining peace in the locality.

8. The learned trial Judge considered the decision of this Court in Prakash Babu v. State of Kerala [2004(2) KLT 908], in which also the learned single Judge relied the decisions reported in Rajender Kumar Jain Manohar Lal Attorney General of India's case (supra), Sheo Nandan Paswan v. State of Bihar [AIR 1987 SC 877], Abdul Karim v. State of Karnataka [AIR 2001 SC 116], Madan Gopal v. State of Kerala [1989 (1) KLT 92] and Razack v. State of Kerala [2003 (3) KLT 686]. Apex Court and this Court in the above decisions, held that it is the duty of the Court to prevent miscarriage of justice and protect the interest of public justice, while considering the question of consent u/s.321 Cr.P.C.

9. The facts and circumstances in this case show that the impugned order refusing to grant permission to

withdraw the petition by the Additional Sessions Judge warrants interference in the changed circumstance. An unjustified refusal on the part of the trial Court is denying public justice. It is true that Section 321 Cr.P.C. reveals a statutory function on the executive , which empowers the Public Prosecutor to withdrawal or not from the prosecution. The exercise of such supervisory power is subject to the control of the judicial scrutiny by a court of law and only with the consent of the Court. The withdrawal of the prosecution is justifiable in this case, when both parties merged together and working as a single party and they have no political enmity now.

In the circumstances, the order passed by the learned Sessions Judge is set aside and the matter is remitted to the Additional Sessions Judge (Adhoc) I, Kasaragod for fresh consideration in the changed

circumstances. The learned Judge is directed to consider Crl.M.P.No.1328/2007 and dispose of the petition within thirty days from the date of receipt of this order.

Sd/-
P.D. RAJAN, JUDGE.

acd

True copy

PA to Judge.

