

Hon'ble Sri Justice M.S.K.Jaiswal

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Criminal Revision Case No.242 of 2008

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% 28-07-2015

S.R.Laxmirajam

...Petitioner

VERSUS

\$ The State of A.P.,

Rep.by Inspector of Police, ACB, Hyderabad

Through Special Public Prosecutor,

High Court, Hyderabad

...Respondent

< **GIST:**

> **HEAD NOTE:**

!Counsel for Petitioner: Sri Ananda Chary

^Counsel for Respondent: Special Public Prosecutor

? Cases referred

1. 2007 (2) ALT (Cri) 325 (A.P.)

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Criminal Revision Case No.242 of 2008

Between :-

S.R.Laxmirajam .. Petitioner

and

The State of A.P.

Rep.by Inspector of Police,

ACB, Hyderabad

Through Special Public Prosecutor,

High Court, Hyderabad .. Respondent

DATE OF JUDGMENT PRONOUNCED: 28th July, 2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

1. Whether Reporters of Local Newspapers
may be allowed to see the Judgment? Yes/No

2. Whether the copies of Judgment may be
marked to Law Reporters/Journals Yes/No

3. Whether His Lordship wish to see
the fair copy of the Judgment? Yes/No

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Revision Case No.242 of 2008

ORDER:-

The revision is directed against the order of the learned Prl.Spl.Judge for SPE & ACB Cases, City Civil Court, Hyderabad, dated 28-01-2008, in CrI.M.P.No.1386 of 2007 in C.C.No.25 of 2004.

2. The said petition was filed by the prosecution under Section 321 Cr.P.C., seeking permission to withdraw the case but the learned Special Judge has dismissed the petition holding that there is no public interest involved in favour of withdrawal of the prosecution against the accused/Officer and that there are no grounds to accord permission and consequently the petition was dismissed.

3. Aggrieved by the said dismissal, the respondent/accused Officer filed the present revision contending that the Government has issued the orders directing the

authorities to withdraw the prosecution taking into consideration all the facts and circumstances, that the learned Judge ought not to have rejected the petition of the prosecution to withdraw the case and that the petition be allowed as prayed for.

4. The facts, in brief, are as under:-

One Bhusarapu Ravinder is the *de facto* complainant and he had certain disputes with Nerevetla Rama Swamy and Nevetla Durgaiah. They had a quarrel and both the groups filed complaints against each other before Julapally P.S. The accused Officer was working as S.I. of Police there at. When the *de facto* complainant approached the accused Officer to enquire about the investigation into the complaint lodged by him against Rama Swamy and Durgaiah, it is alleged that the accused Officer demanded bribe of Rs.15,000/- and ultimately it was reduced to Rs.10,000/-. The *de facto* complainant gave a complaint to the ACB, who in turn, laid the trap after registering the case and accordingly on 22-10-2002 the accused Officer was caught while he demanded and accepted the bribe of Rs.10,000/- from the *de facto* complainant. The requisite tests were conducted and after completing the investigation, the charge sheet was filed, which was registered as C.C.No.25 of 2004.

5. The contention of the petitioner/accused Officer is that he is not even the Inquiry Officer in the complaint lodged by the *de facto* complainant against his rivals, that the investigation was entrusted to the Sub-Divisional Police Officer, that as a matter of fact, he obtained a hand-loan of Rs.10,000/- from the *de facto* complainant Bhusarapu Ravinder for the purpose of meeting the medical needs in connection with the treatment of his son who was ailing with kidney ailment and that a false case has been foisted. It is submitted that the accused Officer was suspended and subsequently re-instated and ultimately he superannuated and on a representation made by the accused Officer, taking into consideration all the material on record, the Government issued G.O.Rt.No.1640 Home (SC.A) Department, dated 07-11-2007, according permission to withdraw the prosecution. Learned Counsel relied upon a decision of our High Court in Criminal Petition No.5496 of 2007, dated 05-03-2010.

6. On the other hand, learned Special Public Prosecutor submits that it is a case where the accused Officer was trapped successfully while he was accepting a bribe of Rs.10,000/- which was recovered from his pocket and the Sodium Carbonate Solution test proved positive. The statements of the material witnesses have been

recorded and after obtaining sanction from the Government in G.O.Ms.No.118 of Home (SC.A3) Department, dated 10-05-2004, the prosecution was launched. Learned Special Public Prosecutor submits that while the Government is well within its competence to issue the orders for withdrawing the prosecution but a duty is cast upon the Public Prosecutor to fairly and honestly assist the Court and come to his own independent conclusion about the validity of the orders of the Government according permission to withdraw from the case. Learned Public Prosecutor submits that merely because the Government issues the orders, the Public Prosecutor cannot act as stooge of the Government and file a petition for withdrawal. Learned Public Prosecutor submits that even if the Public Prosecutor files a memo, the powers are vested with the Court to accord or refuse to accord permission to withdraw the prosecution depending upon the facts and circumstances of each case. Therefore, the learned trial Judge has found that the withdrawal of the prosecution by the Government is not in the public interest and similarly, the Public Prosecutor do not appear to have applied his independent mind in filing the memo before the Court and hence the permission was refused. Learned Special Public Prosecutor submits that the learned Special Judge has given valid and cogent reasons for dismissing the petition warranting no interference. Learned Public Prosecutor has relied upon a decision of our High Court reported in **M.JAGAN MOHAN REDDY v. STATE OF ANDHRA PRADESH**.

7. The point for consideration is as to whether it is a fit case where prosecution can be permitted to withdraw the case or whether it needs to be adjudicated in accordance with law.

8. So far as the factual matrix is concerned, briefly stated, it is the case of the investigating agency that the accused Officer working as S.I. of Police at Julapally P.S., has demanded and accepted a sum of Rs.10,000/- from the *de facto* complainant for doing an official favour and the trap was successfully laid and the tainted money was recovered from the pocket of the accused. The fact of the amount being paid by the *de facto* complainant and it being recovered from the possession of the accused Officer is not disputed, on the other hand, the specific contention of the accused Officer is that since his son was suffering with an ailment, he was in need of money and accordingly he obtained a hand-loan of Rs.10,000/- from the *de facto* complainant and that has been made the basis for the charge. No reasons are forthcoming from the accused Officer as to why the *de facto* complainant who has

volunteered to give hand-loan, lodged a complaint with the Anti Corruption authorities and lay a trap. That apart, the accused Officer was working as S.I. of Police within the jurisdiction of which Wine Shop was being run by the *de facto* complainant.

9. Launching of the prosecution in matter such as one in hand has been circumscribed by the provisions of the enactment. Before launching a prosecution against public servant, the sanction of the Government is mandatory and accordingly in the instant case, the Government issued the sanction vide G.O.Ms.No.118. Similarly, the Government has subsequently issued G.O.Rt.No.1640 on 07-11-2007 according permission to withdraw the prosecution. The grounds stated therein are contained in paras 7, 8 and 9, which may usefully be extracted. They read as under:-

“Now, Sri S.R.Laxmirajam, Sub-Inspector of Police, formerly at Julapally Police Station, Karimnagar District, has stated that on 24-8-2002 the complainant Sri Busarapu Ravinder who was running a retail wines came to Police Station and lodged a complaint against Sri N.Durgaiah and Ramaswamy with serious quarrels between both sides and requested to take necessary action. After enquiry this was found to be a non-cognizable offence in which police cannot take action. He handed over the General Diary, charge of the Station to his Asst.Sub-Inspector of Police as he was deputed for 2nd Gender Sensitization course at Andhra Pradesh Police Academy from 26-8-2002 to 29-8-2002 and participated in the said course. In his absence the said N.Ramaswamy and Durgaiah approached the Superintendent of Police, Karimnagar. The Superintendent of Police had appointed the Sub-Divisional Police Officer, Peddapalli, to complete investigation and report, which is the subject matter of Cr.No.85/2002 under Section 3(i)(x) of SCs/STs (POA) Act,1989 of Julapally Police Station which was registered by the Asst.Sub-Inspector of Police in his absence and later on investigated by the Sub-Divisional Police Officer, Peddapalli. As per the orders of the Superintendent of Police, Karimnagar, the Sub-Divisional Police Officer, Peddapalli enquired the matter moreover he had no jurisdiction at all to interfere the complaints of both sides. As complained by the complainant that he demanded bribe is totally false and fabricated as the matter was enquired by the Sub-Divisional Police Officer only, moreover, he was not an Inquiry Officer in this case and the question of demanding bribe to do official favour to the complainant does not arise.

He further stated that he took a loan from the complainant to meet the operational expenditure of his son Ravi Kiran who later underwent Kidney operation for which he promised to give the same in the presence of Thakur Manmohan Singh @ Pradeep Singh. Copies of evidence of treatment were produced. Considering the above points Sri S.R.Laxmirajam, Sub-Inspector of Police has requested to withdraw prosecution pending against him.

Government after careful examination of the allegation of corruption case made against Sri S.R.Laxmirajam, Sub-Inspector of Police, formerly at Julapally Police Station, Karimnagar District, take a lenient view as the Officer has already retired from service and decided and hereby order to withdraw the said prosecution orders issued in the G.O. 4th read above.”

10. What is noticed from the above Government Order is that the circumstances which weighed with the Government in according permission to withdraw the prosecution of a successfully laid trap case is that the accused Officer has since retired from service and that the accused Officer has informed the authority that he took the money recovered from him as a hand-loan. It is also noticed that the withdrawal of the prosecution against the accused Officer is not in any public interest but the Government has decided to take a lenient view since the Officer has retired from the service.

11. Even if the Government issued the orders, an obligation is cast upon the prosecutor to consider the facts and circumstances independently and impartially and he being a responsible Officer of the Court is required to file a petition in the Court setting out the reasons as to why the prosecution is sought to be withdrawn. In the instant case, the petition filed by the Public Prosecutor do not contain the requisite particulars to show that an impartial and independent decision was taken by the Public Prosecutor in the matter of seeking permission to withdraw the prosecution and that the said withdrawal was within the larger interest of the public.

12. The Court is empowered with the discretion of either giving the consent or refusing to accord permission to withdraw from the prosecution if it is satisfied that the said withdrawal from the prosecution is not in the public interest or will sub serve any of the constitutional obligations of the State. Solemn obligation is cast on the three Agencies to act to uphold the Rule of Law. Deviation if any, should be only in exceptional cases and for the larger good of the society. If a Public Servant is caught red handed demanding and accepting bribe, and if prosecution against such Officer is to be dropped on ground such as retirement on superannuation it will amount to making mockery of the provisions of Prevention of Corruption Act and the provisions of Conduct Rules of Civil Servants.

13. Learned Counsel appearing for the petitioner has relied upon the decision of this Court in Criminal Petition No.5496 of 2007, dated 05-03-2010, which is in respect of a similar matter. Considering the circumstances of the case, this Court has allowed the request of the prosecution and quashed the proceedings by setting aside the orders of the trial Court.

14. Learned Public Prosecutor relied upon **M.Jagan Mohan Reddy's case (cited supra)**. In this Judgment, this Court has taken into consideration catena of the decisions of the Supreme Court on the subject and after elaborate discussion, has observed in paras 11 and 12 as hereunder:-

“The above decisions rendered by the Supreme Court clearly indicate that the Public Prosecutor has to apply his mind independently without allowing himself to become the Government's stooge. Wherever issues involve the emotions and there is a surcharge of violence in the atmosphere it has often been found necessary to withdraw from prosecution in order to restore peace, to free the atmosphere from the surcharges of violence to bring about a peaceful settlement of issues and to preserve the calm which may follow the storm. While withdrawing the case, the Government should decide, in the first instance, whether it should be baneful or beneficial to launch or continue the prosecution. If the Government decides that it should be in the public interest to withdraw from the prosecution, the Government may order withdrawal of the case. Criminal justice is not a plaything and a criminal Court is not a play ground for politicking. The political fervour should not convert prosecution into persecution, nor political favour reward wrongdoer by withdrawal from prosecution. If political fortunes are allowed to be reflected in the processes of the Court very soon the credibility of rule of law will be lost. Therefore, the Courts when moved for permission for withdrawal from prosecution, must be vigilant and inform themselves fully before granting consent. While it would be obnoxious and objectionable for a Public Prosecutor to allow himself to be ordered about, he should apprise himself from the Government and thereafter apprise the Court the host of factors relevant for withdrawal from the cases.

In the present case, the Public Prosecutor did not file any letter addressed by the Government to him to file an Application along with the G.O., before the Court to enable the Court to give the consent. The Public Prosecutor did not assign any reasons whether in the interest of public the prosecution has to be withdrawn. This is a case where there is an allegation of acceptance of bribe under the Prevention of Corruption Act. The Public Prosecutor did not mention in the Application that there is no likelihood of conviction of the accused from the evidence so far adduced. Neither the Government nor the Public Prosecutor assigned any reasons and there is no indication in the application whether the Public Prosecutor has applied his mind. There is an allegation of demanding and accepting bribe against the accused. There is

no public interest involved in it. The Government deciding to refer the matter to the Tribunal for Disciplinary Proceedings by itself is not a ground for withdrawal of the case. The Public Prosecutor did not mention how the withdrawal meets the ends of justice social, economic and political. He also did not enjoin whether there is any public policy involved in this case ad broader public interest like maintenance of law and order, maintenance of public peace and harmony. He also did not mention that the withdrawal of the case against the accused will not stifle to thwart the process of law or cause manifest injustice. There is no indication that the petitioner considered the material and in good faith reached the conclusion that the withdrawal from the prosecution will serve the public interest. By withdrawing the case, the prosecution should not reward the wrongdoer and if the withdrawal is made on irrelevant considerations, the credibility of the Rule of Law will be lost. The withdrawal can be allowed only in the interest of justice. There are no sufficient circumstances for the Court that the withdrawal of the prosecution against the accused would advance the cause of justice.”

15. Having carefully perused both the authorities, I am inclined to agree with the view taken by the learned Single Judge in the decision reported in **M.Jagan Mohan Reddy’s case (cited supra)**. Applying the said authority to the facts of the present case, what is noticed is that in the case in hand absolutely no legally valid and tangible grounds are shown either by the Government in its G.O.Rt.No.1640 or in the memo filed by the prosecution seeking consent of the Court to withdraw the prosecution. The learned Special Judge has considered all the aspects in proper perspective and has refused to accord permission and I see no reason to interfere with the same.

16. There are no merits in the petition and the same is liable to be dismissed, however, with an observation that since the case appears to be of the year 2002 and the charge sheet is filed in the year 2004, and charges are also framed therein, the learned Special Judge should make every endeavour to dispose of the case, preferably within a period of three months from the date of receipt of the records, uninfluenced by any observations made herein above.

17. In the result, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any, pending shall stand closed.

M.S.K.Jaiswal, J

28th July, 2015

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