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

Criminal Revision Case No.99 of 2011

ORDER:-

This revision case is filed against the orders of the learned Principal Special Judge for SPE & ACB Cases, Hyderabad, in Crl.M.P.No.1341 of 2010 in C.C.No.24 of 2010, dated 10-01-2011.

2. The petitioner is the accused Officer No.1 along with one G.Mahesh, who is shown as A.2. The 1st respondent filed the charge-sheet against the accused Officer alleging offences punishable under Sections 7 and 13 (1)(d) read with Section 13 (2) of the Prevention of Corruption Act,1988.

3. Learned Special Public Prosecutor representing the complainant filed a petition under Section 321 Cr.P.C., to withdraw the case of the prosecution against the accused Officer No.1 and to discharge him. Vide impugned orders, the learned Special Judge has dismissed the petition holding that the withdrawal of the prosecution is not in the public interest and will not serve the interest of justice. It is further held that no valid grounds are shown to come to a conclusion that the withdrawal of the prosecution against the accused Officer would advance the cause of justice.

4. The petitioner/accused Officer No.1 filed the present revision case contending that the learned Judge erred in refusing to accord permission to withdraw the prosecution, that the learned Special Public Prosecutor and the Government have considered all the material on record and sought for withdrawal of the prosecution, that the Government has referred the enquiry against the accused Officer to the Tribunal for Disciplinary Proceedings and hence the Court ought to have accorded permission to the Prosecutor to withdraw the case.

5. The allegations in brief are that the petitioner/accused Officer No.1 was working as Sub-Registrar in the Office of the District Registrar, Hyderabad. He demanded and accepted a bribe of Rs.2,000/- from one Smt.Shaheen Jahan through his Personal Servant

– the non-petitioner/A.2 for showing official favour of registering and releasing of the document executed by her on 15-07-2009. ON a complaint of the *de facto* complainant, the trap was laid and the cash of Rs.2,000/- was recovered from the possession of the non-petitioner/A.2 and the phenolphthalein test proved positive.

6. The Government vide G.O.Ms.No.91, Revenue (VIG.VI) Department, dated 01-02-2010, accorded sanction for prosecution. When the matter was pending before the trial Court, the Government issued G.O.Ms.No.497, Revenue (Vig.VI) Department, dated 11-06-2010, the relevant portion of which reads as under:-

> "Whereas the Accused Officer Sri Samiullah Shareef, former Joint Sub-Registrar-I, Registrar Office, Hyderabad, has made a representation before Government, stating that on 15-07-2009, he has registered the document in question in favour of Mohd.Bin Salam. Immediately, on presentation of the document before him, he has registered the document as Document No.1657of 2009, Book-I, and the document was scanned and registered on the same day. When the document was ready for the return to the parties on 15-07-2009, Smt.Shaheen Jahan appeared on 17-07-2009 for document. When the process of return of the document was going on, all of a sudden, the Anti Corruption Bureau officials entered in the office alleging that he has demanded Rs.2,000/- from the particular lady namely Smt.Shaheen Jahan and received the amount from her. The AO has further represented that he has never demanded any amount from her for registering the above said document. When the discussion was going on and all of a sudden, one person by name G.Mahesh (A.2) was produced before him by saying that he has demanded Rs.2,000/- from the complainant. The Accused Officer has further submitted that he does not have any knowledge and intimacy with that 3rd person by name G.Mahesh and that he has seen him as a Tea Boy very often used to bring the tea to the office staff. The Phenolphthalein test was conducted on him and the result was negative. The Accused Officer has, therefore, requested the Government to reinstatement him into

service and to close the case since he is suffering a lot financially for maintenance, he is retiring on 31-07-2010 and his elder daughter has gone for the treatment of cancer.

After careful examination of the matter in detail and considering all aspects of the case, Government have decided to withdraw prosecution and to place the Accused Officer on his defence before Tribunal for Disciplinary Proceedings. Hence, it is ordered to withdraw the prosecution orders accorded in the G.O. 2nd read above, and the Accused Officer was placed on his before the Tribunal for Disciplinary Proceedings."

7. In pursuance to the Government Order, the learned Special Public Prosecutor attached to the Court of the Principal Special Judge for SPE & ACB Cases, Hyderabad, filed a petition which reads as under:-

"It is respectfully submitted that in the above calendar case, charge-sheet was filed against the respondent/accused Officer and accused No.2 for the offences punishable under Sections 7, 13 (2) r/w 13(1)(d) of P.C.Act, 1988, for having demanding and accepting illegal gratification other than legal remuneration of Rs.2,000/- through Sri G.Mahesh (accused 2). Ac No.2 for the offence punishable under Section 12 of the P.C.Act, 1988 and for obtaining pecuniary advantage for himself of the said amount. On the strength of the sanction proceedings issued vide G.O.Ms.No.91, Revenue (Vig-VI) Department, dated 01-02-2010, charge-sheet was filed in the above calendar case against the respondents and the Prl.Spl.Judge for SPE & ACB Cases, Hyderabad, took cognizance of the offence and numbered the charge-sheet. The case is coming up for hearing on charges.

It is further submitted that as the matter stood thus, the Government has reviewed the case and decided to modify the orders vide G.O.Ms.No.497, Revenue (Vig-VI) Department, dated 11-06-2010 to withdraw prosecution and to place the respondent/accused Officer on his defence before the Tribunal for Disciplinary Proceedings, A.P., Hyderabad. The Government Order is filed herewith for your honours' kind perusal.

I respectfully submit that on perusal of the Government Order and the material evidences available on record and on application of the mind independently and for the reasons accorded by the Government, I am satisfied that the case is fit for withdrawal from prosecution in accordance with the settled principles of law as laid down by the Hon'ble Supreme Court of India."

8. The learned trial Judge after taking into consideration the decisions of the Supreme Court in **STATE OF BIHAR v. RAM NARESH**[1]**; M.N.SANKARANARAYANA NAIR v. P.V.BALAKRISHNAN**[2]**; BANSI LAL v. CHANDAN LAL AND BALWANT SINGH**[3]**; ABDUL KARIM ETC., v. STATE OF KARNATAKA AND OTHERS ETC.**[4]**; STATE OF ORISSA v. CHANDRIKA MOHAPATRA**[5]**; SUBHASH CHANDRA v. STATE**[6]**; RAJENDER KUMAR v. STATE**[7]**; SHEONANDAN PASWAN v. STATE OF BIHAR**[8]**; RAHUL AGARWAL v. RAKESH JAIN**[9]**; and S.K.SHUKLA v. STATE OF U.P.**[10] held that the learned Special Public Prosecutor did not assign any reasons as to what public interest was involved in withdrawal of the prosecution, that the learned Special Public Prosecutor has not mentioned that there is no likelihood of conviction of the accused due to paucity of evidence, that there is no public interest involved in withdrawing the case, that the Government deciding to refer the matter to the Tribunal for Disciplinary Proceedings by itself is not a ground for withdrawal of the case, that no reasons are mentioned as to how withdrawal meets the ends of justice and no reasons were assigned as to what material was considered for reaching the conclusion, that the withdrawal of the prosecution cannot be made on irrelevant consideration and therefore the request of the prosecution cannot be acceded.

9. Learned Counsel appearing for the petitioner/accused Officer

submits that the Government after taking into consideration the surrounding facts and circumstances has accorded sanction for withdrawal which ought to have been accepted by the learned trial Court.

10. This Court had an occasion to consider similar matter in Criminal Revision Case No.242 of 2008 (S.R.Laxmirajam V. State of A.P.) and after referring to the two decisions of the learned single Judge of this Court (Kuntrapakam Muddukrishnaiah V. The Inspector of Police, ACB, Tirupati – Criminal Petition No.5496/2007 and M.Jagan Mohan Reddy V. State of Andhra Pradesh – 2007 (2) ALT (CRL) 325 (A.P.), it was held that withdrawal from the prosecution cannot be accorded merely because the prosecution has sought for it.

11. There is one more decision of the Supreme Court reported in **BAIRAM MURALIDHAR v. STATE OF ANDHRA PRADESH**[11] wherein the following observations are made in paragraph Nos.18, 19, 20 and 22:-

> "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's case (2000) 8 SCC 710), 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 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 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.

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".

A case under the Prevention of Corruption Act has its own gravity. IN *Niranjan Hemchandra Sashittal v. State of Maharashtra (2013) 4 SCC 642,* while declining to quash the proceeding under the Act on the ground of delayed trial, the Court observed thus:

> "25. In the case at hand, the appellant has been charge-sheeted under the Prevention of Corruption Act, 1988 for disproportionate assets. The said Act has a purpose to serve. Parliament intended to eradicate corruption and

provide deterrent punishment when criminal culpability is proven. The intendment of the legislature has an immense social relevance. In the present day scenario, corruption has been treated to have the potentiality of corroding the marrows of the economy. There are cases where the amount is small and in certain cases, it is extremely high. The gravity of the offence in such a case, in our considered opinion, is not to be adjudged on the bedrock of the quantum of bribe. An attitude to abuse the official position to extend favour in lieu of benefit is a crime against the collective and an anathema to the basic tenets of democracy, for it erodes the faith of the people in the system. It creates an incurable concavity in the rule of law. Be it noted, system of good governance is founded on collective faith in the institutions. If corrosions are allowed to continue by giving allowance to quash the proceedings in corruption cases solely because of delay without scrutinising other relevant factors, a time may come when the unscrupulous people would foster and garner the tendency to pave the path of anarchism."

We have referred to these authorities only to show that in the case at hand, regard being had to the gravity of the offence and the impact on public life apart from the nature of application filed by the Public Prosecutor, we are of the considered opinion that view expressed by the learned trial Judge as well as the High Court cannot be found fault with. We say so as we are inclined to think that there is no ground to show that such withdrawal would advance the cause of justice and serve the public interest. That apart, there was no independent application of mind on the part of the learned Public Prosecutor, possibly thinking that the Court would pass an order on a mere asking."

12. Applying the aforesaid dicta to the facts of the present case, I have no hesitation in holding that the withdrawal from the prosecution by the prosecutor is not based on any valid and legally acceptable grounds. It is a case where the petitioner/accused Officer has been trapped when he demanded a bribe of Rs.2,000/- from Smt.Shaheen Jahan for registering and releasing a document. The tainted amount apparently at the instance of the accused Officer was collected by the 2nd respondent/A.2, who according to the prosecution was working as a private employee but whereas according to the accused Officer No.1,

he used to see A.2 in the Office while he was supplying tea to the employees. Learned Counsel appearing for the petitioner/accused vehemently submits that since no recovery of the tainted amount was found from the possession, he cannot be said to have accepted any illegal gratification. It is a matter of evidence as to whether the non-petitioner/A.2 has collected the amount for and on behalf of the accused Officer who was the Sub-Registrar but on that ground, withdrawal of the prosecution cannot be considered. It is pertinent to note that based upon the same material, the Government issued Sanction Order on 01-02-2010 and within about four months thereafter, thought it fit to withdraw the prosecution without there being any additional material before it. In the Government Order, the representation of the accused Officer that he is suffering a lot financially for maintenance and that he is due to retire on 31-07-2010 and that his daughter is undergoing treatment for cancer appears to have weighed with the Government in issuing the Government Order withdrawing the prosecution. Only on the basis of the above representation, the Government issued the Government Order withdrawing the prosecution. The learned Special Public Prosecutor did not state any reasons and based on the Orders of the Government has filed a petition to withdraw the case. The learned trial Judge has considered all the aspects in proper perspective and has refused to accord permission to withdraw the prosecution. I see no reason to interfere with the said findings and it is based on legally acceptable para meterea. There are no merits in the revision and the same is liable to be dismissed.

13. In the result, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.S.K.Jaiswal, J

September, 2015

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[1] AIR 1957 S.C., 389

[2] AIR 1972 S.C., 496

[3] AIR 1976 S.C., 370

[4] AIR 2001 S.C., 116

[5] AIR 1997 S.C., 903

[6] AIR 1980 S.C., 423

[7] AIR 1980 S.C., 1510

[8] AIR 1983 S.C., 194

[9] (2005) 2 SCC 377

[10] (2006) 1 SCC 314

[11] (2014) 10 SCC 380