

In the High Court of Punjab and Haryana at Chandigarh

CRR-465 of 2013

Date of Decision:9.1.2015

Paramjit Singh

---Petitioner

versus

State of Haryana and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.R.N.Lohan, Advocate
for the petitioner**

**Ms. Neelam Kashyap,DAG, Haryana
for the respondent-State**

**Mr. K.S.Sidhu, Senior Advocate with
Mr. G.S.Benipal, Advocate
for respondents No. 2 and 3**

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporter or not?**
- 3. Whether the judgment should be reported in the Digest?**

REKHA MITTAL, J.

Paramjit Singh, the complainant in FIR No.50 dated 19.5.2004 registered in Police Station, Garhi District Jind for offence punishable under Sections 420, 467, 468, 471, 506 of the Indian Penal Code (in short "IPC") has filed the present petition to assail order dated 6.12.2012 passed by the Additional Sessions Judge, Jind whereby the order dated 24.12.2010 passed by the Judicial Magistrate Ist Class, Narwana allowing withdrawal from prosecution was affirmed.

Counsel for the petitioner contends that on completion of investigation in the aforesaid FIR, report under Section 173 of the Code of Criminal Procedure (in short Cr.P.C.”) was submitted before the Court and after hearing the parties, charge under Sections 420, 467, 468, 471, 506, 201 IPC was framed against the accused and the case was pending for evidence of the prosecution. The public prosecutor filed an application dated 12.4.2008 for withdrawal from prosecution on the basis of decision taken by the Government in view of letter of Financial Commissioner and Principal Secretary to Government Haryana, Administration of Justice dated 8.1.2008 appended with the application. The said application was allowed by the Judicial Magistrate vide order dated 24.12.2010 and the order passed by the trial Court was affirmed by the appellate Court vide impugned order dated 6.12.2012.

The sole submission made by counsel for the petitioner is that in the application filed by the public prosecutor for withdrawal from prosecution, there is no reference that the public prosecutor applied his own mind nor pointed out any material on the basis whereof he could arrive at a satisfaction that it was a fit case for withdrawal in public interest. It is further argued that the public prosecutor filed the application solely on the basis of the aforesaid letter issued by the Government to the District Magistrate, Jind conveying its decision to withdraw from prosecution and, therefore, neither the order passed by the trial Court nor the impugned order passed by the Appellate Court can be allowed to sustain. In support of his contention, he has referred to judgment of the Hon'ble Supreme Court of India ***Balwant Singh and others Vs. State of Bihar AIR 1987 SC 2265.***

He has also cited judgment of this Court *Navjot Singh Sidhu vs. State of Punjab 1992(2) R.C.R.(Criminal) 325*.

Counsel for the respondent-accused, on the other hand, would submit that before disposing of the application for withdrawal from prosecution, the public prosecutor got recorded his statement dated 24.12.2010 wherein the learned public prosecutor deposed that he had gone through the case file without any outside pressure and found that the case is fit for withdrawal in the interest of public peace. It is further argued that the Court is neither required to give a detailed reasoned order to give its consent nor would examine the materials on record if it would lead to conviction of the accused or otherwise. The judicial function implicit in the exercise of 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 it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes. For this purpose, he has relied upon judgments of the Hon'ble Supreme Court of India *Sheo Nandan Paswan vs. State of Bihar AIR 1987 SC 877*, *Abdul Karim vs. State of Karnataka 2000(4)R.C.R.(Criminal)688*, *Vijaykumar Baldev Mishra @ Sharma vs. State of Maharashtra 2007(3) RCR(Criminal) 269* and latest judgment of the Apex Court *Bairam Muralidhar Vs. State of Andhra Pradesh 2014(4) RCR(Criminal)01*.

Another submission made by counsel is that the accused filed a civil suit seeking specific performance of the alleged forged agreement to sell and the said suit has been decreed by the Additional Civil Judge (Senior Division), Narwana vide judgment dated 14.6.2010 and the finding recorded

by the Civil Court falsifies and belies the allegations set up by the complainant that the agreement in dispute is the result of fraud and forgery.

In reply, counsel for the petitioner submits that the judgment passed by the Civil Court has not attained finality as the same has been challenged in appeal. The findings recorded by the Civil Court are not binding upon the criminal Court. Neither the government nor the public prosecutor had taken a decision to withdraw from the prosecution on the basis of judgment of the civil Court which came into existence more than two years after the application for withdrawal from prosecution was submitted on 12.4.2008.

I have heard counsel for the parties and perused the records.

The public prosecutor submitted a handwritten application dated 12.4.2008 and in the said application, only averment made by the public prosecutor is that it has been decided by the Government to withdraw from prosecution in the public interest and, therefore, the case be withdrawn from prosecution in view of letter of the Financial Commissioner and Principal Secretary to Government Haryana attached with the application. In the photocopy of the letter appended with the application, addressed to the District Magistrate, Jind, it has been mentioned that the Government has decided to withdraw from prosecution in the case of FIR No. 50 dated 19.5.2004, registered at Police Station, Garhi, District Jind against Amarjit Singh. The said letter does not make reference as to on what basis the Government had decided to withdraw from prosecution. The application filed by the public prosecutor does not make reference that the public prosecutor has taken into consideration any materials which could

formulate basis for his satisfaction to withdraw from prosecution in public interest. Not only this, the statement made by the public prosecutor on 24.12.2010 also does not refer to any material which weighed in the mind of the public prosecutor to withdraw from prosecution in the interest of public peace.

Counsel for the State, during course of hearing, did not make any submission as to how withdrawal from prosecution in the circumstances of the present case was in public interest or continuation of criminal proceedings can result in breach of public peace.

The Supreme Court of India in the latest judgment ***Bairam Muralidhar's case (Supra)*** relied upon by counsel for the respondent in para 18 has recorded its observations, quoted thus:-

*“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**, 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 reading of the aforesaid extract makes it evident that it is enjoined upon the public prosecutor to state, what material he has considered to withdraw from prosecution and the said material has to be set out in brief but there is no such compliance in the present case. It is necessary for the Court to see whether grant of consent would thwart or stifle the course of law or cause manifest injustice. The Court is required to exercise its judicial discretion and not to act in a mechanical manner on mere asking. The Court is obligated to consider the material on record to see that the application has been filed in good faith and it is in the interest

of public and justice and further withdrawal would advance the cause of justice. In the case at hand, neither the public prosecutor had discharged his duty nor the Court has exercised its judicial discretion in the manner expected in law. It appears to me that the Judicial Magistrate allowed withdrawal from prosecution on mere asking of the public prosecutor who became ploy in the hands of the Government to make such a request without delving deep in the matter or recording his satisfaction that withdrawal from prosecution is in public interest. The error committed by the Judicial Magistrate was endorsed by the appellate Court without correctly and properly appreciating the settled position of law.

The plea with regard to judgment passed by the civil court is misconceived. The judgment passed by the Civil Court is not germane to the issue in controversy as neither the Government nor the public prosecutor decided for withdrawal from prosecution on the basis thereof. This apart, the judgment of the civil Court has not attained finality and, therefore, cannot be looked into at this stage. Further more, the judgment of the Civil Court may be produced by the accused in defence if they want to derive any benefit thereof.

In view of what has been discussed hereinabove, the petition is allowed, the impugned orders are set aside and the proceedings pending before the trial Court are restored at the stage the same were pending at the time of withdrawal.

(REKHA MITTAL)
JUDGE

9.1.2015
PARAMJIT