

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Misc. No. M-28607 of 2015

Date of Decision: 10.01.2020

Sukhwinder Singh

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Mohit Thakur, Advocate
for Mr. Vivek Thakur, Advocate
for the petitioner.

Mr. Hittan Nehra, Additional Advocate
General, Haryana for respondent No.1.

Mr. Tara Dutt, Advocate
for Mr. Sunil Kumar Nehra, Advocate
for respondents No.2 & 3.

Anil Kshetarpal, J.

Correctness of order passed by learned Additional Sessions Judge, Kapurthala while accepting revision filed by the State through Public Prosecutor against the order passed by Judicial Magistrate Ist Class, Kapurthala has been challenged. Learned Judicial Magistrate dismissed the application under Section 321 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Code”). for permission to withdraw the prosecution of FIR No.104 dated 15.11.2003 under Sections 447/34 IPC and Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the Act”).

Some facts are required to be noticed. FIR referred to above

was registered on the basis of a complaint made by Sukhwinder Singh Sarpanch of Gram Panchayat of Village Dogranwala with allegations that a piece of land owned by the Government of Punjab was in unauthorized possession of Ex-Sarpanch Jarnail Singh and Ex-Member Panchayat Narinder Singh. On the orders of the High Court, the land was got vacated and consequently, illegal possession was got removed. Thereafter, both the aforesaid persons are once again found, cultivating the aforesaid land from which they were already evicted.

During the pendency of the criminal trial, the learned Judicial Magistrate framed charges under Section 13-A of the Act to which accused pleaded not guilty and claimed trial. During the trial, an application was moved by the Public Prosecutor for withdrawing from the prosecution. Learned Additional Chief Judicial Magistrate, Kapurthala refused permission on the ground that the application is not supported by documents. The aforesaid order was challenged before the Court of Sessions, but failed and further, in petition before the High Court, following order was passed:

“Perusal of the application filed under Section 321 Cr.P.C. by the learned Additional Public Prosecutor shows that there was no application of mind by him for withdrawal of the petition.

In view of the above, learned counsel for the petitioners prays for withdrawal of the present petition with liberty to approach the learned Public Prosecutor for filing fresh application in accordance with law.

Learned counsel for the State as well as learned

counsel for the complainant have no objection to the prayer made by the learned counsel for the petitioners.

Dismissed as withdrawn.

In case the petitioners approached the learned Public Prosecutor, in that eventuality he shall form his opinion to file a fresh application in accordance with law.

It is, however, made clear that the learned Public Prosecutor will not construe as if direction has been issued to him by this Court to file a fresh application.”

Thereafter, once again, the Public Prosecutor filed an application for withdrawal from prosecution against the accused. Learned Judicial Magistrate although held that offence under Section 13-A of the Act is not made out but held that the offence under Section 447 IPC is attracted and the charge can be amended at any stage. Thus, the learned Judicial Magistrate passed order of framing amended charge. The State filed a revision petition. Learned Additional Sessions Judge, after noting that neither offence under Section 13-A of the Act is made out against the accused nor offence under Section 447 read with Section 34 IPC is made out, accepted the revision petition and resulting in allowing of the application for withdrawal of the prosecution.

This Court has heard learned counsel for the petitioner and with his able assistance gone through the paper book. Learned counsel for the petitioner submitted that second application filed under Section 321 of the Code was not maintainable. He further submitted that learned Additional Sessions Judge, in exercise of its powers of revision, wrongly interfered with

the order passed by the learned Judicial Magistrate.

As regards first argument, it will be noticed that in the first round when matter reached upto the High Court, a request was made to withdraw the petition with liberty to approach the Public Prosecutor for filing fresh application in accordance with law, which was granted. Still further Section 321 of the Code does not debar filing of second application. In the first round, the Court found that the Public Prosecutor has filed the application without application of mind. In such circumstances, fresh application is maintainable.

As regards second argument, it will be noticed that the Court of Revision has the powers to rectify the error in the order or proceedings of the subordinate Court. The scope of power, while dealing with the revision is limited. However, such limited power is to be exercised in the interest of justice. Learned Additional Sessions Judge by an elaborate order has discussed various aspects of the case and found that the learned Judicial Magistrate committed an error.

In view of the facts of the case, this Court does not find it to be a fit case for exercise of powers under Section 482 of the Code to interfere in the order passed by the learned Additional Sessions Judge.

Dismissed.

(Anil Kshetarpal)
Judge

January 10, 2020
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No