

**(1985) 02 P&H CK 0008**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Miscellaneous No. 5695-M of 1984

Dhup Singh

APPELLANT

Vs

State of Haryana and ors.

RESPONDENT

**Date of Decision:** Feb. 12, 1985

**Hon'ble Judges:** K.P.S.Sandhu, J

**Advocate:** D.S. Bali, R.K. Jhingan, M.P. Gupta, Harbans Singh, Advocates for appearing  
Parties

**Judgement**

K.P.S. Sandhu, J.(Oral)

1. By way of this petition under section 482 of the Code of Criminal Procedure Dhup Sing has challenged the correctness of the order of the Additional Chief Judicial Magistrate, Hissar, dated 7th September, 1984, by which he allowed the Assistant Public Prosecutor to withdraw from the prosecution of respondents Nos. 2 to 5 and acquitted them of the charges under sections 392, 353 and 201 of the Indian Penal Code.

2. The facts which are relevant for the purpose are as follows. A case under section 392, 353, 201 of the Indian Penal Code was registered against the aforesaid respondents at Police Station, Barwala, on 21st June, 1983, vide first information report No. 127 of 1983. The police after investigation submitted a report under section 173 of the Code of Criminal Procedure in the Court of the Judicial Magistrate First Class, Hissar. The learned Magistrate after perusing the evidence collected by the investigating agency and hearing Shri A.C. Chaudhary, Assistant Public Prosecutor and the counsel for the aforesaid respondents vide his detailed order dated 25th January, 1984 came to a finding that a prima facie case under section 392, 353, and 201 of the Indian Penal Code was made out against the aforesaid respondents and chargesheeted them accordingly. Aggrieved by that order the aforesaid respondents went in revision which came up for hearing before the Additional Sessions Judge, Hissar. The State very strenuously opposed the plea of the aforesaid respondents before the learned Additional Sessions Judge. The

learned Additional Sessions Judge upheld the order dismissed the revision vide his detailed order dated 8th August, 1984, and directed the parties to appear before the learned Chief Judicial Magistrate. The learned Chief Judicial Magistrate on 21st August, 1984, adjourned the case to 1st September, 1984, and directed the parties to appear in the Court of the Additional Chief Judicial Magistrate, Hissar, on that date on 1st September, 1984 in the presence of the parties the case was adjourned to 10th September, 1984, for recording of the prosecution evidence. However, on 6th September, 1984, the same Assistant Public Prosecutor Shri A.C. Chaudhary filed an application under section 321 of the Code of Criminal Procedure praying therein that there was insufficient evidence or record which could end in the conviction of the aforesaid respondents and that he should, therefore, be allowed to withdraw from the prosecution of the aforesaid respondents in the interest of justice. The learned Magistrate vide his impugned order allowed the application of the Assistant Public Prosecutor and acquitted the aforesaid respondents of the charges

3. It may be pertinent to note here that on 7th September, 1984, when the petition of the Assistant Public Prosecutor under section 321 of the Code of Criminal Procedure came up before the Court respondent Nos. 2 to 5 were also present in the Court although the next date fixed for the hearing of the case was 10th September, 1984. As pointed out earlier, the learned Magistrate after taking into account the evidence collected by the investigation agency after going through the report under section 173 of the Code of Criminal Procedure came to definite finding that a *prima facie* case against the respondents was made out. This finding of the learned Magistrate was confirmed by the Additional Sessions Judge, Hissar. There was no material on record to justify the impugned order passed by the learned Magistrate. The presence of the respondent Nos. 2 to 5 in the Court when this application was allowed without any notice having been given to them is also suggestive of the facts that the application had been made by the Assistant Public Prosecutor for extraneous reasons. Although the Public Prosecutor is entitled under section 321 of the Code of Criminal Procedure to withdraw from the prosecution and the trial Court has a discretion to give permission to him to do so, but the discretion has to be exercised judicially. To learned counsel support this proposition Mr. Harbans Singh Senior Advocate, for the petitioner, has placed reliance on *Bansal Lal v. Chandan Lal and another*, AIR 1976 Supreme Court 370 wherein their Lordships were pleased to hold as under :

"Therefore when the Additional Sessions Judge made the impugned order, there was no material before him to warrant the conclusion that sufficient evidence would not be forthcoming to sustain the charges or that there was any reliable subsequent information falsifying the prosecution case or any other circumstance justifying withdrawal of the case against the respondents. Consenting to the withdrawal of the case on the view that the attitude displayed by prosecution made it 'futile' to refuse permission does not certainly serve the administration of justice. If the material before the Additional Sessions Judge was considered sufficient to enable him to

frame the charges against the respondents, it is not possible to say that there was no evidence in support of the Prosecution case."

Similarly, in the case in hand, after the charges had been framed and the revision of respondent Nos. 2 to 5 had been dismissed against the framing of the charges there was no material on record before learned Magistrate to warrant the conclusion that sufficient evidence would not be forthcoming to sustain the charges. I am afraid that the learned Magistrate has not exercised the discretion judicially. Consequently, his impugned order is set aside and the case is sent back to the learned Magistrate to pass an order according to law. The parties through their counsel are directed to appear before the learned Magistrate on 4th March, 1985.

JUDGMENT accordingly.