
(2002) 06 KL CK 0063

High Court Of Kerala

Case No: Criminal R.P. No. 2 of 2000

Krishnan Kakkanath

APPELLANT

Vs

Ravi and Another

RESPONDENT

Date of Decision: June 19, 2002

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 321

Citation: (2002) CriLJ 4056 : (2002) 3 ILR (Ker) 215

Hon'ble Judges: M.R. Hariharan Nair, J

Bench: Single Bench

Advocate: M.N. Sukumaran Nair and S. Vijaya Kumar, for the Appellant; K.I. Mayankutty Nather, (for No. 1) and Public Prosecutor (for No. 2), for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M.R. Hariharan Nair, J.

The question that is posed before the Court in this revision is of some novelty and that is whether when a case and counter case exist, permission for withdrawal u/s 321 of the Cr.P.C. could be granted in the main/counter case alone.

2. The facts : The petitioner is an accused in C.C. No. 264 of 1998 of the Chief Judicial Magistrate's Court, Kasargode, where the allegation is that obstruction was caused to the Sales Tax Officials when they tried to conduct inspection in a business place. The present petitioner filed a private complaint before the Judicial First Class Magistrate Court, Kasargode on 24-2-1998 alleging that the first respondent herein, who was the Intelligence Officer of the AIT & ST Squad No. 2, Tellicherry was coming out of Shalimar Jewellery, Kasargod at about 1.50 p.m. on 18-11-1997; that he wrongfully restrained the petitioner and prevented him from moving from the place shouting that he was the leader of the group and that he would not be let free. The petitioner was actually the office bearer of the State Committee of the "Kerala

Vyapari Vyavasai Ekopana Samithi" and the accused hit him with a stone on the right side of his forehead near the eye, in consequence of which the petitioner sustained injury requiring long and continuous treatment. He was first taken by the members of his organisation, who were in the premises at the time, to the Government Taluk Headquarters Hospital, Kasargod, then to the Kasaragode Nursing Home and thereafter to the Unity Health Complex, Mangalore, where he underwent treatment from 18-11-1997 till 22-11-1997. The said complaint was forwarded to the police for action u/s 156(3) of the Cr.P.C. and in due course charge was laid. C.C. No. 929 of 1998 was filed on that basis and the Court framed charges against the first respondent herein (Sales Tax Official) on 21-7-1999. It was on the next adjournment date viz. 16-10-1999 that the Prosecutor filed application u/s 321 of the Cr.P.C. seeking withdrawal of the case. In the application it was alleged by the Prosecutor, inter alia, as follows :

The defacto complainant-cum-injured was the Vice-President of Kerala Vyapari Vyavasayi Ekopana Samithi. Accused was the Intelligence Officer (IB) AIT and ST, Kannur Squad No. II. As per the direction of State Govt., the Sale Tax Officials were making inspections to all the shops. As a protest against this official act there was a clash between the Sales Tax Officials and the organisation of the Merchant Association all over the part of Kasaragod District and this incident is part of the same. Hence there is an enmity between them. More over there are cases against shop owners and office bearers of the Merchant Association of the Kasaragod District. In this case the prosecution witnesses are interested since they are the officials of the organisation of the Merchant Association of the Kasaragod District. If at all the incident has taken place, the act of the accused herein is not in his personal capacity, but it is while discharging his official duty. So chance for false implication of the accused due to the grudge against the officials cannot be ruled out in this case.

3. It was also alleged that the case has created strife and ill-feelings between the two sections, that peace and harmony among them was affected and that in order to keep cordial relationship between the parties and to preserve peace and harmony, it is necessary to drop the proceedings. He further stated that the Government also wanted to withdraw the case in the interests of public justice, which is of paramount consideration.

4. The Court considered the said aspects and allowed the petition and it is aggrieved by such order that the petitioner has come to Court.

5. Learned counsel for the petitioner submitted that in the absence of any averment in the application that there are circumstances which clearly show that the object of administration of justice would be advanced or furthered by the withdrawal, the application should not have been allowed. Yet another submission is that as long as there is no motion to withdraw the other case filed against the petitioner, the present withdrawal was impermissible and has to be treated as mala fide and

collusive. It is also argued that the confidence of the public will be shaken by the grant of the petition, which is actually filed abusing the discretion cast on the Prosecutor.

6. Section 321 of the Cr.P.C. based on which the petition for withdrawal was filed by the Prosecutor, reads as follows :

Section 321 : Withdrawal from Prosecution : Any Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and, upon such withdrawal,-

(a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;

(b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences.

7. The section gives no indication as to the grounds on which the Public Prosecutor may make the application or the considerations on which the Court is to grant its consent. Nor is it clear on the aspect whether motion can be made in one of the two cases alone where there exists case and counter case.

8. The general principles governing the withdrawal are well settled by judicial precedents. These may be summarised as follows : The decision whether it is appropriate to make a motion for withdrawal primarily lies on the Public Prosecutor. What the Court has to do is only to consider the aspect of grant of consent and not to determine any matter judicially. In other words, the Court performs a supervisory jurisdiction in the matter and not an adjudicatory function. For exercising the jurisdiction it is not necessary for the Court to assess the evidence to discover whether there are good prospects for a conviction if the case is proceeded with. All that the Court has to see is whether the application is made in good faith and in the interests of public policy and to promote justice or whether it is intended to stifle the process of law. The paramount consideration must always be the interest of administration of justice. If the Court is convinced that the Public Prosecutor has exercised his discretion properly and the grant of the petition would not impede the course justice, the petition has normally to be granted.

9. Learned counsel for the petitioner submitted that the Prosecutor has not exercised his discretion fairly in the matter and that the motion is made merely based on the orders of the Government, the receipt of which is admitted in the petition itself. However, I do not think that the giving of such a direction should stand in the way of the grant of the petition. The matter is covered by the decision in [Sheonandan Paswan Vs. State of Bihar and Others](#), where the Apex Court has held that it is open to the Government to suggest to the Prosecutor that a particular case

need not be proceeded with though the Government cannot compel the Prosecutor to withdraw the case. It is also clear from this decision that besides inadequacy of evidence, other relevant grounds which would further broaden the ends of public justice also can be good grounds. Where the Government advises the Public Prosecutor to withdraw, it is not for the Court to infer that consequent motion made by the Public Prosecutor was without application of mind. It is for the elected Government to feel the pulse of the people and to respond to their feelings and emotions. Economic and political order or peace would be valid grounds for withdrawal and the Court has to exercise its discretion in the matter judicially. The main aspects to be considered by the Court in the matter are whether the grounds for withdrawal are valid; whether the application is made in good faith or is collusive and whether grant of the petition would impede the course of justice.

10. To me it appears that the existence of a counter case is certainly an aspect that has to enter the mind of the Court while exercising its discretion in the matter of allowing the withdrawal. However, the existence of such a case is not a total bar for the grant of the petition because in certain cases it may so happen that the withdrawal of the counter case would actually advance the interests of justice and the continuance of a false counter case would actually weaken the main case. It cannot, therefore, be said that in all cases where there is a counter case also registered, the Court would be absolutely helpless or that its hands are tied. Whether the withdrawal should be allowed or not in such case will have to be depend upon the facts and circumstances of each case. Suffice it to say, that here again, the guiding factors should be the bona fides of the motion made by the prosecutor; propriety of the action and whether the grant would advance or impede the flow of justice and whether it agrees with the broad principles of public policy.

11. During hearing, the learned counsel for the petitioner brought to my notice the decision in CrI. M.C. No. 915 of 1999, the gist of which is reported in *Hamzakutty v. State of Kerala* 1999 (2) Ker LT (SN) 68 . That was also a case where there was a counter case and there was no motion for withdrawing the same. The withdrawal sought was confined to the main case. It was found that the petition for withdrawal was rightly rejected by the trial Court. However there are factual differences between the said case and the present case. First of all the motion for withdrawal in that case came after the case was in an advanced stage and many witnesses had already been examined and there was some evidence before the Court with regard to the culpability or otherwise of the accused. In the present case, as already mentioned, the motion was made on the very-first posting after the charge had been framed and before any witnesses was examined. Yet another difference is that the case and counter case involved therein were both based on political clashes. The withdrawal of the cases in favour of the party in power alone obviously could have worked out injustice and that was one of the reasons which prompted this Court to uphold the order of rejection of the motion for withdrawal of one of the cases alone. In the present case the petition was field in a case where the allegation is that the

Sales-Tax Officer, who was conducting an inspection, assaulted an office bearer of the association of the merchants, who objected to the exercise of the statutory powers by the Sales Tax Official. The other case which was not sought to be withdrawn was the one filed by the police based on report that official acts of public servants was interfered with by the merchants concerned. There is one more difference in the factual scenarios and that is the fact that the other case which is not sought to be withdrawn is not pending before the very same Court in which the present motion was made. In view of all these, I do not think that the aforesaid decision can be applied as such to the facts of the present case.

12. There is no merit in the contention that the request for withdrawal has to be declined because the Government gave instructions to the Prosecutor to make the necessary motion. In that regard the learned Public Prosecutor has relied on the decision in [Rajender Kumar Jain and Others Vs. State Through Special Police Establishment and Others](#), . A contention was taken therein that the Public Prosecutor has to act independently while exercising the power u/s 321 of the Cr.P.C. and that if the application was filed pursuant to some instruction received from the Government the motion would be vitiated. The contention was repelled by the Apex Court holding that an elected Government, sensitive and responsive to the feelings and emotions of the people, will be amply justified in doing so for the purpose of creating an atmosphere of goodwill or for the purpose of not disturbing calm or for other similar purpose and that it is not for the Court to say, in such cases, that the initiative having come from the Government the motion was made without exercise of free mind by the Prosecutor. The Government letter showing that the prosecutor was "directed to withdraw", it was held, was only a quibbling over words. The Court, in such situation, is to make an effort to elicit the reasons for withdrawal and satisfy itself that the Public Prosecutor too was satisfied about the justifiability of the withdrawal, The duty and role of the Prosecutor in the matter was also considered in the decision and it was observed that 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 to the question of withdrawal from the cases, but under no circumstances should he allow himself to become anyone's stooge.

13. The trial Court, in the present case, was convinced, on an appraisal of the facts and the arguments, that the motion was in good faith. No independent witnesses were cited to support the prosecution story. The complaint which is asserted in the particular case, could be an attempt to escape from effective prosecution. Withdrawal of the case was found necessary to keep up the morale of the government officials, who were supposed to perform their statutory duties in a proper manner. In such circumstances I do not think that the trial Court erred in any way in allowing the motion for withdrawal and in acquitting the accused u/s 321 of the Cr.P.C.

The revision, in the circumstances, is found to be without merit and it is dismissed.