(1978) 11 CAL CK 0002

Calcutta High Court

Case No: Criminal Rev. Case No. 352 of 1978

Jerfan Sk.		APPELLANT
	Vs	
State and Others		RESPONDENT

Date of Decision: Nov. 15, 1978

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 227, 228, 321
- Penal Code, 1860 (IPC) - Section 148, 149, 307

Citation: 83 CWN 140

Hon'ble Judges: B.N. Maitra, J

Bench: Single Bench

Advocate: A. Sattar and D.K. Mukherjee, for the Appellant; K. Mukherjee and S. Ghosh and M.M. Farooq for the State, for the Respondent

Final Decision: Allowed

Judgement

B.N. Maitra, J.

Charge was framed against eighteen accused under sections 148/307/149 I.P.C. Thereafter the Public Prosecutor, Murshidabad, put in an application for withdrawal u/s 321 Cr. P. C. The prayer was allowed by the learned Sessions Judge. One Jerfan Sk., petitioner, filed the present application for revision. It has been contended on behalf of the petitioner that in this case a grave offence was committed because actually gun was fired. The Public Prosecutor filed an application for withdrawal at the instance of the State Government after the charge was framed. He did not apply his mind to the facts of the case. The prayer for withdrawal was illegally allowed and the same cannot be sustained in law.

2. The learned Advocate appearing on behalf of the accused opposite parties has stated that though the application was filed by the Public Prosecutor for withdrawal, the learned Sessions Judge went through the first information report and the statement of the witnesses. After considering the facts and circumstances of the

case he allowed the prayer for withdrawal. The applicant has no locus standi to file the present application. He has referred to an unreported decision where Borooah, J., spoke for the Bench in a recent case. The case in 26 CWN 880 , has been cited to show that in such cases the court must give its reason for the order of withdrawal. Here the learned Sessions Judge gave full reasons for passing the order in question.

3. The cases of M.N. Sankarayarayanan Nair Vs. P.V. Balakrishnan and Others, , of State of Punjab v. Surjit Singh 1969 (1) S.C. 550 and of State of Orissa Vs. Chandrika Mohapatra and Others, have been cited. It has been contended that it will appear from those cases that the court should allow withdrawal for the administration of justice. Here that test has been satisfied because the learned Sessions Judge considered the case in all its aspects and allowed the petition for withdrawal. In view of the words used in section 321 Cr. P.C. the withdrawal may be permitted at any stage before the judgment is pronounced. Here the learned Judge allowed the prayer for withdrawal after the charge was framed and he acquitted the accused. The latest case of Chintamoni Mondal Vs. State of West Bengal and Others, has been cited to show that when the court grants leave to the Public Prosecutor to withdraw from the prosecution, the ends of justice must always be kept in mind by it. Hence there is no justification to interfere with the order in question. The learned lawyer appearing on behalf of the State adopted this reasoning.

4. In the case of Sankarnarayan versus Balkrishna, (Supra), the Assistant Sessions Judge allowed the prayer for withdrawal at the instance of the Public Prosecutor. Thereafter, the Managing Director of the Firm in question, who is a third party, filed the application before the Supreme Court. The Supreme Court allowed the prayer, set aside the order of the Assistant Sessions Judge and of the High Court and remitted the case for trial according to law. So this case is an authority for the proposition that in such case a third party can also move the appropriate court if he considers that the order of withdrawal was illegally passed. There is also another aspect of the case. It appears from the first paragraph of the petition in question that the petitioner was also injured. Hence if this Court is satisfied that the order passed by the learned Sessions Judge is illegal, then this Court can suo motu set aside that order. Moreover, I have already held that the petitioner has locus standi to file this application.

5. The principles for such withdrawal have been laid down by the Supreme Court in the case of Sankarnarayan versus Balkrishna (Supra). This decision was first followed by Mr. Justice A.C. Gupta in the case of Bansi Lal Vs. Chandan Lal and Others, . This principle was followed by Mr. Justice K. Iyer in the case in Balwant Singh and Others Vs. State of Bihar, . It will appear from this case that withdrawal should not be allowed for the mere asking. The court must be satisfied on the materials before it that such permission would serve the administration of justice. Permission should not be allowed on grounds extraneous to the interest of justice and offences against the State should not go unpunished simply because as a general policy or

expediency unconnected with the duty to prosecute the offender, the Government directs the Public Procutor to withdraw from the prosecution and the Public Prosecutor merely does so. Here the application filed by the Public Prosecutor shows that as a public policy the State Government desired withdrawal of the case.

6. It will be useful to refer to sections 227 and 228 Cr. P.C. in this respect. Section 227 says that if upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in this behalf the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing. The next section 228 enjoins that if after such consideration and hearing as aforesaid the Judge is of opinion that there is ground for presuming that the accused has committed an offence and the same is exclusively triable by the sessions, he shall frame charge in writing against the accused. Such charge was actually framed. At that stage he did not state that there was no ground to proceed against the accused. After framing of such charge the learned Sessions Judge completely went out of his way in stating that he had perused the first information report and the statement and so he allowed the prayer for withdrawal. If he was so satisfied, he should have proceeded according to the provisions of section 227 and he should not have framed the charges. Such observations are wholly inconsistent with the framing of the charges made by him. Here it has been alleged that gun was used and none was injured. It is not material at this stage whether the bullet touched anybody''s person because that is a matter to be gone into at the trial. It is true that the learned Judge considered the first information report. The learned Advocate appearing on behalf of the accused emphasised the point that in the first information report no case u/s 307 IPC was made out. The first information report is not the prosecution case. It can only be used for the purpose of corroboration or contradiction of the statement of the maker of it and of no other witness. This will appear from the decision of Nisar Ali Vs. The State of Uttar Pradesh, at page 367. The same observation was made by Dua, J., in the case of Sheikh Hasib alias Tabarak Vs. The State of Bihar, . Hence the submissions made on behalf of the accused opposite parties and of the State cannot be accepted. It must be held that the prayer for withdrawal was allowed on extraneous considerations and not for the administration of justice.

The Rule is made absolute and the impugned order set aside. The case is remitted to the learned Sessions Judge for trial according to law.