

Bansi Lal

Vs

Chandan Lal and Others

Criminal Appeal No. 272 of 1975

(Y. V. Chandrachud, V. R. Krishna Iyer, A. C. Gupta JJ)

05.12.1975

JUDGMENT

GUPTA, J. -

1. By his order dated November 19, 1974 the First Additional Sessions Judge, Etawah, allowed the application of the Public Prosecutor, Etawah, to withdraw the prosecution against respondents Chandan Lal and Baldeo Prasad. A revisional application directed against the order was dismissed in limine by the Allahabad High Court. In this appeal by special leave the propriety of the order allowing withdrawal of the prosecution is in question.

2. The facts of the case, relevant of the present purpose, are as follows. On the morning of May 27, 1970 two reports concerning the same incident were lodged in quick succession by two persons; the first report was made by one Ram Narayan at 6.15 a.m. and the next at 6.30 a.m. by the appellant Bansi Lal at Etawah police station. The reports said that respondent Chandan Lal and several others had forcibly caught hold of Bansi Lal's sister's husband Mewa Ram and dragged him inside Chandan Lal's house and when attracted by his screams several persons attempted to rescue Mewa Ram, the other respondent Baldeo Prasad and one Sukh Lal closed the door from inside. Bansi Lal's report added that one of the inmates of the house standing on the roof was threatening the crowd outside with a gun. On receipt of this information, Sub-Inspector K. K. Sharma accompanied by some constables hastened to Chandan Lal's house which they found closed from inside and surrounded by a crowd. Someone from the roof of the house started firing at the crowd and the police party. This man who was later identified as one Rameshwar was killed when the police returned fire. Entering Chandan Lal's house the police party found Mewa Ram lying seriously injured in a room where Chandan Lal, Baldeo Prasad and Sukh Lal were present. Chandan Lal, Baldeo Prasad and three other persons found inside the house, Sukh Lal, Gaya Prasad, Damodar and Sitaram were all arrested and Mewa Ram was sent to the District Hospital for treatment. Mewa Ram died the same evening without gaining consciousness.

3. On the report of Sub-Inspector K. K. Sharma, a case under Sections 147, 148, 302, 342 and 149 of the Indian Penal Code was registered against the said five persons. Deputy Superintendent of Police, R. B. Malik who was deputed to investigate the case submitted charge-sheet against the accused in the court of Additional District Magistrate (Judicial) on July 7, 1970. On May 22, 1974 the Additional District Magistrate (Judicial) committed the case to the court of sessions. On July 7, 1974 the Additional Sessions Judge, Etawah, on the application of the Public Prosecutor, allowed the case against Sukh Lal to be withdrawn. On the next day, July 8 charges were framed against the remaining accused persons including the respondents under Sections 147, 342 and 302/149 of the Indian Penal code. On November 18, 1974 the Public Prosecutor made an application before the

Additional Sessions Judge, Etawah, praying for permission to withdraw the case against respondents Chandan Lal and Baldeo Prasad. The material part of the application reads :

The prosecution does not want to produce evidence and continue the criminal matter against these assessee (Chandan Lal and Baldeo Prasad).

On the next day, November 19, the Additional Sessions Judge allowed this application and acquitted Chandan Lal and Baldeo Prasad of the charges framed against them. Referring to certain facts which he described as the 'defence case', the Additional Sessions Judge held that the case against Chandan Lal and Baldeo Prasad should be allowed to be withdrawn "because the prosecution is reluctant to prove its case against the said two accused persons" and it appeared "futile to refuse permission to the State to withdraw the prosecution." The correctness of this order is the only question for determination in this appeal.

4. Section 321 of the Code of Criminal Procedure, 1973 which corresponds to Section 494 of the earlier Code of 1898 and is in identical terms empowers the Public Prosecutor to withdraw with the consent of the court from the prosecution of any person either generally or in respect of any one or more of the offences for which he is being tried. Section 494 of the Code of 1898 has been construed by the different High Courts in a number of cases. This Court in *M. N. Sankarayarayanan Nair v. P. V. Balakrishnan* ((1972) 2 SCR 599 : (1972) 1 SCC 318 : 1972 SCC (Cri) 55) explaining the well-established legal position as to the scope and ambit of the powers granted by Section 494 has observed that though the section

does not circumscribe the powers of the Public Prosecutor to seek permission to withdraw from the prosecution, the essential consideration which is implicit in the grant of the power is that it should be in the interest of administration of justice

Though it is not possible to catalogue all the circumstances in which this power can be exercised, by way of illustration *M. N. S. Nair's case* (supra) mentions a few instances where the Public Prosecutor would be apparently justified in seeking such permission, as in a case where the prosecution will not be able to produce sufficient evidence to sustain the charge or that subsequent information before prosecuting agency would falsify the prosecution evidence or any other similar circumstances.

It is added that the request to grant permission under Section 494 should not be accepted "as a necessary formality", "For the mere asking", but the court must be satisfied "on the materials placed before it" that the grant of permission would serve the administration of justice and that

permission was not being sought covertly with an ulterior purpose unconnected with the vindication of the law which the executive organs are in duty bound to further and maintain.

5. In the case before us the prosecution has only reached the stage of framing charges against the accused and no occasion of the defence to make out a case has yet arise. It is not clear where the Additional Sessions Judge found the case made which he calls the defence case. It is not to be found in the material that was before him. Counsel for the respondent, State of U. P., drew our attention to an order dated October 18, 1973 passed by the Allahabad High Court on a revision petition filed by the State seeking to stay further proceedings of this case when it was pending before the Additional District Magistrate (Judicial), Etawah. It appears from this judgment that an application for stay of the proceedings was made before the Additional District Magistrate (Judicial) on the ground that the

case required to be investigated further. The Additional District Magistrate rejected the application and the Sessions Judge, Etawah, confirmed that order. The High Court on October 18, 1973 dismissed the revision petition made against the order refusing the prayer for stay and directed the Additional District Magistrate to dispose of the proceedings before him expeditiously and in accordance with law. As stated already, the case was committed to the court of sessions on May 22, 1974. 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 the 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. The application for stay of the proceeding made before the committing magistrate cannot also be said to falsify the prosecution case. If the prosecuting agency brings before the court sufficient material to indicate that the prosecution was based on false evidence, the court would be justified in consenting to the withdrawal of the prosecution, but on the record of the case, as it is, we do not find any such justification. In our opinion the High Court was in error in dismissing in limine the revisional application made against the order of the Additional Sessions Judge.

6. The appeal is accordingly allowed and the order of the Additional Sessions Judge permitting the withdrawal of the case against the respondents is set aside. The Additional Sessions Judge will proceed with the trial in accordance with law.

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