Rajender Kumar Jain

Vs

State Through Special Police Establishment and Others

And

Manohar Lal

Vs

Bansi Lal and Others

And

Attorney-General of India

Vs

State of Haryana and Others

Criminal Appeal No. 287 of 1979 Special Leave Petition (Criminal) No. 3115 of 1979

(Chinnappa Reddy, J.)

(V. R. Krishna Iyer, O. Chinnappa Reddy JJ)

JUDGMENT

CHINNAPPA REDDY, J. –

1. A cocktail of law and politics, reason and extravagance is the only way we can describe the submissions made to us in these two cases. Well known personalities are involved, in one case an ex-Central Minister, the present Governor of a State, and some leading journalists, and in the other an ex-Central Minister, and a host of government officials. Perhaps that was responsible for the passion and the tension which appeared to characterise and sometimes mar the arguments in the two cases.

2. We will first take up for consideration Criminal Appeal 287 of 1979.

3. In exercise of the powers conferred by Section 196(1) (a) of the Code of Criminal Procedure, 1973, and Section 7 of the Explosive Substances Act, 1908, the Government of India by its Order dated September 6, 1976 accorded sanction for the prosecution of George Mathew Fernandes alias George Fernandes and 24 others for alleged offences under Section 121-A Indian Penal Code, 120-B Indian Penal Code read with Sections 4, 5 and 6 of Explosive Substances Act and Section 5(3)(b) and Section 12 of the Indian Explosives Act, 1884. The first paragraph of the order according sanction set out the object of the conspiracy in the following words :

> Whereas, it is alleged that after the issue of the proclamation of Emergency on 25th

> June, 1975 by the President of India in exercise of the powers conferred by clause (1) of Article 352 of the Constitution George Mathew Fernandes alias George Fernandes, Chairman of Socialist Party of India and Chairman of All India Railwaymen's Federation sought to arouse resistance against the said emergency by declaring that the said emergency had been "clamped" on the country by the "despotic rule" of Smt. Indira Gandhi, Prime Minister of India and to entertain an idea that a conspiracy be hatched with the help of the persons of his confidence, to overawe the government and in pursuance of the conspiracy do such acts which might result in the destruction of public property and vital installations in the country.

Thereafter the order set out the various committed by the several accused persons in pursuance of the objects of the conspiracy. On September 24, 1976 the Deputy Superintendent of Police, Special Police Establishment, Central Bureau of Investigation Unit (A), New Delhi, filed a charge-sheet in the Court of the Chief Metropolitan Magistrate, Delhi, against the said accused persons for the offences mentioned in the order sanctioning the prosecution. Two of the accused persons had been tendered pardon. They had, therefore, to be examined as witnesses in the Court of the Magistrate taking cognizance of the offences notwithstanding the fact that the case was exclusively triable by the Court of Session. The evidence of the approvers was recorded on March 22, 1977 and the case was adjourned to March 26, 1977 for further proceedings. At that stage on March 26, 1977, N. S. Mathur, Special Public Prosecutor filed an application under Section 321 of the Criminal Procedure Code, 1973, for permission to withdraw from the prosecution. The application was as follows :

It is submitted on behalf of the State as under :-

> 1. That on September 24, 1976 the Special Police Establishment after necessary investigation had filed a charge-sheet in this Hon'ble Court against Shri George Mathew Fernandes and 24 others for offences under Section 121-A, Section 120-B, IPC read with Sections 4, 5 and 6 of the Explosive Substances Act, 1908 and Sections 5(3)(b) and 12 of the Indian Explosives Act, 1884 as well as the substantive offences.
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> 2. That besides the accused who were sent up for trial two accused namely Shri Bharat C. Patel and Rawati Kant Sinha were granted pardon by the Hon'ble Court and were examined as approver under Section 306(4), CrPC.
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> 3. That out of 25 accused sent up for trial cited in the charge-sheet, 2 accused namely Ladli Mohan Nigam and Atul Patel were declared proclaimed offenders by the Hon'ble Court.
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> 4. That in public interest and changed circumstances, the Central Government has desired to withdraw from the prosecution of all the accused.
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> 5. It is therefore prayed that this Hon'ble Court may accord consent to withdraw from the prosecution on 26th March 1977.
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> # Sd/- (N. S, MATHUR) Special Public Prosecutor for the State, New Delhi##
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> On the same day the learned Chief Metropolitan Magistrate, expressing the opinion that it was "expedient to accord consent to withdraw from the prosecution", granted his consent for withdrawal from the prosecution.

4. One Dr. Rajender Kumar Jain, an advocate, filed a petition in the High Court of Delhi, under Section 397 of the Criminal Procedure Code for revision of the order of the learned Chief Metropolitan Magistrate giving his consent to the Special Public Prosecutor to withdraw from the prosecution. Several grounds were raised all of which were negatived by the High Court. It was also held by the High Court that the applicant had no locus standi. The revision petition was dismissed. Dr. Rajender Kumar Jain has filed this appeal after obtaining special leave from this Court.

5. Shri Ram Panjwani, learned counsel for the appellant made the following submissions : (1) The offences for which the accused persons were to be tried were exclusively triable by a Court of Session and, therefore, the Committing Magistrate had no jurisdiction to give consent to the Public Prosecutor to withdrawn from the prosecution. (2) The Public Prosecutor has abdicated his function and had filed the application at the behest of the Central Government without applying his mind. (3) The Magistrate was in error in giving consent on the ground that it was expedient to do so. Expedience was never for judiciary. (4) N. S. Mathur who had filed the application for withdrawal from the prosecution was not the Public Prosecutor in-charge of the case and the application was therefore incompetent. The submissions of Shri Ram Panjwani were controverted by Shri Ram Jethmalani and Shri V. M. Tarkunde, learned counsel for the respondents. They also submitted that the offences with which the accused persons were charged were of a political nature and if the Government of the day thought that the Public Prosecutor should withdraw from the prosecution to do so, it could not be said that the Public Prosecutor abdicated his function merely because the proposal to withdraw from the prosecution emanated from the government and he acted upon such proposal. It was also submitted that so far as the fifth respondent was concerned no prosecution could be launched or continued against him under Article 361(2) as he was the Governor of a State. Shri Panjwani in his reply submitted that political offences were unknown to the municipal law of the land and that in the instant case the withdrawal from the prosecution was for a purely political purpose and not in the public interest at all. It was said that the case was withdrawn in order that Shri George Fernandes could be appointed as a Minister in the Central Cabinet.

6. Section 321 of the Criminal Procedure Code of 1973 which corresponds to Section 494 of the Code of Criminal Procedure of 1898 is as follows :

> 321. Withdrawal from prosecution. - The 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, 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 offence.

We have not extracted the proviso as it is not necessary for the purpose of these cases.

7. Under Section 494 of the Criminal Procedure Code, 1898, it was held by this Court in State of Bihar v. Ram Naresh Pandey (1957 SCR 279 : AIR 1957 SC 389 : 1957 Cri LJ 567), that the Court of the Committing Magistrate before whom a committal proceeding was pending was "the court" within the meaning of Section 494 which was competent to give its consent even in the case of

offences exclusively triable by the Court of Session. But, it was contended that after the enactment of the Criminal Procedure Code of 1973, the situation had changed since under the new Code the Court of the Committing Magistrate had no judicial function to perform in relation to the case which he was required to commit to the Court of Session. The submission was that the court contemplated by Section 494 was the court capable of pronouncing a judgment, ending the proceeding by an order of acquittal or discharge and, since the Court of the Committing Magistrate under the new Code was not invested with the power of acquitting or discharging the accused it was not the court which could grant its consent to withdraw from the prosecution. In the first place there is no warrant for thinking that only the court competent to discharge or acquit the accused under some other provision of the Code can exercise the power under Section 321 Criminal Procedure Code, 1973. The power conferred by Section 321 is itself a special power conferred on the court before whom a prosecution in pending and the exercise of the power is not made dependent upon the power of the court to acquit or discharge the accused under some other provision of the Code. The power to discharge or acquit the accused under Section 321 is a special power founded on Section 321 itself, to be exercised by the court independently of its power of enquiry into offence or try the accused. Again, the expression 'judgment' in the context may be understood to mean the judgment which may be ultimately pronounced if the case were to be committed to a Court of Session. That was the view expressed in the State of Bihar v. Ram Naresh Pandey (1957 SCR 279 : AIR 1957 SC 389 : 1957 Cri LJ 567), where the court observed :

In any view, even if 'judgment' in this context is to be understood in a limited sense it does not follow that an application during preliminary enquiry - which is necessarily prior to judgment in the trial - is excluded.

In the second place it may not be accurate to say that the Committing Magistrate has no judicial function to perform under the 1973 Code of Criminal Procedure. Section 209 of the Criminal Procedure Code, 1973 obliges the Magistrate to commit the case to the Court of Session when it appears to the Magistrate that the offence so disclosed is triable exclusively by the Court of Session. Therefore, the Magistrate has to be satisfied that an offence is prima facie disclosed and the offence so disclosed is triable exclusively by the Court of Session. If no offence is disclosed the Magistrate may refuse to take cognizance of the case or if the offence disclosed is one not trible exclusively by the Court of Session he may proceed to deal with it under the other provisions of the Code. To that extent the Court of the Committing Magistrate does discharge a judicial function. We therefore, overrule the first submission of Shri Ram Panjwani. We do not agree with the view taken by the High Court of Andhra Pradesh in A. Venkatramana v. Mudam Sanjeeva Ragudu (1976 Andh LT Rep 317), that the Court of Committing Magistrate is not competent to give consent to the Public Prosecutor to withdraw from the prosecution.

8. The fourth submission of Shri Ram Panjwani does not appeal to us. The notification dated June 17, 1966 of the Ministry of Home Affairs, Government of India, shows that the Senior Public Prosecutor, Public Prosecutor and Assistant Public Prosecutor of the Delhi Special Police Establishment attached to the Delhi office of the Special Police Establishment were appointed as Public Prosecutors under Section 492(1) of the Criminal Procedure Code, 1898 to conduct the case of the Special Police Establishment before the Courts of Magistrates, Special Judges, and Session Judges, in the Union Territory of Delhi. All notifications issued under the old Code are deemed to have been made under the corresponding provisions of the new Code. It appears that Shri N. S. Mathur is a Public Prosecutor attached to the Special Police Establishment at Delhi and has been functioning right through as Public Prosecutor in the Union Territory of Delhi. The High Court has also pointed out on a scrutiny of the proceedings of the Magistrate that it was Shri N. S. Mathur

who was in-charge of the case practically throughout.

9. The second and third submissions of Shri Panjwani may be considered together. Decisions of this Court have made clear the functional dichotomy of the Public Prosecutor and the court. In State of Bihar v. Ram Naresh Pandey (1957 SCR 279 : AIR 1957 SC 389 : 1957 Cri LJ 567), the court while considering Section 494 of the old Code explained :

The section is an enabling one and vests in the Public Prosecutor the discretion to apply to the court for its consent to withdraw from the prosecution of any person. ..... The function of the court, therefore, in granting its consent may well be taken to be a judicial function. It follows that in granting the consent the court must exercise a judicial discretion. But it does not follow that the discretion is to be exercised only with reference to material gathered by the judicial method. Otherwise the apparently wide language of Section 94 would become considerably narrowed down in its application. In understanding and applying the section two main features have to be kept in mind. The initiative is that of the Public Prosecutor and what the court has to do is only to give its consent and not to determine any matter judicially. ..... The judicial function .... implicit in the exercise of the judicial discretion for granting the consent would normally mean that the court has to satisfy itself that the executive function of the Public Prosecutor has not been improperly exercised or that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes. In the context it is right to remember that the Public Prosecutor (though an Executive Officer ....) is, in a larger sense also an officer of the court and that he is bound to assist the court with his fairly-considered view and the court is entitled to have the benefit of the fair exercise of his functions.

The court also appreciated that in this country the scheme of the administration of criminal justice places the prime responsibility of prosecuting serious offences on the executives authorities. The investigation including collection of the requisite evidence, and the prosecution for the offence with reference to such evidence were the functions of the executive, and in that particular segment the power of the Magistrate was limited and intended only to prevent abuse.

10. In M. N. Shankarayarayanan Nair v. P. V. Balakrishnan ((1972) 2 SCR 599 : (1972) 1 SCC 318 : 1972 SCC (Cri) 55) the court while reiterating the decision that the court granting permission for withdrawal should satisfy itself that the executive function of the Public Prosecutor has not been improperly exercised and that is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes, observed that the wide and general powers conferred on the Public Prosecutor to withdraw from the prosecution have to be exercised by him "in furtherance of rather than as a hindrance to the object of the law" and that the court while considering the request to grant permission should not do so as "a necessary formality - the grant of it for the mere asking".

11. In State of Orissa v. Chandrika Mohapatra ((1977) 1 SCR 335, 340 : (1976) 4 SCC 250 : 1976 SCC (Cri) 584) the court said :

> We cannot forget that ultimately every offence has a social or economic cause behind it and if the State feels that the elimination or eradication of the social or economic cause of the crime would be better served by not proceeding with the prosecution the State should clearly be at liberty to withdraw from the prosecution.

12. In Balwant Singh v. State of Bihar ((1978) 1 SCR 604, 605 : (1977) 4 SCC 448 : 1977 SCC (Cri) 633) the independent role of the Public Prosecutor in making an application for withdrawal

from a prosecution was emphasised. It was pointed out that statutory responsibility for deciding upon withdrawal vested in the Public Prosecutor and the sole consideration which should guide the Public Prosecutor was the larger factor of the administration of justice and neither political favour nor party pressure or the like. Nor should he allow himself to be dictated to by his administrative superiors to withdraw from the prosecution. The court also indicated some instance where withdrawal from prosecution might be resorted to independently of the merits of the case : (SCC p. 449, para 2)

Of course, the interests of public justice being the paramount consideration they may transcend and overflow the legal justice of the particular litigation. For instance, communal feuds which may have been amicably settled should not re-erupt on account of one or two prosecutions pending. Labour disputes which, might have given rise to criminal cases, when settled, might probably be another instance where the interests of public justice in the broader connotation may perhaps warrant withdrawal from the prosecution. Other instances also may be given.

13. In Subhash Chander v. State (Chandigarh Admn.) (AIR 1980 SC 423 : (1980) 2 SCC 155 : 1980 SCC (Cri) 376) the court once again emphasised the independence of the Public Prosecutor in the matter of seeking to withdraw from the prosecution. It was observed : (SCC p. 161, para 12)

Any authority who coerces or orders or pressures a functionary like a Public Prosecutor in the exclusive province of his discretionary power, violates the rule of law, and any Public Prosecutor who bends before such command betrays the authority of his office.

However, it was indicated : (SCC p. 161 para 12)

Maybe, government or the District Magistrate will consider that a prosecution or class of prosecutions deserves to be withdrawn on grounds of policy or reasons of public interest relevant to law and justice in their larger connotation and request the Public Prosecutor to consider whether the case or cases may not be withdrawn. Thereupon, the Prosecutor will give due weight to the material placed, the policy being the recommendation and the responsible position of government which, in the last analysis has to maintain public order and promote public justice. But the decision to withdraw must be his.

A reference was made to come consideration which may justify withdrawal from prosecution. It was said : (SCC p. 159, para 6)

The fact that broader considerations of public peace, larger considerations of public justice and even deeper considerations of promotion of long-lasting security in a locality, of order in a disorderly situation or harmony in a faction milieu, or halting a false and vexatious prosecution in a court, persuades the executive pro bono publico, sacrifice a pending case for a wider benefit, is not ruled out although the power must be sparingly exercised and the statutory agency to be satisfied is the Public Prosecutor, not the District Magistrate or Minister. The concurrence of the court is necessary. The subsequent discovery of a hoax behind the prosecution or false basis for the criminal proceeding as is alleged in this case, may well be a relevant ground for withdrawal. For the court should not be misused to continue a case conclusively proved to be a counterfeit. This statement of the law is not exhaustive but is enough for the present purpose and, indeed, is well-grounded on precedents.

14. Thus, from the precedents of this Court, we gather :

1. Under the scheme of the Code prosecution of an offender for a serious offence is primarily the responsibility of the executive.

2. The withdrawal from the prosecution is an executive function of the Public Prosecutor.

3. The discretion to withdraw from the prosecution is that of the Public Prosecutor and none else, and so, he cannot surrender that discretion to someone else.

4. The government may suggest to the Public Prosecutor that he may withdraw from the prosecution but none can compel him to do so.

5. The Public Prosecutor may withdraw from the prosecution not merely on the ground of paucity of evidence but on other relevant grounds as well in order to further the broad ends of public justice, public order and peace. The broad ends of public justice will certainly include appropriate social, economic and, we add, political purposes sans Tammary Hall enterprises.

6. The Public Prosecutor is an officer of the court and responsible to the court.

7. The court performs a supervisory function in granting its consent to the withdrawal.

8. The court's duty is not the reappreciate the grounds which led the Public Prosecutor to request withdrawal from the prosecution but to consider whether the Public Prosecutor applied his mind as a free agent, uninfluenced by irrelevant and extraneous considerations. The court has a special duty in this regard as it is the ultimate repository of legislative confidence in granting or withholding its consent to withdrawal from the prosecution.

15. We may add it shall be the duty of the Public Prosecutor to inform the court and it shall be the duty of the court to apprise itself of the reasons which prompt the Public Prosecutor to withdraw from the prosecution. The court has a responsibility and a stake in the administration of criminal justice and so has the Public Prosecutor, its 'Minister of Justice'. Both have a duty to protect the administration of criminal justice against possible abuse or misuse by the executive by resort to the provisions of Section 361 Criminal Procedure Code. The independence of the judiciary requires that once the case has travelled to the court, the court and its officers alone must have control over the case and decide what is to be done in each case.

16. We have referred to the precedents of this Court where it has been said that paucity of evidence is not the only ground on which the public prosecutor may withdraw from the prosecution. In the past, we have often known how expedient and necessary it is in the public interest for the public prosecutor to withdraw from prosecutions arising out of mass agitations, communal riots regional disputes, industrial conflicts student unrest etc. Wherever issues involve the emotions and there is a surcharge of violence in the atmosphere it has often been found necessary to withdraw from prosecutions in order to restore peace, to free the atmosphere from the surcharge of violence, to bring about a peaceful settlement of issues and to preserve the clam which may follow the storm. To persist with prosecutions where emotive issues are involved in the name of vindicating the law may even be utterly counter-productive. An elected government sensitive and responsive to the feelings and emotions of the people, will be amply justified if for the purpose of creating an atmosphere of

goodwill or for the purpose of not disturbing a calm which has descended it decides not to prosecute the offenders involved or not to proceed further with prosecution already launched. In such matters who but the government can and should decide, in the first instance, whether it should be baneful or beneficial to launch or continue prosecutions. If the government decides that it would be in the public interest to withdraw from prosecutions, how is the government to go about this task ?

17. Under the Code of Criminal Procedure it is the Public Prosecutor that has to withdraw from the prosecution and it is the court that has to give its consent to such withdrawal. Rightly too, because the independence of the judiciary so requires it as we have already mentioned. Now the Public Prosecutor is an officer of the court. He sets the criminal law in motion in the court. He conducts the prosecution in the court for the people. So it is he that is entrusted with the task of initiating the proceeding for withdrawal from the prosecution. But, where such large and sensitive issues of public policy are involved, he must, if he is right-minded seek, advice and guidance from the policy-makers. His sources of information and resources are of a very limited nature unlike those of the policy-makers. If the policy-makers themselves move in the matter in the first instance, as indeed it is proper that they should where matters of momentous public policy are involved, and if they advise the Public Prosecutor to withdraw from the prosecution, it is not for the court to say that the initiative comes from the government and there fore the Public Prosecutor cannot be said to have exercised a free mind. Nor can there be any quibbling over words. If ill informed but well meaning bureaucrats choose to use expressions like "the Public Prosecutor is directed" or "the Public Prosecutor is instructed", the court will not on that ground alone stultify the larger issue of public policy by refusing its consent on the ground that the Public Prosecutor did not act as a free agent when he sought withdrawal from the prosecution. What is at stake is not the language of the letter or the prestige of the Public Prosecutor but a wider question of policy. The court, in such a situation is to make an effort to elicit the reasons for withdrawal and satisfy itself, that the Public Prosecutor too was satisfied that he should withdraw from the prosecution for good and relevant reasons.

18. We, however, issue a note of warning. The bureaucrat too should be careful not to use peremptory language when addressing the Public Prosecutor since it may give rise to an impression that he is coercing the Public Prosecutor to move in the matter. He must remember that in addressing the Public Prosecutor he is addressing an officer of the court and there should be no suspicion of unwholesome pressure on the Public Prosecutor. Any suspicion of such pressure on the Public Prosecutor may lead the court to withhold its consent.

19. We may now consider Shri Ram Panjwani's argument that the criminal law of India does not recognise 'political offences' and so there cannot be withdrawal from a prosecution on the ground that the offences involved are 'political offences'. It is true that the Indian Penal Code and the Code of Criminal Procedure do not recognise offences of a political nature, as a category of offences. They cannot, in the ordinary course of things. That does not mean that offences of a political character are unknown to jurisprudence or that judges must exhibit such a naivete as to feign ignorance about them. Offences of a political character are well known in International law and the Law of Extradition. The Indian Extradition Act refers to 'offences of a political character'. For our present purpose it is really unnecessary for us to enter into a discussion as to what are political offences except in a sketchy way. It is sufficient to say that politics are about government and therefore, a political offence is one committed with the object of changing the government of a State or inducing it to change its policy. Mahatma Gandhi, the father of the Nation, was convicted and jailed for offences against the municipal laws; so was his spiritual son and the first Prime Minister of our country; so was the present Prime Minister and so were the first President and the present President of India. No one would hesitate to say that the offences of which they were convicted

were political. Even as we are writing this judgment we read in the morning's newspapers that King Birendra of Nepal has declared a "general amnesty to all Nepalese accused of political charges". The expression 'political offence' is thus commonly used and understood though perhaps 'political offence' may escape easy identification.

20. Earlier in the judgment we set out the alleged object of the conspiracy as recited in the order sanctioning the prosecution. It was to overawe the government by committing various acts of destruction of public property and vital installations and the motive attributed was that the accused wanted to change the government led by Shrimati Gandhi. One need not agree with the ends or the means - genuine revolutions have never yet been made by acts of senseless terrorism or wanton destruction, putting innocent lives and public property in jeopardy - but, it is clear that the very order sanctioning the prosecution imputes to the offences alleged to have been committed by the accused the character of 'political offences'.

21. To say that an offence is of a political character is not to absolve the offender of the offence. But the question is, is it valid ground for the government to advise the Public Prosecutor to withdraw from the prosecution ? We mentioned earlier that the Public Prosecutor may withdraw from the prosecution of a case not merely on the ground of paucity of evidence but also in order to further the broad ends of public justice and that such broad ends of public justice may well include appropriate social, economic and political purposes. It is now a matter of history that the motivating force of the party which was formed to fight the elections in 1977 was the same as the motivating force of the criminal conspiracy as alleged in the order sanctioning the prosecution; only the means were different. The party which came to power as a result of 1977 elections chose to interpret the result of the elections as a mandate of the people against the politics and the policy of the party led by Shrimati Gandhi. Subsequent events leading up to the 1980 elections which reversed the result of the 1977 elections may cast a doubt whether such interpretation was correct; only history can tell. But if the government of the day interpreted the result of the 1977 elections as a mandate of the people and on the basis of that interpretation the government advised the Public Prosecutor the withdraw from the presecution, one cannot say that the Public Prosecutor was activated by an improper motive in withdrawing from the prosecution nor can one say that the Magistrate failed to exercise the supervisory function vested in him in giving his consent. We are unable to say that the High Court misdirected itself in affirming the order of the Magistrate. We also notice that the learned Attorney-General who disassociated himself from the legal submissions made by the parties did not withdraw the counter-affidavit filed earlier on behalf of the State. No fresh counter-affidavit disclosing a change of attitude on the part of the new government which took office in January this year was filed. Apparently the new government did not do so as a gesture of grace and goodwill and to prevent rancour and bitterness. That we appreciate. Criminal Appeal 287 of 1979 is therefore, dismissed.

22. Special Leave Petition (Criminal) No. 3115 of 1979 has been filed by one Manohar Lal, against the order of the Chief Judicial Magistrate, Bhiwani, permitting the Public Prosecutor to withdraw from the prosecution in case No. 1861 filed by the State against Chaudhary Bansi Lal, ex-Defence Minister, his son Surinder Singh, ex-M.L.A., R. S. Verma, ex-Deputy Commissioner, Bhiwani, and several other officials and non-officials for a host of offences. The applicant has come straight to this Court under Article 136 of the Constitution without going to the High Court in the first instance. On that ground alone the petition is liable to be dismissed as we do not ordinarily entertain such petitions. We refrain from doing so as the matter has been fully argued before us.

23. On July 13, 1977, Manohar Lal, laid information with the Station House Officer, Police Station,

Bhiwani City, against the several accused persons. The charge-sheet was filed by the Bhiwani Police on July 21, 1978 on the basis of information laid with them by Manohar Lal. The gravamen of the allegation against the accused persons was that Chaudhary Bansi Lal was annoyed with Manohar Lal and his sons as they failed to transfer two plots of land to his son and a relative. Chaudhary Bansi Lal, therefore, induced the Bhiwani Town Improvement Trust to include in its successive schemes land belonging to Manohar Lal and his sons, in Bhiwani Town, on which stood some buildings including two temples. As Manohar Lal apprehended that his buildings might be demolished, he filed a writ petition in the Supreme Court and obtained an order of stay of demolition. However, the stay was vacated on December 1, 1976 and on the same day on the instructions, by telephone or wireless, of Chaudhary Bansi Lal, R. S. Verma, the Deputy Commissioner instructed his officers to demolish the buildings standing on the land. The Land Acquisition Collector made his award of compensation and deposited the amount in bank. All this was done in course of a few hours and the demolition of the building was started forthwith and completed by December 4, 1976. The charge-sheet, as we said, was filed on July 21, 1978. Chaudhary Bansi Lal filed a petition in this Court for transfer of the case to a court outside the States of Punjab Haryana. This Court issued notice on the petition for transfer and granted stay of further proceedings on the case before the Chief Judicial Magistrate, Bhiwani. The order of stay continued. On September 20, 1979 on the basis of a letter addressed to him by the District Magistrate, the Public Prosecutor filed an application before the Chief Judicial Magistrate for permission to withdraw from the prosecution. On September 21, 1979 the court granted its consent to the withdrawal of the Public Prosecutor from the prosecution. It is this order that is questioned in the special leave petition.

24. Shri Parekh, learned counsel for the petitioner urged that the Public Prosecutor filed the application at the behest of Shri Bhajan Lal, the Chief Minister of Haryana and that he never applied his mind to the facts of the case. According to Shri Parekh, Shri Bhajan Lal ordered the withdrawal of the Public Prosecutor from the prosecution because his ministry would not survive without the help of Chaudhary Bansi Lal. A motion of non-confidence was imminent against Shri Bhajan Lal and was to be considered on September 24, 1979; so he ordered withdrawal of the case against Chaudhary Bansi Lal on September 20, 1979, in order to secure the support of his group. It was said that the withdrawal from the prosecution was not based on any ground of public policy. Shri Parekh, drew our attention to the wireless message which was sent by the government to the District Magistrate, Bhiwani informing him that the government has decided to withdraw the four cases mentioned is the message, pending in the Court of Bhiwani and that the four cases should be withdrawn immediately from the concerned courts and the government informed accordingly. The District Magistrate, Bhiwani forwarded a copy of the wireless message to the District Attorney, Bhiwani for necessary action directing him to withdraw the four cases from the concerned courts as desired by the government and the report compliance to this office. The District Attorney thereafter filed an application for permission to withdraw from the prosecution. On September 21, 1979, he made a statement before the Chief Judicial Magistrate that he had made the application on the orders of the District Magistrate, Bhiwani and that the reasons were given in the application. In answer it was contended by the Advocate General of Haryana who appeared for the State of Haryana and Shri M. C. Bhandare who appeared for Chaudhary Bansi Lal that Surinder Singh son of Chaudhary Bansi Lal had petitioned to the Chief Minister of Haryana alleging that he, his father and their associates were being harassed by numerous cases being filed against them without any justification. He requested the Chief Minister to stop needless harassment. The Chief Minister constituted a sub-committee consisting of himself, the Finance Minister and the Irrigation and Power Minister to look into the question. The sub-committee examined the cases in detail and decided that four out of

twenty-five cases filed against Chaudhary Bansi Lal should be withdrawn as the evidence available was meagre and, in particular in the case based on Manohar Lal's information the complainant had also been suitably and profitably compensated. The decision of the government was communicated to the District Magistrate who is turn asked the Public Prosecutor to move the court for consent to withdraw from the prosecution. The Chief Minister and his colleagues on the sub-committee have filed before us affidavits regarding the constitution of the sub-committee and the decision to withdraw from the prosecution. They have also denied the allegation that the case had been withdrawn with a view to gain the support of Chaudhary Bansi Lal against a no-confidence motion which the petitioner alleged was to be moved against the Chief Minister. It was pointed out in the affidavits that no no-confidence motion was ever tabled against Chief Minister Bhajan Lal and that on the very figures given by the petitioner regarding the party position in the Haryana Assembly the support of Chaudhary Bansi Lal and his group would not matter. It was also brought out in the counter-affidavits filed on behalf of some of the respondents that the petitioner had himself admitted in the agreement which he had entered into with the Bhiwani Town Planning Trust on May 6, 1977 that his land and plots had been duly acquired under various developments schemes, that he desired to withdraw all the petitions etc. filed by him in various courts and that he would not claim any damages against the Trust. The Town Planning Trust agreed to release the lands to him with a view to enable him to reconstruct the buildings. It was expressly recited in the agreement that the Bhiwani Town Improvement Trust agreed to terms of the agreement as it was though to be "in the best interest of the parties concerned as well as in the good of the residents of the Bhiwani Town to settle the matter amicably and mutually". The Government of Haryana also, it was so recited in the agreement, had accorded its approval to the terms of the settlement. It has been mentioned in the counter-affidavits that the agreement between Manohar Lal and the Bhiwani Town Improvement Trust in which Manohar Lal admitted the title of the Bhiwani Town Improvement Trust to the land and buildings was never placed before the Jaganmohan Reddy Commission. In fact it is one of the complaints of Chaudhary Bansi Lal that those that were in-charge of producing evidence before the Jaganmohan Reddy Commission took care to see that nothing in his favour was placed before the Commission. Chaudhary Bansi Lal filed a counter-affidavit in which he has stated that the allegation that his son and relative wanted to purchase the land of Manohar Lal was an allegation which Manohar Lal never made in any of the objections filed by him against the schemes proposed by the Town Improvement Trust. It has also been pointed out that in the several writ petitions filed by Manohar Lal against the schemes no allegations of mala fides were made against Bansi Lal. In one writ petition an attempt was made to introduce such an allegation by way of amendment but the High Court held that the allegation was a mere 'afterthought'. The District Attorney has filed a counter-affidavit in which he has stated that the evidence in the case was of a meager nature and he was of the view that it might not be possible to obtain a conviction in the case. He had brought it to the notice of the District Magistrate earlier but as important personalities were involved it was not thought proper and prudent to make an application for withdrawal from the prosecution. The occurrence which was the subject-matter of the case was said to have taken place at 10 p.m. A large number of accused had been named. There were reasons to believe that most of the names of the accused were included on mere suspicion. In fact two advocates who had been implicated as accused led unimpeachable evidence that they were not in Bhiwani at all that night. After he received advice from the District Magistrate he was convinced that an application should be filed for withdrawal from the prosecution and so he filed the same. Shri Bhaskar Chatterji, the District Magistrate has also filed an affidavit in which he was stated that the District Attorney had informed him that some of the cases filed against Chaudhary Bansi Lal and his family members were weak in nature. He did not however, take any action at that time as important personalities were involved and as there were no directions from the government in that regard. Later he received a wireless

message which he forwarded to the District Attorney for action. Shri Kataria, Secretary to Government of Haryana, Department of Administration of Justice has also filed a counter-affidavit in which he has mentioned the details of the proceedings of the Cabinet Sub-Committee which took the decision to withdraw the case on September 20, 1979.

25. On a perusal of the allegations and counter-allegations, the facts which emerge from the record as beyond dispute are :

(1) The land of Manohar Lal and his sons on which there were certain buildings was included in the Bhiwani Town Improvement Scheme.

(2) The allegation that Bansi Lal's son and relative wanted to purchase the land originally was not made by Manohar Lal in the original objections and writ petitions filed by Manohar Lal.

(3) The Supreme Court first granted stay of the demolition of buildings but later vacated the stay on December 1, 1976.

(4) As soon as stay was vacated, without any loss of time, the demolition work was started and completed. Dynamic and bulldozers were used and the buildings were demolised.

(5) On May 6, 1971, Manohar Lal and his sons entered into an agreement with the Bhiwani Town Improvement Trust agreeing to withdraw all the cases filed by them against the Improvement Trust and accepting the title of the Trust to the land acquired under the Town Improvement Schemes. In return the Improvement Trust agreed to release the lands to Manohar Lal and his sons for the purpose of reconstructing the buildings and to receive the compensation assessed for the demolished buildings. It was recited in the agreement that the Town Improvement Trust had agreed to this course as it was thought to be "in the best interest of the parties concerned as well as in the good of the residents of the Bhiwani Town".

(6) On July 13, 1977 Manohar Lal lodged a first information report with the police.

(7) On July 21, 1978 the police filed a charge-sheet in the Court of the Chief Judicial Magistrate, Bhiwani.

(8) The District Attorney had informed the District Magistrate that the evidence was of a weak nature as most of the accused appeared to have been implicated on mere suspicion and some of the accused were not even present in the town on the night of the occurrence.

(9) Surinder Singh, son of Bansi Lal made a representation to the government that they were being harassed by innumerable cases being filed against them.

(10) On September 20, 1979, the Cabinet Sub-Committee decided that four out of twenty-five cases filed against Bansi Lal and others should be withdrawn. A wireless message was sent by the government to the District Magistrate asking him to withdraw the four cases and to report compliance. The letter was forwarded to the District Attorney. The District Attorney filed an application for withdrawal from the

prosecution on the same day.

(11) Neither before nor after the Cabinet Sub-Committee took its decision was there a no-confidence motion tabled against Chief Minister Bhajan Lal.

(12) On September, 1979 the court granted its consent to the withdrawal of the Public Prosecutor (the District Attorney) from the case.

26. It is on this material we have to determine whether the withdrawal from the prosecution could be said to be mala fide, that is, for irrelevant or extraneous reasons. We are not satisfied that there is sufficient basis to come to such a conclusion particularly in view of two outstanding circumstances namely that only four out of twenty-five cases have been withdrawn and the complainant himself had acknowledged the title of the Town Improvement Trust to the lands and the Trust had not only returned the lands to the complainant but also paid him compensation for the demolished buildings in the interest of all parties in Bhiwani town. We, therefore, dismiss the special leave petition.

27. Before bidding farewell to these cases it may be appropriate for us to say that criminal justice is not a plaything and a Criminal Court is not a playground for politicking. Political fervour should not convert prosecution into persecution, nor political favour reward wrongdoer by withdrawal from prosecution. If political fortunes are allowed to be reflected in the processes of the court very soon the credibility of the rule of law will be lost. So we insist that courts when moved for permission for withdrawal from prosecution must be vigilant and inform themselves fully before granting consent. While it would be obnoxious and objectionable for a Public Prosecutor to allow himself to be ordered about, he should appraise himself from the government and thereafter appraise 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.

28. No arguments were advanced in Criminal Miscellaneous Petition 3890 of 1979. It is, therefore, dismissed.

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