

State of Punjab

Vs

Union of India and Others

Criminal Appeals Nos. 116-36 of 1974

(A. P. Sen, B. C. Ray JJ)

24.09.1986

ORDER

1. We are satisfied on hearing learned counsel for the parties that the judgment of the High Court cannot be sustained. It is the duty of the Court while granting permission to the Public Prosecutor to withdraw from the prosecution under Section 494 of the Code of Criminal Prosecutor, 1898 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. The ultimate guiding consideration while granting a permission to withdraw from the prosecution must always be the interest of administration of justice and that is the touchstone on which the question must be determined whether the prosecution should be allowed to withdraw. 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 such broad ends of public justice may well include appropriate social, economic and political purposes.

2. In the present cases, the proceedings were still in their initial stages and the State Government took a policy decision that in a cases which did not involve acts of serious personal violence or material destruction of State property, the prosecutions against the respondents i.e. employees of the Posts and Telegraph Department who went on one day's token strike on September 19, 1968 and who were not involved in any such acts of violence and destruction, should be withdrawn. In accordance therewith, the Public Prosecutor moved applications under Section 494 of the Code for permission to withdraw from the prosecutions. In due course, the applications were allowed on the learned Magistrates being satisfied that the requirements of Section 494 were fulfilled and they recorded orders of acquittal of the respondents under Section 494(b) of the Code. It cannot be said that the learned Magistrates were not justified on the materials placed before them in coming to the conclusion that the grant of permission would subserve the interests of justice. On the contrary, the decision taken by the State Government to withdraw from the prosecutions was a part of an overall settlement between the Central Government and the employees of the Post and Telegraph Department. It would certainly not subserve the interests of justice to direct retrial of the respondents despite the settlement arrived at, after a lapse of nearly 18 years. Such a course would give rise to unnecessary industrial unrest for no reason whatever. We need not enter into the controversy whether this Court having in *M.N. Sankarayarayanan Nair v. P. V. Balakrishnan* [(1972) 2 SCR 599 : (1972) 1 SCC 318 : 1972 SCC (Cri) 55 : AIR 1972 SC 496] referred to the decision of the Full Bench of the Kerala High Court in *Dy. Accountant-General (Admn.) v. State of Kerala* [AIR 1970 Ker 158 : 1969 Ker LT 669 : ILR (1969) 2 Ker 492] while laying down the requirement of Section 494 of the Code, this was tacit approval of the view taken in that case.

3. The result therefore is that the appeals must succeed and are allowed. The judgment and order of

the High Court are set aside and the orders of acquittal passed by the learned Magistrates are restored.

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