

Tek Chand and Another

Vs

Tek Chand, Supdt. of Police and Others

Special Leave Petition (Cri.) Nos. 1682 and 3120 of 1983

(G. L. Oza, Ranganath Misra JJ)

28.11.1986

ORDER

1. These two special leave petitions and a writ petition were filed for a common purpose - The writ petition questioning the vires of Section 321 of the Code of Criminal Procedure of 1973 and these two special leave petitions questioning the correctness of the order of the High Court by which it affirmed the order of the Chief Judicial Magistrate of Bhiwani, according permission under the same Section 321 for withdrawal of a prosecution against the respondents excepting the State of Haryana. We have already dismissed the writ petition and now proceed to dispose of the special leave applications. As lengthy arguments were advanced we propose to make a brief but speaking order.
2. Having heard learned counsel for the parties we are inclined to think that the order of the learned Chief Judicial Magistrate was perhaps not appropriate in law. The High Court did go into the question afresh in its revisional jurisdiction but there could also be some arguments possible with reference to what the High Court has said. We are, however, definitely of the view that no useful purpose will be served in setting aside the order of the Chief Judicial Magistrate as affirmed by the High Court and in directing the prosecution to proceed as there is, in our opinion, no chance of ultimate conviction. Allowing such a prosecution to proceed will only be harassment to the parties and wastage of public time. Now we briefly indicate some features to justify this conclusion of ours.
3. The incident is dated April 2, 1974. The first information report has been registered suo motu by the police in November 1977 - After a gap of more than 3 1/2 years. The victims of the injuries were also accused of criminal offences said to have taken place at the same point of time and were produced before the Judicial Magistrate of Bhiwani on April 3, 1974. The Judicial Magistrate enlarged them on bail and finding injuries on their persons directed them to be medically examined. There is no material before us to show that the victims had complained to the learned Judicial Magistrate that the present accused persons were the authors of the injuries on them. We gave an opportunity to the petitioners to produce such material but with no result. For the first time, witnesses to the occurrence were examined towards the end of 1977 and beginning of 1978 during investigation.
4. The learned counsel drew our attention to the fact that one of the accused person happens to be the son of a political figure wielding influence. We find that this fact did not deter the Judicial Magistrate in ordering release of the victims who had been produced before him as accused persons. The learned Magistrate also made an order for their medical examination and that was carried out. There is no justification as to why a private complaint was not made contemporaneously and the matter had to wait for 3 1/2 year for investigation on the basis of the first information report.

5. The learned counsel also pointed out that emergency had intervened and during that period a situation prevailed where the victims could not open their mouths. A period of more than 14 months intervened between the occurrence and the promulgation of emergency.

6. A Commission was set up after the emergency had ended and holding a fresh elections, a different political party had come to power. Following the report of the Commission this prosecution had been launched. The petitioners' learned counsel did not dispute the position that the finding of the commission is not evidenced and no conviction can lie on the conclusion either. In these circumstances, chances of conviction are too far-fetched and bleak. We do not think it is in public interest that the prosecution should proceed. We may add that in a report under Section 173 (8) of the Code, the investigating agency has also indicated that adequate evidence has not been forth-coming to support the prosecution. It is thus not necessary to examine the legal aspect canvassed in the special leave petitions and argued during hearing. Both the petitions are dismissed.

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