

Name Dasarath

v.

State of Andhra Pradesh

(Supreme Court Of India)

HON'BLE MR. JUSTICE A.K. PATNAIK HON'BLE MR. JUSTICE FAKKIR
MOHAMED IBRAHIM KALIFULLA

Criminal Appeal No. 299 Of 2014 (Arising Out Of Slp(Crl.) No. 5615 Of 2013)
| 31-01-2014

1. Delay condoned.

2. Leave granted.

3. The appellant worked as an Assistant Excise Superintendent, Excise Superintendent, Assistant Commissioner of Prohibition and Excise and Deputy Commissioner of Prohibition and Excise Government of Andhra Pradesh. After the investigation, a chargesheet was filed against him under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988. Thereafter, by an order dated 04.02.2009, the Government of Andhra Pradesh passed an order for withdrawal of the prosecution against the appellant and accordingly instructed the Public Prosecutor to file a petition before the Court of the Principal Special Judge for SPE and ACB cases, Hyderabad under Section 321 CrI.P.C. for withdrawal of the prosecution. Pursuant to the said order, the Public Prosecutor filed a petition for withdrawal under Section 321 CrI.P.C. but the Principal Special Judge for SPE and ACB cases, Hyderabad dismissed the petition for withdrawal by a lengthy order dated 10.01.2011. Aggrieved by the order of the Special Judge, the appellant filed Criminal Revision Case No.178/2011 before the High Court but by the impugned order, the High Court has dismissed the Criminal Revision. Aggrieved by the impugned order, the appellant has filed this appeal by way of special leave under Article 136 of the Constitution.

4. We have gone through the order of the Trial Court and the impugned order of the High Court and find that the Trial Court and the High Court have not correctly appreciated the law laid down by this Court in various decisions particularly in paragraphs 69, 70 and 71 of the majority judgment delivered by Khalid, J. in Sheo Nandan Paswan v. State of Bihar and others as reported in (1) AIR 1987 SC 877 at pages 914, 915 and 916 of the AIR, the relevant portions of which are quoted hereinbelow:

“Section 321 reads 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, upon 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 offences.”

(Proviso omitted)

This Section enables the Public Prosecutor, in charge of the case to withdraw from the prosecution of any person at any time before the Judgment is pronounced, but this application for withdrawal has to get the consent of the Court and if the Court gives consent for such withdrawal the accused will be discharged if no charge has been framed or acquitted if charge has been framed or where no such charge is required to be framed. It clothes the public prosecutor to withdraw from the prosecution of any person, accused of an offence both when no evidence is taken or even if entire evidence has been taken. The outer limit for the exercise of this power is “at any time before the Judgment is pronounced.”

70. The Section gives no indication as to the grounds on which the Public Prosecutor may make the application, or the considerations on which the Court is to grant its consent. 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.

71. The Court's function is to give consent. This section does not obligate the Court to record reasons before consent is given. However, I should not be taken to hold that consent of the Court is a matter of course. When the Public Prosecutor makes the application for withdrawal after taking into consideration all the materials before him, the Court exercises its judicial discretion by considering such materials and on such consideration, either gives consent or declines consent. The section should not be construed to mean that the Court has to give a detailed reasoned order when it gives consent. If on a reading of the order giving consent, a higher Court is satisfied that such consent was given on an overall consideration of the materials available, the order giving consent has necessarily to be upheld.”

5. We accordingly allow the appeal, set aside the order of the Trial Court and the impugned order of the High Court and remand the matter to the Trial Court for fresh consideration of the petition for withdrawal of prosecution against the appellant under Section 321 CrI.P.C. in the light of the judgments of this Court and in particular the majority judgment of the Constitution Bench of this Court in *Sheo Nandan Paswan v. State of Bihar* and other quoted above.