

# JAMMU AND KASHMIR HIGH COURT

Partap Chand

Vs.

L. Behari Lal

Criminal Misc. No. 259 of 2010

(Wazir, C.J. and Shahmiri, J.)

11.02.1955. 02.12.2000

## JUDGMENT

### **Shahmiri, J.**

1. This is a revision application directed against an order of the Additional District Magistrate, Jammu, by which he gave his consent to the Public Prosecutor withdrawing from the prosecution in a case originally instituted as a private complaint by the applicant against the three non-applicants, discharged the non-applicants, and dismissed the complaint.

2. We have heard counsel for the parties. The case is an offshoot of the Praja Parishad agitation 1952-53. Partapchand, applicant, had brought a complaint under Section 395, R.P.C., against Rehari Lal, the then Special Tehsildar, Akhnur, Manohar Lal, the Sub Inspector of police and Basanti Ram, Constable Jurian. The complaint was instituted on the 12th of Bhadon 2010. It was alleged therein that in Magh 2009, i.e., more than seven months before the institution of the complaint, the accused non-applicants had raided the house of the applicant and not finding anybody there had demolished the house and removed property worth ₹ 7500/-therefrom. It appears that the police had also instituted some cases against the complainant. On the 21st of Phagan 2010, the Public Prosecutor Jammu appeared in the Court of the Additional District Magistrate and put in an application stating that he had taken over charge of this case. He also put in another application for the withdrawal of the prosecution under Section 494, Criminal Procedure Code. On the 2nd of Chet 2010, the date fixed in the case, the Public Prosecutor and one of the accused persons, Basanti Ram, were present when after recording the statement of the Public Prosecutor the trial Magistrate gave his consent under Section 494, Criminal Procedure Code, and the complaint was dismissed.

3. The learned counsel for the applicant has attacked the order of the Additional District Magistrate, Jammu, mainly on two grounds. His first ground is that the trial Magistrate should

have given reasons for according his consent to the withdrawal of the prosecution and his failure to do so vitiates the order. He has referred to certain authorities of the other Indian High Courts on this point. Our examination, however, reveals that there is a cleavage of opinion on this point between the different High Courts. While the High Court of Calcutta and in some cases the Court of the Judicial Commissioner of Nagpur and the Chief Court of Sindh have taken the view that it is necessary for the trial Court to record thereasons, the High Court of Bombay, Madras and Patna and in some cases the High Court of Lahore and the Chief Court of Sindh and the Judicial Commissioner's Court of Nagpur have held that it is not essential for the trial court to record its reasons. After careful consideration, we agree with the view that it is not essential for the trial Court to record its reasons for giving its consent to the withdrawal of the prosecution under Section 494, Criminal Procedure Code, though it may be desirable to do so. Failure to record the reasons, in our view, is not an illegality and would not of itself be sufficient to vitiate the order. We are fortified in our conclusion by the wording of S.494, Criminal Procedure Code. It is nowhere stated in the section that the reasons must be recorded by the Court giving its consent. A reference to other sections of the Code of Criminal Procedure, e.g., Sections 203, 209 and 263 and so on and so forth, would show that where the legislature intended that the Court must record its reasons for the order it makes, it did not hesitate to set forth this intention in unmistakable words in those provisions. In this connection '*Kasi Viswanadham v. Madan Singh*<sup>1</sup>', - '*Gulli Bhagat v. Narain Singh*<sup>2</sup>', - '*Dattatraya Govindrao v. Emperor*<sup>3</sup>', - '*Abdul Majid v. Arbabshah Akbershah*<sup>4</sup>', may be referred to. The High Court of course can interfere with an order of the trial court under Section 494, Criminal Procedure Code, if the applicant succeeds in showing that the trial Court has exercised its discretion in an extremely high-handed or arbitrary manner. No such material has been placed before us on behalf of the applicant. On the other hand, the explanation submitted by the trial Magistrate shows that his consent to the withdrawal of the case was given, because (1) the police had shown its willingness to withdraw the case instituted by them against the applicant and (2) that the continuation of the case was not in the public interest. In '*Giribala Dasi v. Mader Gazi*<sup>5</sup>', it has been observed vide page 704 that S.494

"contemplates action to be taken more often than not upon circumstances extraneous to the record of the case, inexpediency of a prosecution for reasons of State, necessity to drop the case on grounds of public policy,....."

For the foregoing reasons we are of the opinion that omission to give reasons by the trial Magistrate, in the circumstances of this case, does not justify our interference with the order made by him.

4. The second ground that has been pressed by counsel for the applicant is that it was wrong on the part of the Public Prosecutor to intervene and withdraw this prosecution and at any rate he should not have done so without consulting the applicant who had instituted the complaint in this case. Some support is sought by counsel for the applicant for the submission from certain observations made by Sulaiman C.J., in - '*Ram Govind Singh v. Lallu Singh*<sup>6</sup>', With great respect

for the view expressed by his Lordship in that case it appears that the circumstances there were entirely different. In that case, there was no allegation that the prosecution had been withdrawn for reasons of State or in the public interest. There was no Public

<sup>1</sup> AIR 1948 Mad 422

<sup>3</sup> AIR 1938 Nag 76

<sup>5</sup> AIR 1932 Cal 699

<sup>2</sup> AIR 1924 Pat 283

<sup>4</sup> AIR 1933 Sind 357

<sup>6</sup> AIR 1924 All 203

Prosecutor in charge of the case. What happened in that case was that the trial Magistrate forwarded an application of the accused to the District Magistrate strongly recommending it for the consideration of the District Magistrate, because the trial Magistrate did not believe that the accused had committed the offence with intent to defraud. The District Magistrate accepted the apology of the accused persons and ordered the Prosecuting Inspector to withdraw the case. Thus the prosecuting Inspector had never put in his appearance in the case. The evidence for the complainant had been finished and in these circumstances Sulaiman C.J., did not consider it desirable that the Prosecuting Inspector should have applied for the withdrawal of the case without consulting the complainant. For arriving at this conclusion, the learned Judge in that case was mainly influenced by the consideration that, if the trial Magistrate was of the opinion that there was no case against the accused, he should have himself acquitted them instead of submitting their application to the District Magistrate with his recommendation. This case is distinguishable from the facts of the present case. Here we find that the Public Prosecutor had taken over charge of the case under instructions from the District Magistrate on 21st Phagan 2010 and his application for withdrawal of the prosecution was considered on 2nd Chet 2010 when his statement was recorded and the trial Magistrate gave the requisite consent and the accused were discharged. It has not been contended that a Public Prosecutor, cannot intervene in a criminal case instituted on a private complaint. In - '*Slier Singh v. Jitendranath Sen*<sup>7</sup>', it has been held that an application for withdrawal of prosecution by Public Prosecutor who is not in charge of the case before but appears in the case only to withdraw the prosecution is not illegal. One of the two judges who heard the case, S.K. Ghose J., held that such an application was irregular but not illegal. The other Judge, Lort-Williams J., held that it was neither illegal nor irregular but merely unusual. The reason for this is not far to seek. It would be obvious from the following observations made in a Patna Division Bench case reported as 'AIR 1924 Patna 283':

"Finally there is a deeper and indeed a fundamental reason for non-interference which turns upon the position of a private prosecutor in prosecutions for cognizable offences. In my opinion the private prosecutor has no position at all in the litigation. The Crown is the prosecutor and the custodian of the public peace and if it decides to let an offender go, no other aggrieved party can be heard to object on the ground that he has not taken his full toll of private vengeance."

5. In the result, we find no force in this application and it is rejected.

Application rejected.

<sup>7</sup> AIR 1931 Cal 607