

## PATNA HIGH COURT

Gulli Bhagat

Vs

Narain Singh

(B Mullick, C.J. Macpherson, J.)

20.04.1923

### JUDGMENT

#### **B Mullick C.J.**

1. This application raises a somewhat important point, namely, whether an order of acquittal passed under Section 494, Criminal Procedure Code, should be revised in this Court at the instance of a private party. It appears that after the case had been fully tried out a petition was filed by the Public Prosecutor on the 6th April 1923 for leave to withdraw the case. The Magistrate thereupon recorded the following order.

A petition of protest is filed. I have heard the parties Accused acquitted under Section 494, Criminal, Procedure Code. Enter true sections 148, 325, 149 and 323, Indian Penal Code.

2. It is now contended before us that the learned Magistrate acted illegally in allowing the withdrawal without recording his reasons for doing so. It is also, though somewhat faintly, urged that there was in fact no grant of consent. Now it is clear from a perusal of the order that the Magistrate heard the parties and that he gave his consent after duly considering the matter; and the only question is whether he was required to draw up a judgment such as is prescribed by Section 367 of the Criminal Procedure Code and to record his reasons for allowing the withdrawal. In our opinion there is no provision of law compelling a Magistrate to do this, and once he has given his consent than acquittal its propriety ought not, in our opinion, to be questioned except upon appeal by the Local Government.

3. In this connection our attention has, however, been drawn to *Umesh Chandra Roy v. Satis Chandra Roy*<sup>1</sup> where Teunon and Shamsul Huda, JJ., held that the Court must give and record its reasons so that the High Court may be in a position to say whether the discretion vested in the Court has been properly exercised.

4. That view was followed by Teunon and Ghosh, JJ., in *Rajani Kanta Shaha v. Idris Thakur*<sup>2</sup> and also in *Jagat Chandra Roy v. Kalimuddi Sardar*<sup>3</sup> In my opinion these cases overstate the law.

Section 494 does not expressly require the Court to give any reasons for consenting to the withdrawal nor is there any provision which compels a Court to write a reasoned judgment establishing the propriety of the order. There are many final orders known to the Code for which no reasoned judgment is required.

5. In the next place where a discretion has been exercised by a Court of competent jurisdiction, which is not on the face of it arbitrary, the practice of the High Court is that as a Revisional Court it will neither inquire into the reasons nor interfere.

6. But the most serious objection to the decisions cited above is that they offend against the principle laid down by the majority of the Court in *Faujdar Thakur v. Kasi Choudhuri*<sup>4</sup> where Jenkins, C J., observed that the power of interference in revision, with orders of acquittal, could be most sparingly exercised and only cases where it was urgently demanded in the interests of public justice. The application for revision in this case is in application to revise an order of acquittal, and as no question of public justice appears to be involved, I do not think that we should be right in interfering except upon a properly constituted

7. In this Court there is not much authority upon the point and the only case which has been brought to our notice is *Gopi Bari v. Emperor*<sup>5</sup> In that which was decided by a Bench formed by a Single Judge of this Court, a Magistrate had decided to consider the petition of withdrawal filed by the Public Prosecutor on the ground that the private prosecutor objected to the withdrawal and it was held that his order was without jurisdiction and the learned Judge, instead of sending the case on remand to the Trial Court proceeded to examine the facts himself and exercised the jurisdiction which the Trial Court should have exercised. This authority supports, the view that Section 494 gives the Trial Court full jurisdiction to give or refuse consent and that the High Court will only interfere in revision if some question of jurisdiction is involved.

8. 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.

9. If, therefore, in the present case, the Court has allowed the Public Prosecutor to withdraw the case upon insufficient or improper grounds, the Local Government is the only authority who can take action for the correction of that error.

10. We accordingly reject the application.

Cases Referred.

141 Ind. Cas. 998 : 26 C.L.J. : 208 : 18 Cr.L.J. 886 : 22 C.W.N. 69

264 Ind. Cas. 280 : 48 C. 1105 : 25 C.W.N. 615 : 34 C.L.J. 51 : 22 Cr.L.J. 760

371 Ind. Cas. 693 : 26 C.W.N. 880 : 24 Cr.L.J. 889

437 Ind. Cas. 186 : 42 C. 612 : 19 C.W.N. 184 : 21 C.L.J. 53 : 16 Cr.L.J. 184

557 Ind. Cas. 657 : 1 P.L.T. 400 : 21 Cr.L.J. 641