

PUNJAB AND HARYANA HIGH COURT

State of Punjab

Vs

Shamsher Singh

(S.S.Dewan, J.)

19.05.1983

JUDGEMENT

S.S.Dewan, J.

(1.) SHAMSHER Singh, Rup Singh and Kashmira Singh were being prosecuted in the Court of the Chief Judicial Magistrate, Faridkot, for the offence under Section 9 of the Punjab Security of State Act, 1953 and 3 of the Police (Incitement to Disaffection) Act, 1922. The learned Public Prosecutor, filed an application under Section 321 of the Criminal Procedure Code, 1973 (for short, the Code) on the grounds that the Government had decided to withdraw all the cases against the agitating police personnel and that to keep peace and security in the State and with a view to create a good-will between the Employers and the Employees, he may be allowed to withdraw from the prosecution. The learned Magistrate however, declined his consent to withdraw from the prosecution due to insufficient grounds for withdrawal. Feeling aggrieved the accused-petitioners have now come up in revision.

(2.) THE learned counsel for the petitioners had urged that the order of the learned Chief Judicial Magistrate, Faridkot, cannot be sustained. It is contended that Section 321 of the Code of Criminal Procedure 1973 (For short, the Code) invests the Public Prosecutor incharge of the case with the power to exercise his discretion to withdraw from the prosecution with the consent of the Court at any time before the judgment is pronounced. It is further urged that on the facts and circumstances of this case, the ends of public justice are better served by withdrawal rather than continuation of the prosecution against the petitioners and that of the prosecution against the petitioners and that it will also be in the interest of administration of Justice if the Public Prosecutor is permitted to withdraw from the prosecution in the peculiar circumstances of the case. As to under what circumstances, the Court should grant consent and what would be the germane considerations for exercising the jurisdiction under Section 321 of the Code, the law has been declared by the Supreme Court in a number of cases. The question came up before the Supreme Court in *The State of Bihar v. Ram Naresh Pandey*¹, The following principles emerged from the aforesaid decision :- (1) Inasmuch as the granting of consent would result in discharge or acquittal and would be subject to correction by the High Court under Section 435, 436 and 439 or section 417 of the Criminal P.C. the function of the Court is a judicial function. (2) The consent must be accorded or withheld in exercise of judicial discretion. (3) It is not essential that

in exercising the discretion, the Court should be restricted by the material gathered by the Judicial method. (4) The initiative is with the Public Prosecutor and the Court has only to consider the question as to whether consent should be accorded or withheld. (5) 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. (6) The functions of the Court are intended to prevent the abuse of the process of law.

(3.) A similar question arose before the Supreme Court in *M.N. Sankaranarayanan Nair v. P.V. Balakrishnan*², wherein the Court had approved the principles laid down in *The State of Bihar v. Ram Naresh Pandey*, (supra) and has further observed as under :- "The section does not, however, indicate the reasons which should weigh with the Public Prosecutor to move the Court nor the grounds on which the Court will grant or refuse permission. Though the Section is in general terms and does not circumscribe the powers of the Public Prosecutor to seek permission to withdraw from the prosecution, the essential consideration which is implicit in the grant of the power is that it should be in the interest of administration of justice which may be either that it will not be able to produce sufficient evidence to sustain the charge or that subsequent information before prosecuting agency would falsify the prosecution evidence or any other similar circumstances which it is difficult to predicate as they are dependent entirely on the facts and circumstances of each case. Nonetheless it is the duty of the Court also to see in furtherance of justice that the permission is not sought on grounds extraneous to the interest of justice or that offences which are offences against the State go unpunished merely because the government as a matter of general policy or expediency unconnected with its duty to prosecute offenders under the law, directs the Public Prosecutor to withdraw from the prosecution and the Prosecutor merely does so at its behest." ;

Cases Referred.

1AIR 1957 S.C. 389

2AIR 1972 SC 496