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TEKCHAND & ANR.

v.

TEKCHAND, SUPDT. OF POLICE & ORS.

NOVEMBER 28, 1986

B

[RANGANATH MISRA AND G.L. OZA, JJ.]

*Withdrawal of Prosecution—Chances of conviction farfetched and bleak and evidence not forthcoming as per the report under section 173(8) of the Criminal Procedure Code—Whether the grant of permission for nolle prosequi under section 321 of the Code in order.*

C

In respect of certain incident dated 2.4.1974, the First Information Report has been registered *suo motu* by the Police after 3½ years, on the basis of the report of Commission of Inquiry. The victims of the injuries were also accused of criminal offences said to have taken place at the same point of time who were produced before the Judicial Magistrate of Bhiwani on 2.4.74 and were also medically examined. They did not file any private complaint, though released on bail. Based on the report of the Investigating Agency under section 173(8) of the Code of Criminal Procedure Code, the Public Prosecutor filed an application under section 321 of the Code for withdrawal of the prosecution case which was granted by the Chief Judicial Magistrate, Bhiwani. The High Court also affirmed the said order. Hence the Special Leave Petitions.

E

Dismissing the petitions, the Court,

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HELD: In the facts and circumstances of the case, it is in public interest that the Prosecution should not proceed with the prosecution. A report under section 173(8) of the Code of Criminal Procedure by the investigating agency indicated that adequate evidence has not been forthcoming to support the prosecution which was commenced *suo motu* on the basis of a report of the Commission of Inquiry on whose finding no conviction can lie. The victims themselves who were the accused of criminal offences said to have taken place at the same point of time did not complain before the Magistrate concerned and did not file private complaints. The plea that one of the accused persons was the son of a political figure wielding influence did not deter the Magistrate in ordering release the victims in the earlier case. Further chances of conviction are too far-fetched and bleak. [378E, B]

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CRIMINAL APPELLATE JURISDICTION: Special Leave Petition (Crl). Nos. 1682 And 3120 of 1983.

H

From the Judgment and Order dated 12.4.1983 of the Punjab and Haryana High Court in Crl. Revision No. 1427 & 1428 of 1980.

Govind Mukhoty and Sarva Mitter for the Petitioners.

M.C. Bhandari, Harbans Lal, Dr. Y.S. Chitale, C.V. Subba Rao, S.K. Bisaria, Ravindra Bana and N.S. Das Bahl for the Respondents.

The Order of the Court was delivered by

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.

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.

The incident is dated 2.4.1974. The First Information Report has been registered *suo motu* by the police in November 1977—after a gap of more than 3½ 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 3.4.1974. 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,

- A witnesses to the occurrence were examined towards the end of 1977 and beginning of 1978 during investigation.

B The learned counsel drew our attention to the fact that one of the accused persons 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 3½ years for investigation on the basis of the First Information Report.

C 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.

D 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 forthcoming 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.

F S.R.

Petitions dismissed.