GHANSHYAM A

v.

STATE OF M.P. AND ORS.

SEPTEMBER 29, 2006

[S.B. SINHA AND DALVEER BHANDARI, JJ.] B

Code of Criminal Procedure, 1973—s.321—Charge sheet filed u/ss.147/307 IPC—Trial commenced—Application for withdrawal of prosecution filed by Public Prosecutor—Allowed by Sessions Judge—Upheld by High Court— C *Correctness of—Held: Correct as High Court had carefully scrutinized and ensured that no extraneous consideration prevailed in moving such application—Public Prosecutor can at any stage, before the judgment move application for withdrawal of prosecution.*

Appeal—Plea—Belated plea—Application for withdrawal of D *prosecution allowed by Sessions Judge and upheld by High Court in 1991—Not challenged in last 15 years—Appellant challenging the withdrawal now in another case—Held: Appellant not justified in making such grievance.*

Writ petition—Challenging inaction of police authorities in registering complaint—High Court directed Superintendent of Police to register their E *case—Grievance of opposite party that writ petition was filed after undue delay—Held: Not entertainable as order of High Court was based on report of DIG who had conducted enquiry at the instance of Court.*

According to appellant, on 8.11.1986, respondent no. 3-landlord entered his rented house along with anti-social elements to illegally evict him and F **dismantle the house. When he tried to obstruct them, he got seriously injured. Appellant lodged FIR u/ss. 147/307 IPC against respondent no. 3 and his men. Charge-sheet was filed against respondent no. 3 and trial commenced. After sometime, the Public Prosecutor moved an application u/s. 321 Cr.P.C. for withdrawal of the prosecution. The Sessions Judge allowed the same. Appellant** G **preferred Revision against this, which was also dismissed. Thereafter, appellant did not challenge it.**

In 2004, Respondent no.3 filed a Writ Petition in the High Court complaining about the inaction on the part of police authorities in not

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A registering his complaint and in not taking action against persons who had caused injuries to him and his sons on 8.11.1986. High Court on the basis of report of Deputy Director General directed the Superintendent of Police to register their case. Appellant filed application for recalling of this order, which was dismissed.

B

In these appeals, the appellant is aggrieved by (a) the order of withdrawal of the prosecution against respondent no.3 on the ground that respondent no.3 being a former Member of Parliament managed to get an order from the Government directing the Public Prosecutor to withdraw the criminal prosecution and (b) the direction passed by High Court in the writ petition as C it was filed after undue delay.

Dismissing the appeal, the Court

HELD: 1. According to the scheme of s. 321 Cr.P.C., the Public Prosecutor at any stage, before the judgment, can move the Court for D withdrawal of prosecution. The High Court was not oblivious of the fact that an application under s. 321 Cr.P.C. had to be carefully scrutinized and ensured that no extraneous consideration had prevailed in moving such an application. The discretion to withdraw from the prosecution is that of the Public Prosecutor and none else, and so, he cannot surrender that discretion to any one. The Public Prosecutor may withdraw from the prosecution not merely E on the ground of paucity of evidence but on other relevant factors as well, in order to further the broad ends of justice, public order, peace and tranquillity. The High Court while deciding the revision petition clearly observed that the material already available on record was insufficient to warrant conviction. The flow of facts and the possible result thereof as noticed by the Public F Prosecutor and appreciated by the Courts below, constituted the public interest in the withdrawal of the said prosecution. The High Court clearly came to the conclusion that the application for withdrawal of the prosecution and grant of consent were not based on extraneous considerations. [6-E-F, 7-H, 8-A-C]

2. The Additional Sessions Judge permitted withdrawal of the G prosecution on an application moved by the Public Prosecutor under s. 321 Cr.P.C. The appellant had moved a criminal revision petition before the High Court. The order of the High Court was passed in the year 1991 and the appellant never challenged that order in the last 15 years before this Court. Therefore, the appellant is wholly unjustified in making any grievance in H respect of the prosecution which had already been withdrawn against

respondent no.3 a long time ago and the said order was affirmed by the High Court and no proceedings were taken against the said judgment of the High Court. [9-B-D]

3. The order of the High Court was primarily based on the report of the DIG, CID, Gwalior who had conducted the inquiry at the instance of the Court and submitted the report. On the basis of the inquiry report, the High Court directed the Superintendent of Police, Gwalior to take action for registration of the case and conduct the investigation and inquiry in accordance with law. In the backdrop of the peculiar facts and circumstances of the case, no interference is called for. [9-E, G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1017 of 2006.

From the Judgment and Order dated 8.8.2005 and 23.9.2005 of the High Court of Madhya Pradesh Jabalpur Bench at Gwalior in W.P. No. 1356/2004 and M.C.C. No. 473 of 2005 respectively.

Jai Prakash Pandey for the Appellant.

Vibha Datta Makhija for the Respondents Surya Prasad-Respondent No. 3 in-person.

The Judgment of the Court was delivered by

DALVEER BHANDARI, J. Leave granted.

This appeal is directed against the judgment dated 08.8.2005 passed in Writ Petition No.1356 of 2004 by the M.P. High Court of Judicature at Jabalpur, Bench at Gwalior, M.P.

Brief facts which are necessary to dispose of the appeal are recapitulated as under:

A writ petition was filed by respondent no.3 Surya Prasad son of Hariram, aged about 82 years, in which he had complained about the inaction on the part of the police authorities of the police station, Morar in not registering his complaint and taking action against the persons who had caused injuries to him and his sons. It was stated in the writ petition that on 8.11.1986, respondent no.3 and his sons were attacked. They sustained injuries and thereafter respondent no.3 was medically examined. In spite of filing the

A complaint, the police authorities of the Morar police station neither registered any case nor took any action against the accused but in fact the police people protected the accused persons. In the writ petition, he had prayed that justice be done to him and the accused be punished.

Learned Single Judge of the High Court after considering the facts and
B circumstances of the case, issued notice in the writ petition and directed the Director General of Police, Madhya Pradesh, Bhopal to appoint a senior officer from the Police Headquarter to conduct an enquiry into the matter. Accordingly, the Deputy Inspector General of the Central Intelligence Department, Gwalior (for short "DIG, CID") conducted an enquiry and submitted a report.
C Respondent no.3 herein (petitioner in the writ petition) submitted an objection indicating that instead of getting the matter inquired from the Police Headquarter, the respondents improperly had got the investigation carried out from the local police officer. The learned Single Judge held that once it was established that respondent no.3 had sustained injuries in the incident and injuries on his person were confirmed on the medical examination, the police
D authorities of the Morar police station ought to have registered a case and taken appropriate steps in accordance with law. On the basis of the final report of the inquiry, the learned Single Judge directed the Superintendent of Police, Gwalior to register a case in the Police Station of competent jurisdiction and take action in accordance with law.

E The appellant had filed an application bearing M.C.C. No.473 of 2005 for recalling of an order dated 08.8.2005 passed by the learned Single Judge in the writ petition no.1356 of 2004 whereby respondent no.2, the Superintendent of Police, Gwalior, M.P. was directed to register a case and conduct investigation. After hearing the appellant, the learned Single Judge arrived at definite finding
F that there was no ground to recall the order and dismissed the petition.

Being aggrieved by the order dated 08.8.2005 passed in the Writ Petition No.1356 of 2004 and the order dated 23.9.2005 passed in M.C.C. No.473 of 2005, the appellant has preferred this appeal.

G According to the appellant, he was residing in the house situated at Company Bagh Road, Morar, Gwalior, as a tenant since the time of the grandfather of respondent no.3. Now, the landlord of the house is respondent no.3. According to the appellant, respondent no.3 attempted to illegally evict the appellant from his rented house with the help of anti-social elements who came to his house armed with weapons on 8.11.1986. Respondent No. 3 along
H with his men started dismantling the house of the appellant without prior

permission and/or notice to him. The appellant was seriously injured when he tried to obstruct them from dismantling the house. The appellant lodged an FIR No.654/86 under Section 147/307 IPC against respondent no.3 and his men. A charge-sheet was filed against respondent no.3 and his men under Section 147/307 IPC and then the trial commenced.

It may be pertinent to mention that after some time the Public Prosecutor filed an application under Section 321 of the Code of Criminal Procedure for the withdrawal of the prosecution. The learned Additional Sessions Judge granted permission to withdraw the prosecution on the application filed by the Public Prosecutor. It was urged by the appellant that respondent no. 3, being a former Member of Parliament, managed to get an order from the government directing the Public Prosecutor to withdraw the criminal prosecution.

The appellant is aggrieved by the order of withdrawal of the prosecution against respondent no. 3. The appellant's main grievance is that respondent no. 3, after a lapse of number of years, had filed a writ petition before the High Court and obtained an order by which the Court directed the Superintendent of Police, Gwalior to take action for registering the case and conduct an enquiry/investigation in accordance with law.

It may be pertinent to mention that the appellant had preferred a criminal revision petition before the High Court against the order passed by the learned Additional Sessions Judge, Gwalior granting consent for withdrawal of the prosecution on the application of the Public Prosecutor under section 321 of the Code of Criminal Procedure. Section 321 of the Code of Criminal Procedure reads as under:

> "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, -
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> (a) If it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;
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> (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

A respect of such offence or offences:

Provided that where such offence-

(i) was against any law relating to a matter to which the executive power of the Union extends, or

B (ii) was investigated by the Delhi Special Police Establishment under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or

(iii) involved in the misappropriation of destruction of, or damage to, any property belonging to the Central Government, or

C

(iv) was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty,

and the prosecutor in charge of the case has not been appointed by D the Central Government he shall not, unless he has been permitted by the Central Government to do so, move the Court for its consent to withdraw from the prosecution and the Court shall, before according consent, direct the Prosecutor to produce before it the permission granted by the Central Government to withdraw from the prosecution."

E According to the scheme of section 321 Cr.P.C., the Public Prosecutor at any stage before the judgment can move the Court for withdrawal of prosecution. The High Court was not oblivious of the fact that an application under Section 321 Cr.P.C. had to be carefully scrutinized and ensured that no extraneous consideration had prevailed in moving such an application. The F High Court also took note of the fact that the proceedings under section 107 Cr.P.C. were initiated between the parties. In the criminal revision petition, relevant observations of the High Court are reproduced as under:-

"Now coming back to the given case, the complainant and the accused party both were also proceeded against by the State as the preventive G action was taken under Section 107 Cr.P.C., therein, the petitioners statement on oath was recorded as quoted above which does not attribute the act of causing of injuries to accused non-petitioners and further shows that injuries were received accidentally and in his version, there is also no explanation of the injuries, received in the same incident by the accused party, and in such circumstances if the H Prosecution was sought to be withdrawn, it cannot be said that any

favour was shown to any accused, or that such proposal came because the non-petitioner has been a Congress (I) Member of Parliament. If the non-petitioner has been a Member of Parliament, a people's representative, that should not put him to disadvantageous position. If on merits, the case deserved withdrawal, it could not be continued merely because amongst the accused one has been a Member of Parliament and that such withdrawal may be meant or taken as a favour to accused."

In the revision petition, the High Court observed as under:

"In the instant case the prosecutor himself has made reference to the Government letter, the copy of which has been filed on record and having perused it, I am satisfied that letter is only advisory in character and there is nothing to show that the Public Prosecutor was directed by the Government to move for withdrawal. A fair reading of the application for withdrawal shows that the Prosecutor applied his mind before moving the Court for withdrawal as he has so stated in the application, that :- 'In the totality of the circumstances and in the interest of general public, I deem it proper and necessary that the prosecution be withdrawn from the Court'. Therefore, he made the prayer for the Court's consent. From the above it is clear that the Prosecutor applied his mind to the issue, considered all the circumstances and came to the conclusion that prosecution be sought to be withdrawn, notwithstanding, that an accused has been a Member of Parliament, i.e., a people's representative."

On careful scrutiny of the impugned judgment of the High Court passed in the criminal revision petition No. 84 of 1989, it is abundantly clear that the court was not oblivious of its supervisory duty while adjudicating the application under section 321 Cr.P.C. filed by the Public Prosecutor. The relevant observations of the court are as under:

"There are social and economic reasons behind every crime. However, if the Public Prosecutor feels that withdrawal of prosecution fulfills the social purpose completely, then it will be proper to accept the application for withdrawal of prosecution. It is also to be seen that Public Prosecutor is not misusing his wisdom while withdrawing the case for prosecution."

The discretion to withdraw from the prosecution is that of the Public

A Prosecutor and none else, and so, he cannot surrender that discretion to any one. The Public Prosecutor may withdraw from the prosecution not merely on the ground of paucity of evidence but on other relevant factors as well in order to further the broad ends of justice, public order, peace and tranquility. The High Court while deciding the revision petition clearly observed that the material already available on record was insufficient to warrant conviction. B The flow of facts and the possible result thereof as noticed by the Public Prosecutor and appreciated by the Courts below, constituted the public interest in the withdrawal of the said prosecution. The High Court clearly came to the conclusion that the application for withdrawal of the prosecution and grant of consent were not based on extraneous considerations.

C

The appellant aggrieved by the order by which the court's approval was granted for withdrawal of the prosecution, preferred a criminal revision petition in the High Court. The High Court by a detailed and comprehensive judgment on 28.9.1991 dismissed the revision petition. The said judgment of the High Court became final and binding on the parties because the appellant had D never challenged that judgment. In other words, the appellant had no further surviving grievance against respondent no.3.

It is relevant to mention that only when respondent no.3, Surya Prasad filed a writ petition in the High Court in the year 2004 in which he had complained of inaction on the part of the police authorities in not registering E a case against the accused who had caused serious injuries to him and his sons, the High Court on the basis of the report of the Deputy Director General, Intelligence of the Central Intelligence Department, Gwalior, M.P. and averments incorporated in the writ petition, directed the Superintendent of Police, Gwalior to take action for registration of the case and conduct the F investigation and inquiry in accordance with law.

The appellant obviously was aggrieved by the said order of the High Court because he feared that now a case would be instituted against him, therefore, he had moved the High Court for recalling of the order dated 8.8.2005 passed in Writ Petition No. 1356 of 2004. The said application for G recalling the order was dismissed by the High Court. The appellant is now seriously aggrieved by the judgment and order passed in the writ petition and thereafter in the application for recall respectively, has preferred these appeals before this Court.

According to the appellant, the High Court ought not to have passed H any direction in the writ petition filed by respondent no. 3 because it was filed

after undue delay. A

The appellant urged that the High Court did not consider the incident which had taken place in the year 1986 in the proper perspective. He also contended that respondent no.3 himself was involved in a case emanating from the FIR No. 654 of 1986 under Section 307 I.P.C. registered against the respondent. In the backdrop of the case, according to the appellant, the impugned order of the High Court is unsustainable. B

It would be appropriate to mention at this juncture that the Additional Sessions Judge permitted withdrawal of the prosecution on an application moved by the Public Prosecutor under section 321 Cr.P.C. The appellant had moved a criminal revision petition before the High Court. The order of the High Court was passed in the year 1991 and the appellant never challenged that order in the last 15 years before this Court. Therefore, the appellant is wholly unjustified in making any grievance in respect of the prosecution which had already been withdrawn against the respondent no.3 a long time ago and the said order was affirmed by the High Court and no proceedings were taken against the said judgment of the High Court. C D

It may be pertinent to mention that the order of the High Court was primarily based on the report of the DIG, CID, Gwalior who had conducted the inquiry at the instance of the Court and submitted the report. On the basis of the inquiry report, the High Court directed the Superintendent of Police, Gwalior to take action for registration of the case and conduct the investigation and inquiry in accordance with law. E

We have carefully examined the impugned judgment of the High Court and heard the learned counsel for the parties at length. We do not find any infirmity in the order dated 8.8.2005 passed in Writ Petition No. 1356 of 2004 and the order dated 23.9.2005 in MCC No. 473 of 2005 passed by the Madhya Pradesh High Court of Judicature at Jabalpur, Bench of Gwalior. F

In the backdrop of the peculiar facts and circumstances of the case, no interference is called for. These criminal appeals is accordingly dismissed being devoid of any merit. G

D.G. Appeal dismissed.