

Sheonandan Paswan vs State Of Bihar And Ors. on 20 December, 1986

Equivalent citations: AIR1987SC877, 1987CRILJ793, JT1986(1)SC832, 1986(2)SCALE1099, (1987)1SCC288, [1987]1SCR702

Bench: P.N. Bhagwati, G.L. Oza, E.S. Venkataramiah, S. Natarajan, V. Khalid

JUDGMENT

P.N. Bhagwati, C.J. On behalf of himself and G.L. Oza, J. (Minority view)

1. This case has had a chequered history and it is necessary to state the facts in some

2. The fact-situation out of which this case arises relates to the affairs of a Cooperat

3. On the basis of these audit reports, the Registrar Co-operative Societies, at the ins

Much time has passed. On perusal of the file it appears that there is no allegation of d

May 16, 1975

Sd/- Jagannath Misra

4. In the margin opposite to this Order, the seal containing the despatch entry original

Please issue order for restoring the normal condition in the Bank after holding Annual G

May 14, 1974

Sd/- Jagannath Mishra

The explanation given on behalf of Dr. Jagannath Misra was that, as Chief Minister, he h

5. So far as the filing of the prosecution against Nawal Kishore Sinha and the other mem

6. The Estimates Committee to which the matter had been referred by the Speaker submitted

7. Sometime in May, 1977 as a result of fresh elections to the State Legislature, a new

8. One A.K. Datta, a senior advocate of the Patna High Court was appointed Special Public

Government of Bihar Law

(Justice) Department

From : Shri Ambika Prasad Sinha, Secretary

to Government, Bihar, Patna

To : The District Magistrate, Patna.

Patna, Dated 25th Feb. 1981.

Subject : In Connection with the withdrawal

of Vigilance P. S. Case No. 9(2)78

and P. S. case No. 53(8)78.

Sir,

I am directed to say that the State Government have decided to withdraw from prosecution

You are, therefore, requested to direct the public prosecutor to pray the Court after his

Please acknowledge receipt of the letter and also intimate this department about the result

Yours faithfully,

Sd. Illegible

Secretary to Govt. Patna.

Memo No. MW26/81, 1056 J.

Patna, dated 25th February, 1981

Copy forwarded to Vigilance Department for information.

Shri Lallan Prasad Sinha thereupon filed an application in the Court of the Chief Justice

- (1) Lack of prospect of successful prosecution in the light of evidence.
- (2) the implication of the persons as a result of political and personal vendetta,
- (3) inexpediency of the prosecution for the reasons of the State and public policy, and
- (4) the adverse effects that the continuation of the prosecution will bring on public interest.

The application after setting out these grounds proceeded to elaborate them in the following manner:

...That I have therefore gone through the case diary and the relevant materials connected with the case.

That it is in public interest that the prosecution, which has no reasonable chance of success, should be discontinued.

The application for withdrawal was opposed by Sheonandan Paswan, a member of the Bihar Legislative Assembly.

9. Sheo Nandan Paswan thereupon filed Criminal Revision Application No. 874 of 1981 against the order of the District Judge.

10. Since the High Court rejected the revision application in limine, Sheo Nandan Paswan filed a Review application before this Court.

11. Sheo Nandan Paswan thereupon filed a Review application before this Court. But on the day of the hearing, he did not appear. Applying the well-settled principles governing a review petition and giving my very anxious consideration to the facts and circumstances of the case,

and in the result the learned Judge passed an order admitting the review petition and directing the prosecution to proceed.

12. There was one contention of a preliminary nature advanced by Mr. Nariman on behalf of the State.

13. We must concede that no reasons appear to have been given by the Review Bench for al

14. The learned Counsel on behalf of Dr. Jagannath Misra also raised another contention

15. There was also one other contention urged on behalf of Dr. Jagannath Misra with a vi

16. It was then contended on behalf of Dr. Jagannath Misra that Sheonandan Paswan was a
If the use of power is for the fulfilment of a legitimate object, the actuation or cata

17. It is undoubtedly true that the prosecution against Dr. Jagannath Misra was initiate
The contention that the power cannot be exercised by the succeeding ministry has been a

These observations afford a complete answer to the contention urged on behalf of Dr. Jag

18. The learned Counsel on behalf of Dr. Jagannath Misra also contended that the prosecu

19. That takes us to the merits of the question debated before us, namely, whether the l

321. Withdrawal from prosecution - The Public Prosecutor or Assistant Public Prosecutor

(a) if it is made before a charge has been framed, the accused shall be discharged in re

(b) if it is made after a charge has been framed, or when under this Code no charge is r

Provided that where such offence-

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

(ii) was investigated by the Delhi Special Police Establishment under the Delhi Police E

(iii) involved the misappropriation or destruction of, or damage to, any property belong

(iv) was committed by a person in the service of the Central Government while acting or

and the Prosecutor in charge of the case has not been appointed by the Central Government.

This section corresponds to Section 494 of the old Criminal P.C., 1898, and it incorporates the same.

The Court has swung from narrow grounds to broad ones in different decisions from time to time.

20. Now one thing is certain that no unfettered or unrestricted power is conferred on the Public Prosecutor.

21. The same scheme has been followed by the Legislature while conferring power on the Public Prosecutor.

22. It is also necessary to point out that the law has fashioned another safeguard against the exercise of power by the Public Prosecutor.

23. There was one major question debated before us in regard to the position of the Public Prosecutor.

These observations seem to suggest that the prosecution for an offence is the function of the State. The appellant's Advocate later during the course of the argument conceded that there is no objection to this.

This Court also seemed to accept in *State of Orissa v. C. Mohapatra* (supra) that the power of prosecution is a function of the State.

We cannot forget that ultimately every offence has social or economic cause behind it and the law must take account of it.

(italics are ours).

This position seems to obtain until 1978 so far as the decided cases are concerned.

24. But in 1978 the trend changed when in *Balwant Singh v. State of Bihar* the view that the statutory responsibility for deciding upon withdrawal squarely vests on the public prosecutor was affirmed.

This decision for the first time made the Public Prosecutor autonomous of the Executive.

25. The same view was reiterated by Krishna Iyer, J., speaking on behalf of the Court, in *Balwant Singh v. State of Bihar*.

The learned Judge strongly deprecated the action of the District Magistrate in directing the Public Prosecutor to prosecute. The jurisprudence of genuflexion is alien to our system and the law expects every repository of power to be used for the benefit of the people.

This case also, like the earlier one in *Balwant Singh v. State of Bihar* (supra), introduced a new principle.

26. But then again there was a slight shift in this position in the latest decision in R

Whilst at one point it said that it shall be the duty of the Public Prosecutor to inform

(emphasis is ours)

The Court recognised that the Government has a role in the administration of criminal ju

An elected Government, sensitive and responsive to the feelings and emotions of the peop

(emphasis is ours).

and proceeded to add that the Public Prosecutor may act on the advice of the Government

Where large and sensitive issues of public policy are involved he must if he is right mi

(Emphasis ours)

The majority Judges however took a different view in the present appeal when it was hear

It will thus be seen that the position in law in regard to the degree of autonomy enjoye

27. Now there can be no doubt that prosecution of an offender who is alleged to have com

28. Now let us consider the question as to what are the grounds on which the Public Pros

In the past we have often known how expedient and necessary it is in the public interes

It will thus be seen that the Public Prosecutor cannot maintain an application for withd

29. The first qualification is that where a charge has been framed by the Court either u

30. The second qualification which we must introduce relates to a situation where a char

If, upon considering the police report and the documents sent with it under Section 173

Now when a warrant case instituted on a police report comes before the Court, the Court

31. We may also reiterate what was pointed out by this Court in *State of Orissa v. C. Moh*
These are broadly the considerations which can be brought under the rubric of public ju

32. When the application for consent to the withdrawal from the prosecution comes for co

33. If we apply these principles to the facts of the present case, it is clear that the

34. It is no doubt true that if there is not sufficient evidence to sustain the prosecut

35. We accordingly allow the appeal, set aside the Order made by the Chief Judicial Magi

Venkataramiah, J. (Majority view)

36. I have gone through the judgments of Bhagwati, C.J. and Khalid, J. which are pronoun

37. At the outset it should be stated that merely because a Court discharges or acquits

38. Since the orders of the Special Judge, of the High Court and of Bahrul Islam, J. and

It will appear clear from the above discussion that the documentary evidence mentioned a

As far as Respondent No. 3 (Nawal Kishore Sinha) and Respondent No. 4 (Jiwanand Jha) are

39. The three circumstances put up against the accused in this case are (i) that Jiwanan

40. As regards the first of these two circumstances Tulzapurkar, J. observes : "Admitted

41. As regards the ante-dating of the order dated 16-5-1975 it may be noticed that Tulza

42. The passing of the two orders one on 16-5-1975 on the note sheet and the other on bu

43. In fact about 23 criminal cases have been launched against Naval Kishore Sinha and o

44. I respectfully agree with the legal position flowing from Section 321 of the CrPC as

1. Under the scheme of the Code prosecution of an offender for a serious offence is primarily a function of the Public Prosecutor.
2. The withdrawal from the prosecution is an executive function of the Public Prosecutor.
3. The discretion to withdraw from the prosecution is that of the Public Prosecutor and not of the Court.
4. The Government may suggest to the Public Prosecutor that he may withdraw from the prosecution.
5. The Public Prosecutor may withdraw from the prosecution not merely on the ground of public interest but also on the ground of expediency.
6. The Public Prosecutor is an officer of the Court and responsible to the Court.
7. The Court performs a supervisory function in granting its consent to the withdrawal.
8. The Court's duty is not to reappreciate the grounds which led the Public Prosecutor to withdraw from the prosecution.

We may add it shall be the duty of the Public Prosecutor to inform the Court and it shall

45. In the circumstances of this case I find it difficult to say that the Public Prosecution was negligent.
46. A person may have been accused of several other misdeeds, he may have been an another person's enemy or a person who has committed a crime which is very serious.
47. Judged by the well-settled principles laid down by this Court in State of Bihar v. Ram Narain [1960] AIR 181 (SC), the Public Prosecution was not negligent.
48. Before leaving this case I may refer to another circumstance which is rather disturbing.
49. The Review Petition was admitted after the appeal had been dismissed only because Naresh Kumar Singh was a minor at the time of the trial.
50. Having considered all aspects of the case, I agree with the decision of Khalid, J. a

Khalid, J. (On behalf of himself and Natrajan, J.) (Majority view)

51. I regret I cannot persuade myself to agree with the Judgment now pronounced by the l

52. This appeal had an unpleasant history. I am grieved at the turn of events in this case. I, therefore, admit the review petition and direct the re-hearing of the appeal.

The learned Judge who gave this order justified his conclusion with the following observations. In view of the limited scope of the present proceeding I do not consider it necessary to

In paragraph 15, the learned Judge directed as follows:

Accordingly, I further direct that the appeal be re-heard immediately after the decision

The other Judges agreed with this.

53. Thus the Bench that heard the review petition did not disclose in the order the reasons

54. One incontrovertible fact is that the earlier order was not in terms set aside. Admittedly

Order 47, Rule 1, C.P.C., deals with review in civil matters. Article 137 of the Constitution

That the Judgment was not set aside can be concluded from one important fact. One of the

It is left to us now, the unpleasant task to unravel this mystery and to divine the mind

55. This matter was heard at length. The stand taken by the appellant is that the earlier

56. The appeals referred to this Bench do not raise any questions of constitutional law. Special leave granted in both the matters. In view of certain decisions referred to at

It is this order of reference and the direction by the Bench that heard the review petition

57. It is not necessary to deal at length with the facts leading to this appeal. The background

58. The appellant and respondent No. 2 belonged to the rival political parties. The appeal

Consequent upon a mid term poll to the Lok Sabha in March, 1977, there was a change of Ministry

59. The charge-sheet filed by the State of Bihar against the respondents on 19th February

60. There was a change of Ministry in Bihar in June, 1980 and the second respondent beca

61. The application for withdrawal and the order granting consent are assailed on the fo

(1) The withdrawal was unjustified on merits.

(2) It was against the principles settled by this Court in various decisions governing th

(3) Neither the public prosecutor nor the Special Judge applied their mind in the applic

(4) Shri L.P. Sinha was not competent to apply for withdrawal since Shri A.K. Datta's ap

(5) In the circumstances of the case Shri Sinha did not function independently but was i

62. I will dispose of question No. 4 first. It is not necessary to consider in detail th

63. The real question that has to be answered in this case is whether the executive func

64. Section 321 needs three requisites to make an order under it valid : (1) the applica

I find that all the three requisites are satisfied here. The question is whether the fun

65. The public prosecutor should normally be credited with fairness in exercise of his p

66. The Chief Judicial Magistrate was acting as the Special Judge. In his order giving c

67. Section 321 gives the public prosecutor, the power for withdrawal of any case at any

68. While construing Section 321, it is necessary to bear in mind the wide phraseology u

69. The old Code contained a section which enabled the Advocate General to inform the Hi

Section 333, which was deleted consequent on the discontinuance of original criminal tri

Section 321 reads as follows:

321. Withdrawal from prosecution - The Public Prosecutor or Assistant Public Prosecutor

(a) if it is made before a charge has been framed, the accused shall be discharged in re

(b) if it is made after a charge has been framed, or when under this Code no charge is re

This Section enables the Public Prosecutor, in charge of the case to withdraw from the p

70. The section gives no indication as to the grounds on which the Public Prosecutor may

71. The Court's function is to give consent. This section does not obligate the Court to

72. It would be useful to compare the scope of the Court's power under Section 321 with

203. Dismissal of complaint.

If, after considering the statements on oath (if any) of the complainant and of the witn

Section 245(1) deals with the power of the Magistrate in discharging an accused when no
If, upon taking all the evidence referred to in Section 244, the Magistrate considers,

This section gives the Magistrate, in cases where he considers that the accused should b

Section 245(2) enables the Magistrate to discharge an accused "at any previous stage" of
Nothing in this section shall be deemed to prevent a Magistrate from discharging the ac

An order of discharge under either of the two sub-sections can be sustained only if the

Section 257 in Chapter 20, deals with trial of summons cases by a Magistrate and provide
257. Withdrawal of complaint - If a complainant, at any time before a final order is pa

The wording of this section is also significantly different from Section 321. When a com

Section 258, Cr. P.C. in the same chapter deals with the power of Magistrate to stop proceedings. - In any summons case instituted otherwise than by complaint, the Magistrate may at any stage without pronouncing any judgment or order, stop the proceedings if he is satisfied that there is no sufficient ground for proceeding.

This section deals with the stopping of proceedings at any stage without pronouncing any judgment or order.

It is thus clear that the scheme of the above Sections differ from Section 321.

The scope of Section 321 can be tested from another angle and that with reference to Section 321.

These two sub-sections use the expression "with the permission of the Court" and "with the sanction of the Court".

I referred to these sections only by way of illustration to emphasise the distinction between them.

73. There is no appeal provided by the Act against an order giving consent under Section 321.

An order passed under Section 321 comes to this Court by special leave, under Article 136 of the Constitution.

74. Section 321, Cr. P.C. is virtually a step by way of composition of the offence by the accused.

75. Since Section 321 does not give any guideline regarding the grounds on which a withdrawal may be made.

Ram Naresh Pandey's case is a land mark case which has laid down the law on the point whether the Magistrate has discretion to stop proceedings. His discretion in such matters has necessarily to be exercised with reference to such material as is before him.

This decision was approved by this Court in M.N. Sankaranarayanan Nair v. P. V. Balakrishnan. ...In the State of Bihar v. Ram Naresh Pandey, it was pointed out by this Court that the Magistrate must exercise his discretion judiciously.

76. I will now briefly refer to some other cases cited to understand how courts consider the exercise of discretion.

In the case of Bansi Lal v. Chandan Lal, this Court followed its earlier decision which was in the case of State of Bihar v. Ram Naresh Pandey.

In State of Orissa v. Chandrika Mohapatra, the application for withdrawal was made on the ground that the accused was a minor. It is difficult for us to understand how the High Court could possibly observe in its order that the Magistrate has exercised his discretion judiciously.

When the Magistrate states in his order that he has considered the materials, it is not necessary for him to state the grounds on which he has exercised his discretion.

In Balwant Singh v. State of Bihar, this Court felt unhappy when the public prosecutor applied for special leave to appeal against an order of withdrawal.

In Subhash Chander v. State ,this Court upheld the consent given for withdrawal since a

In Rajendra Kumar Jain v. State ,this Court had to deal with two sets of cases - one rel

77. All the above decisions have followed the reasoning of Ram Naresh Pandey's case) an

It is in the light of these decisions that the case on hand has to be considered. I find

Now, I propose to quickly rush through the facts of the case to make the discussion comp

78. When the matter was first heard bythis Court, the documents produced were profusely
The learned Counsel fairly concedes that he does not take much reliance on oral evidenc

On this concession, the learned Judge proceeded to consider the factual details pressed
Before proceeding further, it is pertinent to mention that in his application before th

I respectfully agree with this approach.

79. We have a few documents on which reliance has been placed by counsel on both sides i

(a) Report of the Reserve Bank of India;

(b) Audit report of the Special Divisional Co-operative Audit Officer; and

(c) The report of the Estimates Committee of the Bihar Legislative Assembly.

In none of the three reports has the second respondent been named either as a conspirator

80. One important piece of evidence that is pressed into service against the second resp

81. The second piece of evidence relates to the alleged forgery. The gravamen of the cha

82. The appellant is admittedly a political rival of respondent No. 2. There is no love

83. I have deliberately refrained from considering the factual details of the case becau

On a careful consideration of the facts and circumstances of the case, I hold that this

Natrajan, J.

84. I agree.

ORDER

85. In accordance with the opinion of the majority the appeal shall stand dismissed.