Supreme Court of India
R.M Tewari, Advocate vs State (Nct Of Delhi) & Ors on 20 February, 1996
Equivalent citations: 1996 AIR 2047, 1996 SCC (2) 610
Author: J S Verma
Bench: Verma, Jagdish Saran (J)

PETITIONER:
R.M TEWARI, ADVOCATE

Vs.

RESPONDENT:
STATE (NCT OF DELHI) & ORS.

DATE OF JUDGMENT: 20/02/1996

BENCH:
VERMA, JAGDISH SARAN (J)
BENCH:
VERMA, JAGDISH SARAN (J)
VENKATASWAMI K. (J)

CITATION:
1996 AIR 2047 1996 SCC (2) 610
JT 1996 (2) 657 1996 SCALE (2)389

ACT:

HEADNOTE:

JUDGMENT:

AND CRIMINAL APPEAL No. 250 OF 1996

(arising out of Special Leave Petition (Crl.) No 701 of 1995) Govt. of N.C.T., Delhi V.

Judge, Designated Court II (TADA) AND CRIMINAL APPEAL NO. 251 OF 1996

(arising out of Special Leave Petition (Crl.) No. 1268 of 1995) Mohd. Mehfooz V.

Chief Secretary & Anr.

J U D G M E N T J. S. VERMA. J. :

Leave granted in special leave petitions. In Kartar Singh etc. vs. State of Punjab etc., (1994) 3 SCC 569, the Constitution Bench while upholding the constitutional validity of the provisions in the Terrorist and Disruptive Activities (Prevention) Act, 1987 (for short "the TADA Act") except Section 22 therein, noticed the general perception that there was some misuse of the stringent provisions by the authorities concerned. To prevent any possible misuse of the stringent provisions, the Constitution Bench suggested a strict review of these cases in its observations made as under :

> "In order to ensure higher level of scrutiny and applicability of TADA Act, there must be a screening Committee or a Review Committee constituted by the Central Government consisting of the Home Secretary, Law Secretary and other secretaries concerned of the various Departments to review all the TADA cases instituted by the Central Government as well as to have a quarterly administrative review, reviewing the States' action in the application of the TADA provisions in the respective States, and the incidental questions arising in relation thereto. Similarly, There must be a Screening or Review Committee at the State level constituted by the respective States consisting of the Chief Secretary, Home Secretarys Law Secretary,Director General of Police (Law and Order) and other officials as the respective Government may think it fit, to review the action of the enforcing authorities under the Act and screen the cases registered under the provisions of the Act and decide the further course of action in every matter and so on."

(at page 683) It appears that in compliance with the above observations of this Court in Kartar Singh (supra), a Screening Committee or a Review Committee was constituted by the Government in several States including Delhi. A High Power Committee under the Chairmanship of the Chief Secretary of Delhi reviewed the prosecutions made under the TADA Act and the Government of Delhi conveyed its approval to the Director of Prosecution, Delhi for deletion of the charges under the TADA Act in the specified criminal cases pending before the Designated Court. The learned Special Additional Public Prosecutor filed applications in the Designated Court for withdrawal of charges under the TADA Act in all those cases pending in the Desionated Court. It appears that the only reason assigned for withdrawal of charges under the TADA Act by the learned Public Prosecutor was the recommendation of the High Power Committee which was constituted to review the cases in accordance with the observations of this Court in Kartar Singh. The Deasignated Court dismissed those applications taking ths view that administrative decisions cannot interfere with the working of the judicial system. Apparently, the view taken is that a mere administrative decision taken on the basis of the recommendation of the Review Committee is not sufficient to permit withdrawal of a criminal prosecution pending in a court of law.

The appeals by special leave challenge the orders of the Designated Court and the writ petition by an advocate, in public interest, is for a direction to the Designated Court to permit withdrawal of all prosecutions recommended by the Review Committee.

The scope of Section 321 of Code of Criminal Procedure, 1973 (Cr P.C.) dealing with withdrawal from prosecution is settled by decisions of this Court. In State of Orissa vs. Chandrika Mohapatra and Others, (1976) 4 SCC 250, the scope was indicated as under :

> "Now the law as to when consent to withdrawal of prosecution should be accorded under Section 494 of the Code of Criminal Procedure is well settled as a result of several decisions of this Court. The first case in which this question came up for consideration was State of Bihar v. Ram Naresh Pandey, 1957 SCR 279 ... It was pointed out by this Court in that case that in granting consent to withdrawal from prosecution the court undoubtedly exercises judicial discretion, but it does not follow that the discretion is to be exercised only with reference to material gathered by the judicial method. . ...." (at pase 252) "It will, therefore, be seen that it is not sufficient for the Public Prosecutor merely to say that it is not expedient to proceed with the prosecution. He has to make out some ground which would show that the prosecution is sousht to be withdrawn because inter alia the prosecution may not be able to produce sufficient evidence to sustain the charge or that the prosecution does not appear to be well-founded or that there are other circumstances which clearly show that the object of administration of justice would not be advanced or furthered by going on with the prosecution. The ultimate guiding consideration must always be the interest of administration of justice and that is the touchstone on which the question must be determined whether the prosecution should be allowed to be withdrawn."

(at Page 253) In Sheonandan Paswan vs. State of Bihar & Others, [1983] 2 SCR 61, it was reiterated as under :

> "From the aforesaid enunciation of the legal position governing the proper exercise of the power contained in s. 321, three or four things become amply clear. In the first place though it is an executive function of the Public Prosecutor for which statutory discretion is vested in him, the discretion is neither absolute nor unreviewable but it is subject to the Court's supervisory function. In fact being an executive function it would be subject to a judicial review on certain limited grounds like any other executive action, the authority with whom the discretion is vested "must genuinely address itself to the matter before it, must not act under the dictates of another body must not do what it has been forbidden to do, must act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act and not must act arbitrarily or capriciously ... These several principles can conveniently be grouped in two main categories : failure to exercise a discretion, and excess or abuse of discretionary poser. The two classes are not, however, mutually exclusive." (vide de Smith's Judicial Review of Administrative Action 4th Edition pp. 285-86)."
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> (at pages 81-82) "Fourthly, the decision in R.K.

Jain's case (supra) clearly shows that when paucity of evidence or lack of prospect of successful prosecution is the ground for withdrawal the court has not merely the power but a duty to examine the material on record without which the validity and propriety of such ground cannot be determined. ' (at page 83) It is, therefore, clear that the Designated Court was right in taking the view that withdrawal from prosecution is not to be permitted mechanically by the court on an application for that purpose made by the Public Prosecutor. It is equally clear that the Public Prosecutor also has not to act mechanlcally in the discharge of his statutory function under Section 321 Cr.P.C. on such a recommendation being made by the Review Committee; and that it is the duty of the Public Prosecutor to satisfy himself that it is a fit case for withdrawal from prosecution before he seeks the consent of the court for that purpose.

It appears that in these matters, the Public Prosecutor did not fully appreciate the requirements offection 321 Cr.P.C. and made the applications for withdrawal from prosecution only on the basis of the recommendations of the Review Committee. It was necessary for the Public Prosecutor to satisfy himself in each case that the case is fit for withdrawal from prosecution in accordance with the settled principles indicated in the decisions of this Court and then to satisfy the Designated Court of the existence of a ground which permits withdrawal from prosecution under Section 321 C P Cr .

It would now be open to the Public Prosecutor to apply for withdrawal from prosecution under Section 321 Cr.P C in accordance with law on any ground available according to the settled principles; and on such an application being made, the Designated Court would decide the same in accordance with law.

The observations in Kartar Sinsh have to be understood in the context in which they were made It was observed that a review of the cases should be made by a High Power Committee to ensure that there was no misuse of the stringent provisions of the TADA Act and any case in which resort to the TADA Act was found to be unwarranted, the necessary remedial measures should be taken. The Review Committee is expected to perform its functions in this manner. If the recommendation of the Review Committee, based on the material present, is,that resort to provisions of the TADA Act is unwarranted for any reason which Permits withdrawal from prosecution for those offences, a suitable application made under Section 321 Cr.P.C. on that ground has to be considered and decided by the Designated Court giving due weight to the opinion formed by the Public Prosecutor on the basis of the recommendation of the High Power Committee.

It has also to be borne in mind that the initial invocation of the stringent provisions of the TADA Act is itself subject to sanction of the Government and, therefore, the revised opinion of the Government formed on the basis of the recommendation of the High Power Committee after scruting of each case should not be lightly disregarded by the court except for weighty reasons such as malafides or manifest arbitrariness. The worth of the material to support the charge under the TADA Act and the evidence which can be produced, is likely to be known to the prosecuting agency and, therefore, mere existence of Prima facig material to support the framing of the charge should not by itself be treated as sufficient to refuse the consent for withdrawal from prosecution. It is in this manner an application made to withdraw the charges of offences under the TADA Act pursuant to review of a case by the Review Committee has to be considered and decided by the Designated Courts.

The applications made under Section 321 Cr.P.C. not having been decided on the basis indicated above, fresh applications made in all such cases pursuant to the recommendations of the Review Committee or the revised opinion of the Government have to be considered and decided by the Designated Courts in the manner indicated above.

By an order dated 4.5.1995 made by this Court in these matters, it was directed that the Designated Court would consider the bail applications of all accused persons in respect of whom a prayer had been made for withdrawal of charges framed under the provisions of the TADA Act on merits in accordance with law, after excluding from consideration the accusation relating to charges under the provisions of the TADA Act. The bail granted to all such accused persons pursuant to that order would continue till conclusion of the trial in each case.

The writ petition and the appeals are disposed of accordingly.