Supreme Court of India
State Of Orissa vs Chandrika Mohapatra & Ors on 23 August, 1976
Equivalent citations: 1977 AIR 903, 1977 SCR (1) 335
Author: P Bhagwati
Bench: Bhagwati, P.N.

PETITIONER:
STATE OF ORISSA

Vs.

RESPONDENT:
CHANDRIKA MOHAPATRA & ORS.

DATE OF JUDGMENT23/08/1976

BENCH:
BHAGWATI, P.N.
BENCH:
BHAGWATI, P.N.
FAZALALI, SYED MURTAZA

CITATION:
1977 AIR 903 1977 SCR (1) 335
1976 SCC (4) 250
CITATOR INFO :
RF 1980 SC1510 (11)
R 1983 SC 194 (6,8,55,80,84,97)
R 1987 SC 877 (22,23,28,31,76)

ACT:
Code of Criminal Procedure (Act 2 of 1974), s. 494--Prosecution applying for withdrawal of prosecution--principles to be considered by Court in granting consent.

HEADNOTE:
The principles that should be kept in mind by the Court when giving consent to the prosecution under s. 494 Cr. P.C. 1973, for withdrawing the prosecution against the accused, are that the prosecution is not able to produce sufficient evidence to sustain the charge, or that the prosecution does not appear to be well rounded, 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. It is not sufficient for the prosecution merely to say that it is not expedient to proceed 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. No hard and fast rule can he laid down nor can any categories of cases be defined in which consent should be granted or refused. It must ultimately depend on the facts and circumstances of each case in the light of what is necessary in order to promote the ends of justice, because, the objective of every judicial. process must be the attainment of justice. [338 C--F]

Where, therefore, the Magistrate granted permission for withdrawal, because the prosecution averred that the evidence collected during investigation was not sufficient to sustain the charge against the accused and after satisfying himself, by perusing the case diary, that the averment of the prosecution was justified, the High Court was in error in setting aside the order of the Magistrate. In the instant case,. the High Court also erred in observing that the Magistrate had not perused the case diary, and that the Magistrate had accorded consent for withdrawal of the prosecution by accepting the prosecution case that it was inexpedient to proceed with the case. [338 H; 339 A]

Where, in the connected case, the Magistrate gave his consent for withdrawal on the ground that it was administratively considered by the State inexpedient to proceed with the case, though it was not a valid ground, no useful purpose would be served in compelling the prosecution to proceed with the case, because, both cases arose out of the same incident and the evidence in regard to both was admittedly the same. [339 C D]

Where the application made by the prosecution for withdrawal showed that the clash in which certain persons were injured arose out of rivalry between two trade unions, but that since the date of the incident calm and peace prevailed in the industrial undertaking, the Trial Court would be justified in granting consent for the withdrawal of the prosecution and the High Court would be in error in setting aside that order. In the present case, the State felt that it would not be conducive to the interests of justice to continue the prosecution, since the prosecution or conviction of the accused would rouse feelings of bitterness and antagonism and disturb the calm and peaceful atmosphere prevailing in the undertaking. Ultimately, every offence has a social or economic cause behind it and if the State feels that the elimination or eradication of the social or economic cause of the crime would be better served by not proceeding with the prosecution. the State should be at liberty to withdraw from the prosecution. [340 D-G]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 308310 of 1975.

(Appeals by Special Leave from the Judgments and Orders dated 18.1.1974 and 18.2.1974 of the Orissa High Court in Criminal Revision Nos. 708, 705 and 306/72 respectively).

G. Rath, Adv. General for the State of Orissa and B. Parthasarthi, for the appellant.

Nemo for the respondent.

The Judgment of the Court was delivered by BHAGWATI, J.--This group of 'three Criminal Appeals by Special Leave can be divided broadly into two categories: one category consisting of Criminal Appeals Nos. 308 & 309 of 1975 and the other, consisting of Criminal Appeal No. 310 of 1975. We are disposing of them by a common judgment since the question which arises for consideration in both sets of appeals is as to what is the extent of the power of the Court to give consent to withdrawal of prosecution and discharge of the accused under Section 494 of the Criminal Procedure Code.

Taking up first Criminal Appeals Nos. 308 and 309 of 1975, both these criminal appeals arise out of prosecutions launched in respect of offences alleged to have been com- mitted in the course of the same incident. The police filed a case against nine respondents in Criminal Appeals No.. 308 of 1975 charging them for offences under sections 143, 341 and 138 of the Indian Penal Code and Section 7 of the Criminal Law Amendment Act. It appears that before the trial could proceed against the respondents, an application was made by Court Sub-Inspector, who was in charge of the prosecution, praying for permission for withdrawal of the prosecution on two grounds. One ground was that it was considered inexpedient to proceed with the case while the other was that the evidence collected during investigation was meagre to proceed against the respondents and that no useful purpose would be served by proceeding with the case against them. The learned Magistrate took the view that it was not sufficient ground for according consent that the prosecution considered it inexpedient to proceed further with the case. But so far as the second ground was con- cerned, the learned Magistrate held that it was a valid ground and he did not rest this conclusion merely on the averment made by the Court Sub-Inspector but he also perused the case diary for the purpose of satisfying himself that the evidence was not sufficient to proceed against the respondents. The learned Magistrate felt that in this situation it was proper to accord consent for withdrawal of the prosecution, since compelling the State to go on with the prosecution in these circumstances would involve unnec- essary expenditure and waste of public time, which could otherwise be profitably utilised for other judicial work. The Learned Magistrate accordingly allowed the Court Sub-Inspector to withdraw the prosecution and discharged the respondents under. Section. 494 of the Criminal Procedure Code.

It seems that this order of the learned Magistrate accord- ing consent to the withdrawal came to the notice of the High Court and prima facie taking the view that it was not a proper order, the High Court suo moto issued notices to the State as well as the respondents calling upon them to show cause why this order should not be quashed and set aside. The matter was heard by a single judge of the High Court and the learned judge quashed and Set aside the order passed by the learned Magistrate with the follow- ing observations :--

"The Magistrate should have perused the case diary to see if there was sufficient material for framing of charge. But that he obviously did not choose to do. On the petition for withdrawal that it was inexpedient to proceed with the case he thought it prudent to acquit the accused persons whose prosecution would unnecessarily consume public money and time. Obviously the learned lower court has missed the point and has not approached the subject as he ought to."

The State thereupon preferred the present appeal with Special Leave obtained from this Court.

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 The State of Bihar v. Ram Naresh Pandey(1). 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 refer- ence to material gathered by the judicial method. Having said this, the Court proceeded to enunciate the principles which should ;guide the exercise of this discretion:

"In understanding and applying the Section, two main features thereof have to be kept in mind. The initiative is that of the Public Prosecutor and what the Court has to do is only to give its con- sent and not to determine any matter judicially." " ..... The Judicial function, therefore, implicit in the exercise of judicial discretion for granting the consent should normally mean that 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."

" ..... The Magistrate's functions in these matters are not only supplementary, at a higher level, to those of the executive but are intended to prevent abuse."

" ..... There is, however, a general concurrence at least in the later case--that the application for consent may legitimately be made by the Public Prosecutor for reasons not confined to the judicial prospects of the prosecution." (1) [1957] S.C.R. 279.

This Court had again occasion to consider this question in M.N. Sankarayarayanan Nair v.P. V. Balakrishnan & Ors. (1) where Jaganmohan Reddy, J. speaking on behalf of the Court, pointed out:

"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 prose- cuting agency would falsify the prosecution evi- dence or any other similar circumstances which it is difficult to predicate as they are dependent entirely on the facts and circumstances of each case. Nevertheless 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 gener- al policy or expediency unconnected with its duty to prosecute offenders under the law, directs the public prosecutor to withdraw from the prosecution and the Public Prosecutor merely does so at the behest."

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 sought 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 rounded 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. Now in the present case it is clear that according to the prosecution, the evidence collected during investigation was not sufficient to sustain the charge against the re- spondent and the learned Magistrate was satisfied in regard to the truth of this averment made by the Court Sub-Inspec- tor. It is difficult for us to understand how the High Court could possibly observe in its order that the Magis- trate had not perused the ease diary when in terms the learned Magistrate has stated in his order that he had read the ease diary and it was after reading it that be was of the opinion that the averment of the prosecution that the evidence was not sufficient was not ill-founded. Then again it is difficult to comprehend how the High Court could possibly say that the learned Magistrate accorded consent to the withdrawal of the prosecution on the ground that it was inexpedient to proceed with (1)[1972] (2) S.C.R. 599.

the case, when, in so many terms, the learned Magistrate rejected that ground and granted consent only on the second ground based on inadequacy of evidence. There is no doubt that the learned Magistrate was right in granting consent and the High Count committed a manifest error m setting aside the order of the learned Magistrate. We accordingly allow Criminal Appeal No. 208 of 1975, set aside the order of High Court and restore that of the learned Magistrate. Criminal Appeal No. 309 of 1975 also arises out of the same incident and the only difference between this Criminal Appeal and the earlier one is that the .respondents are different. It is no doubt true that in this case the Court Sub-Inspector based his application for consent to the withdrawal of the prosecution on the ground that it was administratively considered by the State inexpedient to proceed with the case and that, as already pointed out, would not be a valid ground. But since both the cases arise out of the same incident and the evidence in regard to both is admittedly the same, we do not think that any useful purpose would be served by compelling the prosecution to proceed with the case against the respondents in the present case. We accordingly allow Criminal Appeal No. 309 of 1975, set aside the order of the High Court and restore that of the learned Magistrate.

We now turn to Criminal Appeal No. 310 of 1975. The case out of which this appeal arises was the result of a serious rivalry between two trade unions in an industrial undertak- ing. It seems that the respondents who are members of one trade union tried to break up, a procession which was organised by the rival trade union and this led to a clash resulting in injuries to various persons. The respondents were charge-sheeted for various offences arising out this incident and they were committed to the Court of sessions to stand trial for offences under sections 147, 148, 149, 307 and

324 I.P.C. However, before the trial commenced, an application was made by the Public Prosecutor for the consent of the court to withdraw the prosecution against the respondents under section 494 of the Code of Criminal Proce- dure. There were five grounds on which the application was based. Of them two only are important. One was that the occurrence arose out of labour union trouble and since the date of the occurrence, there was industrial peace and harmony and the other was that withdrawal of the prosecu- tion would help maintain cordiality between the rival trade unions. The learned Sessions Judge was impressed by these two grounds and he granted consent to the withdrawal of the prosecution against the respondents. The reasons which weighed with him may be stated in his own words as follows:

"The grounds are that the incident had been the outcome of labour trouble. which has now sub- sided and that the Government, in order to maintain cordial relationship between the mineowners and good labour relationship wants to withdraw the case. The case, as if I find, arose on account of labour union rivalry and the occurrence place to sabotage a procession led by rival trade union. The intention being to keep labour trouble in abeyance, I accord consent of this court for the withdrawal" .....

The High Court in this case too acted suo moto and issued notices. to the State and the respondents calling upon them to show cause why the order of the learned Ses- sions Judge should not be set aside. The case was heard by the same learned judge who heard the earlier two criminal appeals and the learned judge set aside the order granting consent to the withdrawal of the prosecution and quashed the order of acquittal passed by the learned Magistrate and directed the sessions Judge to proceed with the trial of the case. Hence the present appeal by the State with Special Leave obtained from this Court.

We have already discussed the principles which should govern cases of this kind where an application is made by the Public Prosecutor for grant of consent to the withdrawal of prosecution under section 494 of the Criminal Procedure Code. We have pointed out that the paramount consideration in all these cases must be the interest of administration of justice. No hard and fast rule can be laid down nor can any categories of cases be defined in which consent should be granted or refused. It must ultimatelY depend on the facts and circumstances of each case in the light of what is necessary in order to promote the ends of justice, because the objective of every judicial process must be the attain- ment of justice. Now, in the present case, the application made by the Public Prosecutor clearly shows that the inci- dent had arisen out of rivalry between two trade unions and since the date of the incident calm and peaceful atmosphere prevailed in the industrial undertaking. In these circum- stances, the State felt that it would not be conducive to the interest of justice to continue the prosecution against the respondents, since the prosecution with the possibility of conviction of the respondents would rouse feelings of bitterness and antagonism and disturb the calm and peaceful atmosphere prevailing in the industrial undertaking. We cannot forget that ultimately every offence has a social or economic cause behind it and if the State feels that the elimination or eradication of the social or economic cause of the crime would be better served by not proceeding with the prosecution, the State should clearly be at liberty to withdraw from the prosecution. We are, therefore, of the view that in the present case the learned' Sessions fudge was right in granting consent to the withdrawal of the prosecution and the High Court was in error in

setting aside the order o[the learned Sessions Judge.

We accordingly allow Criminal Appeal No. 310 of 1975, set aside the order of the High Court and restore that of the learned Sessions. Judge.

V.P.S. Appeals, allowed.-