

2004 SCC OnLine Kar 408 : (2004) 6 Kant LJ 538 (DB) : (2005) 1 CCR 478

In the High Court of Karnataka at Bangalore
(Division Bench)

(BEFORE N.K. JAIN, C.J. AND AJIT J. GUNJAL, J.)

Raghunathgowda

Versus

The Director General of Police, Bangalore and Others

Writ Petition No. 34076 of 2004 (GM-PIL)

Decided on August 30, 2004

ORDER

1. Petitioner claiming to be a social worker and an agriculturist has filed this PIL petition with the allegation that by prosecuting the Former Chief Minister Smt. Uma Bharathi in a case which was filed in 1995 on the ground that in the alleged place where there was a prohibition, she provoked the mob to attack the Law Enforcement Authority and unfurled the National Flag. It is submitted that several cases filed against many people have been withdrawn except this case. It is farther submitted that the Government sought permission to withdraw this case also but it was not permitted. The Sessions Judge has permitted the State to withdraw its revision petition, and dismissed the petition filed by Smt. Uma Bharathi on the ground of limitation but however reserving liberty to APP or State Public Prosecutor to file fresh application under Section 321 of the Cr. P.C. He also submits that by causing arrest pending such case which is only political in nature, and continuation of such matter, will result in violence in the locality and the State, and disturb the law and order situation, and therefore, a direction may be issued to the State to withdraw the proceedings and the entire proceedings be quashed.

2. As per the direction dated 27-8-2004, the records which were summoned have been produced before us by the Registry.



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Sri Shantharaddi S. Mulimani, learned Counsel for the petitioner submits that on account of law and order problem at Hubli, he is not able to take the sale proceeds to A.P.M.C. office and a tense situation is there in the mind of public.

3. The learned Advocate General along with learned Government Advocate Smt. Shoba Patil and learned State Public Prosecutor, as per the statement of objections filed, have stated that the State will stand by its earlier decision to withdraw the cases against Smt. Uma Bharathi in public interest. It is also stated that earlier order dated 23-1-2002 has not been revoked. The Sessions Judge on account of technicalities has dismissed the matter without going into the substance of the application.

4. Sri S. Dore Raju, learned Counsel for Smt. Uma Bharathi is also present. It is submitted that he was conducting the cases from the beginning and that earlier warrants were recalled on the application made by the learned Counsel for her on 24-5-2003 for some time. He also submits that this time she has surrendered herself, and warrant was not executed. He prays that 3 days time may be granted to prefer a petition under Section 482 of the Cr. P.C. to quash the proceedings or to convert this

petition into criminal petition.

5. No notice has been to the 3rd respondent. Smt. Uma Bharathi is not a party in this PIL petition.

6. We have heard the learned Counsels for the parties, perused the amended petition, statement of objection filed today in the Court by the State and also the materials on record.

7. It is not necessary to go into the merits of the case. No time can be granted to move for conversion of this PIL into a petition under Section 482 of the Cr. P.C. as sought for by learned Counsel Sri S. Dore Raju. A perusal of the record reveals that as per the prosecution there was a prohibition to unfurl the National Flag and no National Flag had been hoisted there since 1980, and there was also a curfew on that day. Despite that Smt. Uma Bharathi made a speech in 1994 and provoked the mob to attack the Law Enforcement Authority. C.C. No. 563 of 1995 was filed in Judicial Magistrate First Class, II Court, Hubli. It is seen that charge-sheet for various offences including Sections 307 and 436 of the IPC (attempt to murder and mischief by fire) was filed against 22 accused on 22-2-1995. A6 to A9 died during the pendency of the case. It has also come on record that A1 (Uma Bharathi) was absent on a number of hearing dates between 1-9-1995 and 23-8-2003 about 48 times. NBW was issued 28 times. Proclamation, attachment and notice to surety were also ordered on several occasions. In the meanwhile, the Judicial Magistrate First Class by order dated 11-7-2002 refused to permit withdrawal of the case on the ground that two offences alleged are exclusively triable by the Court of Sessions and he can only commit the case and hence has no jurisdiction to accord permission. Against that order Cri. R.P. No. 76 of 2004 was filed by Smt. Uma Bharathi on 2-6-2004 and Cri. R.P. No. 88 of 2004 was filed by the State on 22-6-2004. Cri. R.P. No. 76 of 2004 was dismissed as barred by



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limitation and also on merits, holding that Judicial Magistrate First Class has jurisdiction to entertain a withdrawal application even if the offence is exclusively triable by Court of Sessions, but the application itself was not proper as the A.P.P. had not applied his mind. Cri. R.P. No. 88 of 2004 was dismissed as not pressed on the memo filed by the A.P.P. as per the oral direction of the State. A1, A2, A4 and A11 surrendered themselves on 25-8-2004 and have been remanded to judicial custody till 7-9-2004 on the ground that since no bail application is made, recalling of warrant against A1 does not arise. Be that as it may.

8. No doubt, this Court, in an appropriate case, can issue directions if there is gross violation of fundamental rights or if the issue involved touches the conscience of the Court but not personal gain, publicity or political motive.

9. It is well-settled that once the criminal proceedings are pending, to our mind, Judicial order passed in criminal proceedings pending in criminal cases, cannot be interfered with. The question of withdrawal of any criminal complaint depends upon the complainant and in this case upon the State. No direction can be issued in the garb of PIL. Criminal proceedings are already pending. It is seen that the Government has withdrawn all the ten cases pertaining to the alleged incident dated 15-8-1994. The Government has not revoked the earlier order dated 23-1-2002 which is intact. However, for want of proper application, the Sessions Court has not interfered and has given liberty to the State to file a fresh application.

10. Under the circumstances, without going into the merits of the case, in the interest of justice, it will be appropriate to issue direction to the Judicial Magistrate

First Class Court to consider the material facts and the substance of the earlier application after getting comments and reasons from the learned A.P.P. for withdrawal in public interest. No fresh application is necessary. Thereafter the Court on consideration of the materials on record can pass appropriate orders in public interest in accordance with law. The Judicial Magistrate First Class shall treat the earlier application as one under Section 321 of the Cr. P.C., since the substance of the application is to be looked into and not the provision of law under which it is filed. The Trial Court can also entertain the application for grant of bail. The parties are also free to approach for quashing of the proceedings under Section 482 of the Cr. PC., if so advised, in accordance with law. The Government is competent and duty-bound to maintain law and order. It is also expected that all concerned will co-operate in maintaining law and order. Copies of the order may be sent to the concerned Court and to the parties. The records may be despatched immediately.

11. With the above observation, this writ petition is disposed of.

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