

Hemant S Wani And Ors vs The State Of Maharashtra And Ors on 22 March, 2024

Author: N.J.Jamadar

Bench: N.J.Jamadar

1 smwp 1 of 2022.d

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
SUO MOTU WRIT PETITION NO.1 OF 2022

High Court on its Motion	...	Petitioner
versus		
The State of Maharashtra	...	Respondent
WITH		
WRIT PETITION NO.2184 OF 2022		
WITH		
WRIT PETITION NO.3649 OF 2022		
WITH		
WRIT PETITION NO.3805 OF 2022		
WITH		
WRIT PETITION NO.3808 OF 2022		
WITH		
WRIT PETITION NO.3728 OF 2022		
WITH		
WRIT PETITION NO.3810 OF 2022		
WITH		
WRIT PETITION NO.4842 OF 2022		
WITH		
WRIT PETITION NO.353 OF 2023		

Mr. Pranil Sonawane with Mr. Vinod Uttekar, Mr. Raj Chourasia, for Petitioners in
Writ Petitions.

Dr. Birendra Saraf, Advocate General with Mr. A.R.Patil, APP for State.

CORAM: DEVENDRA KUMAR UPADHYAYA, C.J. &
N.J.JAMADAR, J.

DATE : 22 MARCH 2024

P.C.

1. Heard the learned Counsel for the parties.

2. By an order dated 30 January 2024, we had indicated the sequence in which we proposed to examine the issues in the light of the orders passed by the 1 smwp 1 of 2022.doc Supreme in the case of Ashwini Kumar Upadhyay V/s. Union of India and Anr. 1 We had indicated that, at the first instance, it would be expedient to examine the justifiability of the withdrawal of the prosecution

during the period 16 September 2020 to 10 August 2021. We had, therefore, directed that the record and proceedings of the 22 cases mentioned in the table below paragraph 9 of the said order dated 30 January 2024, be called for to facilitate the examination as to whether the permissions to withdraw the prosecutions have been granted justifiably.

3. We have perused the record and proceedings in all the 22 cases, the details of which are as under :

Sr.No. Name of District Name of the Court No. of Charge Withdrawal of Prosecution since 16/09/2020 rd 1 Ahmednagar 3 Jt. CJSD & Addl. SCC 5053 of Sections 143, 341 CJM, Ahmednagar 2020 read with Section 149 of IPC and Sections 37(1)(3) and 135 of Maharashtra Police Act 2 Amravati Jt. CJJD & JMFC, SCC 416 of 2016 Sections 143, 341 Morshi of IPC and Section 135 of the Maharashtra Police Act, 19541 SCC 772 of 2017 Sections 143, 341, 149 of IPC and Section 135 of Maharashtra 1 WP(C) 699 of 2016 1 smwp 1 of 2022.doc Police Act, 1951 SCC 781 of 2017 Sections 143, 341, 149 of IPC and Section 135 of the Maharashtra Police Act, 1951 SCC 363 of 2018 Section 135 of the Maharashtra Police Act.

CJJD & JMFC, Toisa SCC 13 of 2016 Sections 143, 341 of IPC and Sections 37(1) and 135 of the Maharashtra Police Act.

3 Bhandara Addl. Chief Judicial SCC 2359 of 2019 Sections 143, 341, Magistrate, Bhandara 149 of IPC and Section 135 of the Maharashtra Police Act.

nd 4 Chandrapur 2 Jt. CJJD & JMFC, SCC 3087 of 2015 Section 143 of Chandrapur IPC and 135 of Maharashtra Police Act.

	CJM, Chandrapur	SCC 1408 of Section 341 of 2020	IPC and 135 of Maharashtra Police Act
		SCC 1409 of Section 143 of 2020	IPC and Section 135 of Maharashtra Police Act
5	Jalgaon	th 7 Jt. CJJD & JMFC, SCC 5468 of 2017 Section 135 of Jalgaon	Maharashtra Police Act.
			JMFC, Pachora, Jalgaon SCC 333 of 2018 Section 135 of Maharashtra Police Act.

SCC 296 of 2020 Section 135 of Maharashtra 1 smwp 1 of 2022.doc Police Act.

6 Nashik 2nd JMFC, Nashik SCC 433 of 2016 Section 135 of Maharashtra Police Act.

SCC 3439 of 2016 Section 135 of Maharashtra Police Act.

7 Raigad-Alibag CJM, Raigad - Alibag SCC 601 of 2020 Sections 143, 341, 188 of IPC and 135 of Maharashtra Police Act.

SCC 624 of 2016 Sections 141, 143, 341, 188 of IPC SCC 529 of 2021 Section 135 of Maharashtra Police Act 8 Ratnagiri CJJD & JMFC, Rajapur SCC 150 of 2018 Section 135 of Maharashtra Police Act 9 Solapur CJM, Solapur SCC 8366 of Section 188 of 2018 IPC and Section 135 of Maharashtra Police Act th 10 Thane 4 Jt. JMFC, Thane SCC 2383 of 2017 Section 135 of Maharashtra Police Act SCC 5124 of 2019 341, 336, 186, 143, 147, 504, 506, 427 and 120B of IPC and Section 135 of Maharashtra Police Act.

4. While giving consent under Section 321 under the Criminal Procedure Code, 1973 for the withdrawal of the prosecution, the Court has to see whether the application has been made in good faith, in the interest of public policy and justice and 1 smwp 1 of 2022.doc not to thwart or stifle the process of law. The Court after considering these facets of the case, will have to see whether the application suffers from such improprieties or illegalities as to cause manifest injustice if consent is given. (Sheonandan Paswan V/s. State of Bihar2).

5. In the order dated 10 August 2021, the Supreme Court observed that the power under Section 321 is a responsibility which is to be utilized in public interest, and cannot be used for extraneous and political considerations. This power is required to be utilized with utmost good faith to serve the larger public interest. The Supreme Court referred to the principles culled out in the case of State of Kerala V/s. K. Ajith and Ors.,3 as under :

"25. The principles which emerge from the decisions of this Court on the withdrawal of a prosecution under Section 321 of the CrPC can now be formulated:

25.1 Section 321 entrusts the decision to withdraw from a prosecution to the public prosecutor but the consent of the court is required for a withdrawal of the prosecution.

25.2 The public prosecutor may withdraw from a prosecution not merely on the ground of paucity of evidence but also to further the broad ends of public justice.

25.3 The public prosecutor must formulate an independent opinion before seeking the consent of the court to withdraw from the prosecution. 25.4 While the mere fact that the initiative has come from the government will not vitiate an application for withdrawal, the court must make an effort to elicit the reasons for withdrawal so as to ensure that the 2 (1987) 1 SCC 288 3 (2021) 17 SCC 318 1 smwp 1 of 2022.doc public prosecutor was satisfied that the withdrawal of the prosecution is necessary for good and relevant reasons.

25.5 In deciding whether to grant its consent to a withdrawal, the court exercises a judicial function but it has been described to be supervisory in nature. Before deciding whether to grant its consent the court must be satisfied that:

- (a) The 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;
- (b) The application has been made in good faith, in the interest of public policy and justice, and not to thwart or stifle the process of law;
- (c) The application does not suffer from such improprieties or illegalities as would cause manifest injustice if consent were to be given;
- (d) The grant of consent sub-serves the administration of justice; and
- (e) The permission has not been sought with an ulterior purpose unconnected with the vindication of the law which the public prosecutor is duty bound to maintain;

25.6 While determining whether the withdrawal of the prosecution subserves the administration of justice, the court would be justified in scrutinizing the nature and gravity of the offence and its impact upon public life especially where matters involving public funds and the discharge of a public trust are implicated; and 25.7 In a situation where both the trial judge and the revisional court have concurred in granting or refusing consent, this Court while exercising its jurisdiction under Article 136 of the Constitution would exercise caution before disturbing concurrent findings. The Court may in exercise of the well-settled principles attached to the exercise of this jurisdiction, interfere in a case where there has been a failure of the trial judge or of the High Court to apply the correct principles in deciding whether to grant or withhold consent."

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6. We have examined the record and proceedings of each of the above cases, keeping in view the aforesaid principles. We find that the Committee constituted by the State Government to examine the justifiability of the withdrawal of prosecutions had examined the cases in the light of the parameters framed under the Government Resolution. The committee had noted that there was no loss of life or damage to the public property. The learned APPs had presented the applications for withdrawal on the strength of the recommendations of the committee. Independent application of mind by the learned APPs is also evincible from the applications preferred by the respective APPs in these matters.

7. We have also examined the cases from the perspective of the nature and gravity of the offences. Most of the cases arose out of the breach of the prohibitory orders issued by the District Magistrates. A common thread which runs through all these cases is the public cause which the people's representatives and others professed to espouse. The majority of the cases arose out of the agitation

for the better price for farm produce, grant of subsidy to farmers, enhanced compensation for acquired lands and continued supply of electricity etc. It does not appear that any of the prosecutions was withdrawn by the State for an extraneous consideration.

8. Having examined the record, we are satisfied that the learned Magistrates, while giving consent for the withdrawal from prosecution, have justifiably exercised the discretion keeping in view the principles which govern the grant of 1 smwp 1 of 2022.doc consent for withdrawal from prosecution.

9. We, therefore, record our satisfaction and direct that record and proceedings of the above cases, be sent back to the concerned Courts immediately.

10. As indicated in the order dated 30 January 2024, on the next date, we will consider the aspect of issuing further directions to the Courts dealing with the cases involving former and sitting Members of Parliament and State Legislatures. We will also consider the Petitions which have been filed for leave of this Court for withdrawal of the prosecutions, post 10 August 2021.

11. Learned APP is directed to take instructions and file Affidavits in the Petitions in which the Affidavits have yet not been filed, within a period of three weeks.

12. Stand over to 19 April 2024 at 4.00 p.m. (N.J.JAMADAR, J.) (CHIEF JUSTICE) Signed by: S.S.Phadke Designation: PS To Honourable Judge Date: 27/03/2024 19:29:28