

Court No. - 14

Case :- APPLICATION U/S 482 No. - 7179 of 2022

Applicant :- Ram Murti Verma

Opposite Party :- State Of U.P. Thru. Prin. Secy. / Addl. Secy.
Home Lko. And Another

Counsel for Applicant :- Rakesh Kumar Chaudhary, Praveen Kumar
Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Shamim Ahmed, J.

1. Heard Shri Rakesh Chaudhary along with Shri Praveen Kumar Yadav, the learned counsel for the applicant, Dr. Gyan Singh, the learned A.G.A. for the State and perused the material available on record.

2. By means of the present application under Section 482 Cr.P.C. the applicant is challenging the proceedings of Criminal Case No. 169 of 2022, State Vs. Ram Murti Verma and others, arising out of Case Crime No. 233 of 2007, under Sections 143, 152, 283, 188 I.P.C. read with Section 7 of Criminal Law (Amendment) Act, Police Station Alapur, District Ambedkar Nagar and the order dated 28.07.2022 passed by the learned Chief Judicial Magistrate, Ambedkar Nagar, whereby the application under Section 321 Cr.P.C. has been rejected.

3. Learned counsel for the applicant submits that on 09.10.2007 the Station House Office of Police Station Alapur, District Ambedkar Nagar, lodged a first information report bearing Case Crime No. 233 of 2007, under Sections 143, 152, 283, 188 I.P.C. read with Section 7 of Criminal Law (Amendment) Act, alleging therein that he got an information that District President of a political party along with 50-60 party workers are demonstrating and blocking the road regarding murder of an Advocate of the same District, and due to aforesaid demonstration a long queue of vehicles is formed. The police personnel tried their best to persuade the demonstrators, however, they were adamant and are raising anti government slogans. The informant went on the spot and told the demonstrators that due to their demonstration traffic had completely stopped and the provisions of Section 144 Cr.P.C. are in application, thus you are violating the same, but they did

not close their demonstration and when police force from various police stations reached on the spot the demonstrators left the place.

4. Learned counsel for the applicant further submits that after lodging of the F.I.R., charge sheet was filed in a mechanical manner without considering the evidence on record by the Investigating Officer, whereupon the learned Magistrate took cognizance in a routine manner and issued summons against the applicant and other accused persons.

5. Learned counsel for the applicant further submits that since the matter was not a heinous crime affecting the general public at large but a political one where the applicant was falsely implicated in the case due to political vendetta and the allegations levelled in the F.I.R. were political one, where applicant and other accused persons demonstrated despite restraining order of the police, therefore, the State Government vide order dated 03.11.2014 requested the District Magistrate, Ambedkar Nagar to withdraw the instant prosecution against the applicant and for that purpose written permission was granted to the Prosecuting Officer by the Hon'ble Governor of the State of Uttar Pradesh. In pursuance to the aforesaid letter dated 03.11.2014, State has filed an application under Section 321 Cr.P.C. on 21.01.2016 for withdrawal of instant prosecution on valid reasons as no offence is made out against the applicant on the basis of ingredients of the F.I.R. and the case was false and fabricated due to political vendetta.

6. Learned counsel for the applicant further submits that the learned court below without considering the mandate rendered by the Hon'ble Apex Court in the case of **Ashwani Kumar Upadhyay Vs. Union of India and another : 2021 SCC OnLine SC 629**, while observing that the offence committed by the applicant is against the individual as well as against the State, rejected the application of prosecution filed under Section 321 Cr.P.C. vide impugned order dated 28.07.2022, without assigning any valid reason, thus, the impugned order is non speaking.

7. Further it has been argued that the finding as recorded by the court below is bad in law as it failed to consider the referred judgment of Hon'ble Apex Court in its entirety and totally misunderstood the same. The Public Prosecutor had filed the application under Section 321 Cr.P.C. before the court below in good faith and after careful consideration of the material available on record, he recorded his satisfaction that the withdrawal of

prosecution against the applicant is in larger public interest as well as in the interest of justice. The offences for which applicant is charged are not serious in nature and are punishable with the imprisonment of upto seven years and are triable by Magistrate. The entire prosecution case was lodged against the applicant and other co-accused due to political vendetta.

8. It has further been argued by the learned counsel for applicant that the learned court below while passing the impugned order has failed to consider whether withdrawal from prosecution would further cause of justice or not and whether it would be in public interest to allow the withdrawal from prosecution. The offences against the applicant are not made out and general allegations have been levelled against the applicant and other co-accused, of which none of the independent witnesses supported the prosecution case nor the police has recorded any evidence of independent witness.

9. Learned counsel for the applicant further submits that bare perusal of the application filed on behalf of prosecution shows that the Senior Public Prosecutor had considered the material available on record and applied its own independent mind before filing the said application, therefore, there was no occasion for the court below to exercise the power of review regarding the same, who has passed the impugned order in a cursory manner and against the mandate of law.

10. Learned counsel for the applicant further submits that the impugned order is non speaking, no reason has been assigned while rejecting the withdrawal application except one that it is against the individual as well as in the public interest, thus, the impugned order is bad in law and the learned Magistrate has also not considered the mandate of Section 321 Cr.P.C. in which none of the grounds exist for rejection of the withdrawal application, thus the impugned order was passed without application of law, therefore, the impugned order is liable to be quashed.

11. Learned counsel for the applicant further submits that the court below has also not considered this aspect whether to grant its consent to a withdrawal of a criminal case, and to grant its consent the court must be satisfied that Public Prosecutor performed its function properly, the application made by the Public Prosecutor is in good faith and in public interest, scrutinize the

gravity of offence etc., but in the instant case the court below failed to perform its supervisory function properly.

12. Learned counsel for the applicant lastly submits that in view of principles laid down in para-7 of the judgment of Hon'ble Supreme Court in **Ashwani Kumar Upadhyay (supra)**, the learned court below has failed to perform its supervisory function properly as it overlooked the principles laid down therein, and further not recorded any finding in the impugned order in view of the observations made by the Hon'ble Apex Court in the above referred judgment, and the court below has failed to apply the correct principles of law. The aforesaid para is being reproduced as under:

7. Learned amicus has drawn our attention to various instances across the country, wherein various State Governments have resorted to withdrawal of numerous criminal cases pending against M.P./M.L.A. by utilising the power vested under Section 321, Cr.P.C. It merits mentioning that the power under Section 321, Cr.P.C. 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. Recently, this Court in State of Kerala Vs. K. Ajith, (2021) SCC Online SC 510, held as under:

"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:

(i) 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;

(ii) 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;

(iii) The public prosecutor must formulate an independent opinion before seeking the consent of the court to withdraw from the prosecution;

(iv) 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 public prosecutor was satisfied that the withdrawal of the prosecution is necessary for good and relevant reasons;

(v) 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;

(vi) 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

(vii) 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."

13. In view of the discussion made above and considering the arguments as advanced by the learned counsels and the mandate of the judgment passed by the Hon'ble Apex Court in the above referred case, the matter requires consideration on facts and law, both.

14. Learned A.G.A. has accepted notice on behalf of State-opposite party No. 1.

15. Let notice be issued to the opposite party No. 2 through Chief Judicial Magistrate concerned by FAX, who will ensure service of notice upon the opposite party No. 2 and furnish report of service by the next date fixed.

16. Steps be taken within two weeks.

17. Learned A.G.A. as well as the opposite party No. 2 may file counter affidavit within three weeks. Rejoinder affidavit may be filed within two weeks, thereafter.

18. List this case on 07.12.2022 before appropriate Court.

19. Till the next date of listing, further proceedings of Criminal Case No. 169 of 2022, State Vs. Ram Murti Verma and others, arising out of Case Crime No. 233 of 2007, under Sections 143, 152, 283, 188 I.P.C. read with Section 7 of Criminal Law (Amendment) Act, Police Station Alapur, District Ambedkar Nagar, pending before the court below and order dated 28.07.2022 passed by the learned Chief Judicial Magistrate, Ambedkar Nagar in the above mentioned case, shall remain stayed.

Order Date :- 30.9.2022

Mustaqeem