

REVISIONAL CRIMINAL

Before D. Falshaw, C. J. and H. R. Khanna, J.

SURJIT SINGH,—*Petitioner.*

versus

RAJ PAL AND ANOTHER,—*Respondents.*

Criminal Revision No. 671 of 1965.

1965
December, 20th.

Code of Criminal Procedure (Act V of 1898)—S. 494—Public Prosecutor—Whether can withdraw from the prosecution of a case instituted upon a private complaint and pending before a magistrate despite complainant's objection.

Held, that a perusal of the different provisions of the Code of Criminal Procedure makes it plain that a clear distinction has been drawn between cases initiated on private complaint and cases instituted on police report, and while one mode of procedure has been prescribed for cases started on private complaint, a different mode of procedure has been laid down for cases instituted on police report. The Public Prosecutor nowhere comes into the picture in the conduct of cases instituted upon private complaint and as such he has no *locus standi* to withdraw from the prosecution of any person in a case instituted upon a private complaint despite the objection of the complainant to the withdrawal of the case.

Petition under sections 435, 439 of the Code of Criminal Procedure, for revision of the order of Shri Jasmer Singh, Sessions Judge, Barnala, dated 8th June, 1965, affirming that of Shri Solig Ram Bakhshi, Judicial Magistrate, First Class, Phul, dated 8th February, 1965, giving his consent to the withdrawal of the case under section 307/504, I.P.C., against Raj Pal accused.

M. R. SHARMA AND R. L. SHARMA, ADVOCATES, for the Petitioner.

K. S. KAWATRA, ASSISTANT ADVOCATE-GENERAL AND Y. P. GANDHI, ADVOCATES, for the Respondents.

JUDGMENT

Khanna, J.

KHANNA, J.—The question as to whether a Public Prosecutor can withdraw under section 494 of the Code of Criminal Procedure from the prosecution of a case pending before a Magistrate, instituted upon a private complaint, despite the complainant's objection to the withdrawal, arises for consideration in this criminal revision which has

been referred to the Division Bench in pursuance of my order dated September 15, 1965. It arises under the following circumstances :—

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Harnek Singh lodged a report at Police Station, Phul on 15th October, 1964, at 10.40 p.m. that while coming out of a cinema hall along with Surjit Singh at about 9.00 p.m., his (Harnek Singh's) foot accidentally struck against Avtar Singh who was at that time accompanied by Raj Pal. When four of them came out of the cinema building, Avtar Singh and Raj Pal quarrelled with Harnek Singh but the manager of the cinema intervened and separated them. Shortly thereafter when Harnek Singh and Surjit Singh reached near the Civil Hospital, Phul, they found Raj Pal and Avtar Singh present there. Raj Pal then fired a shot which hit Surjit Singh on his face while Avtar Singh fired a shot at Harnek Singh but missed the target. Gurbux Singh and Babu Ram were stated to have witnessed the occurrence.

The police investigated the above case and found that Raj Pal had not participated in the occurrence and had been implicated falsely on account of enmity. Before, however, the police could present a chalan under section 307, Indian Penal Code, against Avtar Singh alone, Surjit Singh instituted a complaint under sections 307, 504 and 323, read with section 34, of the Indian Penal Code, against both Raj Pal and Avtar Singh. The trial Magistrate after holding a preliminary enquiry summoned both the accused.

On 8th January, 1965, Shri Harbans Singh, Prosecuting Deputy Superintendent of Police, Bhatinda, presented an application to the trial Magistrate that Raj Pal accused was innocent and had been falsely involved in this case and this fact had come to light during the investigation. Prayer was, accordingly, made by the Prosecuting Deputy Superintendent of Police in his capacity as Public Prosecutor to withdraw from the prosecution of the case and for the discharge of Raj Pal. The above application was opposed by Surjit Singh and it was contended that Shri Harbans Singh, Prosecuting Deputy Superintendent of Police, did not exercise the powers of Public Prosecutor and had no *locus standi* to file that application. The application, it was further stated, was not *bona fide*. The learned Magistrate overruled Surjit Singh complainant's objections and gave his consent to the withdrawal of the case

Surjit Singh against Raj Pal accused. Revision filed by Surjit Singh
 v. against the order of the trial Magistrate was dismissed by
 Raj Pal and the learned Sessions Judge, Barnala. Surjit Singh there-
 another upon came up in revision to this Court.

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Section 494 of the Code of Criminal Procedure reads as under:—

“Any Police Prosecutor may, with the consent of the Court, in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and, upon such withdrawal,—

- (a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;
- (b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences.”.

When the revision came up for hearing before me, Mr. Sharma on behalf of the petitioner did not dispute the fact that Shri Harbans Singh, Prosecuting Deputy Superintendent of Police, Bhatinda, had been vested with the powers of a public Prosecutor. He, however, contended that as the present case had been started on a private complaint and the Public Prosecutor nowhere figured in the picture, he (the Prosecuting Deputy Superintendent of Police), had no *locus standi* to withdraw from the prosecution of the case under section 494 of the Code of Criminal Procedure. Reliance in this connection was placed upon Division Bench case *Ratanshah Kavasji v. Keki Behramsha and others* (1), wherein it was observed that the words “any Public Prosecutor may withdraw from the prosecution” in section 494 clearly implied that the prosecution referred to in that section must be one which was already being conducted by the Public Prosecutor, and that unless

(1) A.I.R. 1945 Bom. 147.

the Public Prosecutor, was already in charge of the prosecution, he could not withdraw from it. The above authority thus showed that the Public Prosecutor could not withdraw from the prosecution in a case instituted upon a private complaint. In *Ram Gobind Singh v. Lallu Singh and others* (2), it was held that "when a private complaint is filed and then the complainant is given permission to conduct the prosecution and be responsible for its conclusion, it was highly improper that after he had closed his evidence and the charge had been framed, the prosecution should suddenly drop without even consulting him."

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Mr. Gandhi on behalf of Raj Pal respondent referred to *Partap Chand v. L. Behari Lal and others* (3), wherein it was held that a Public Prosecutor could intervene in a criminal case instituted on a private complaint, and that the Public Prosecutor, who had taken charge of the case instituted on a private complaint, could withdraw the prosecution without consulting the complainant.

Reliance in the above cited *Partap Chand's case* was placed upon *Sher Singh v. Jitendranath Sen* (4), wherein it was held that a Public Prosecutor who was not in charge of the case before but appeared in the case only to withdraw the prosecution, was not illegal, though it might be irregular or unusual. In *Emperor v. A. Yankaya and other* (5), while dealing with a case on a private complaint it was observed that as the offence alleged was of a non-compoundable nature, only the Public Prosecutor could withdraw from the prosecution under section 494 of the Code of Criminal Procedure and not a private prosecutor.

In *The State of Bihar v. Ram Naresh Pandey and another* (6), their Lordships of the Supreme Court dealt with section 494 of the Code of Criminal Procedure, but the question as to whether a Public Prosecutor could withdraw from the prosecution in a case started on a private complaint was not gone into because the proceedings in the aforesaid case had begun on a police report. As the other authorities cited before me revealed a conflict of view, the case was referred to a larger Bench.

(2) A.I.R. 1924 All. 203.

(3) A.I.R. 1955 J. & K. 12.

(4) A.I.R. 1931 Cal. 607.

(5) 22 Cr. L.J. 753.

(6) A.I.R. 1957 S.C. 389.

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At the time of the hearing before us, the learned counsel for the parties have cited the authorities which were cited earlier before me when sitting in Single Bench, and the only additional authority cited by Mr. Gandhi is *Karu Main and others v. Kedar Lal* (7). This authority is, however, not of much help because it deals with a case of a private complainant who is permitted to conduct prosecution and wants to withdraw from the prosecution. It does not deal with a case like the present wherein the Public Prosecutor wants to withdraw the prosecution despite the opposition of the complainant. Perusal of the different provisions of the Code of Criminal Procedure makes it plain that a clear distinction has been drawn between cases initiated on private complaint and cases instituted on police report, and while one mode of procedure has been prescribed for cases started on private complaint a different mode of procedure has been laid down for cases instituted on police report. In Chapter XX of the Code, which relates to the trial of summons cases, sections 247 and 248 deal with cases started upon the filing of a complaint, while section 249 deals with cases instituted otherwise than upon complaint. In Chapter XXI, which relates to the trial of warrant cases by Magistrates, section 251A specifies the procedure to be followed in cases instituted on police report, while the other provisions of that Chapter prescribe the procedure to be followed in other cases. When a case is pending before a Magistrate and has been initiated on a police report, it is the State which normally arranges for the conduct of the prosecution. As against that, the case of a private complainant before a Magistrate is either conducted by him himself or by his duly authorised counsel. The Public Prosecutor nowhere comes into the picture in the conduct of cases instituted upon private complaint and as such he could have hardly any *locus standi* to withdraw from the prosecution of any person in that case instituted upon private complaint.

The Legislature has used the words "withdraw from the prosecution" in section 494 of the Code. The dictionary meaning of the word 'withdraw' is to take back or to draw back or to remove a thing from its place. The word 'withdraw' would go to show that the Public Prosecutor can withdraw from the prosecution only if he was already in charge of it. Where neither the Public Prosecutor nor for

(7) A.I.R. 1949 Patna 344.

the matter of that any agency of the State is in charge of the conduct of the prosecution, I fail to understand as to how the Public Prosecutor can withdraw from such a prosecution. To accept the view that a Public Prosecutor can withdraw from the prosecution even in cases instituted on private complaint would also lead to all kinds of abuses and mischiefs. Cases can always arise where, because of the status or influence of the person complained against, the police refuses to register a case against him and the aggrieved person has had to take recourse to the filing of a complaint. If the Public Prosecutor under directions of the District Magistrate or other Executive authority applies for withdrawal from the prosecution, the aggrieved party would be deprived of the only effective remedy. The fact that the withdrawal from the prosecution by the Public Prosecutor, can only be with the consent of the Court no doubt provides some safeguard but this may not prove to be sufficiently adequate in a number of cases. Apart from that, the considerations which would weigh with a Court in giving consent to the withdrawal by the Public Prosecutor from the prosecution would be substantially different from those which would weigh with it when dealing with a case on merits.

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I would, therefore, hold that a Public Prosecutor cannot withdraw under section 494 of the Code of Criminal Procedure from the prosecution of a case pending before a Magistrate, instituted upon a private complaint, despite the complainant's objection to the withdrawal of the case. The revision is, consequently, accepted and the order of the learned Sessions Judge, Barnala, as also that of the trial Magistrate allowing withdrawal of the case against Raj Pal accused, are set aside.

D. FALSHAW, C.J.—I agree.

Falshaw, C.J.

R.S.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

RAM DAYAL,—Petitioner.

versus

GULBHAR SINGH AND ANOTHER,—Respondents.

Civil Writ No. 2212 of 1965.

Punjab Gram Panchayat Act, 1952 (IV of 1953)—S. 13G—Gram Panchayat Election Rules (1960)—Rules 42—Ex parte order accepting election petition—Whether can be set aside by Prescribed Authority—Prescribed Authority—Whether becomes functus officio after deciding the election petition ex parte.

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