

Fateh Chand v. Balbir Singh (J. V. Gupta, J.)

(7) Since in the present case the landlord had held an appointment in the New Delhi Municipal Committee, he was certainly holding an appointment on a post in connection with the affairs of the State. It is not disputed that the Municipal Committee is governed and controlled by the Delhi Administration, Delhi, headed by a Lt. Governor. Thus, for all intents and purposes, the petitioner is fully covered by the definition of specified landlord. The finding of the Rent Controller in this behalf is wholly wrong and misconceived and is set aside.

(8) Since the permission to contest the application has been granted on the basis of the affidavit filed by the tenant that the landlord owns another suitable residential accommodation at Malerkotla and the same has more accommodation than the house in dispute, which fact has been denied by the landlord in his affidavit dated 6th September, 1986, therefore, before the tenant is allowed to contest the petition, he must file an additional affidavit giving complete details of the other suitable residential accommodation at Malerkotla with the landlord. Such an affidavit be filed within a week of the appearance of the parties, who are directed to appear before the Rent Controller on 15th February, 1987. In case no such affidavit is filed, the tenant will not be entitled to contest the petition. If such an affidavit is filed, the ejectment application will be tried from day to day till the hearing is concluded and application decided as contemplated under sub-section (6) of Section 18-A of the Act.

(1) The petition is disposed of accordingly with no order as to costs.

H.S.B.

Before I. S. Tiwana, J.

CHARANJIT,—Petitioner.

versus

STATE OF PUNJAB AND ANOTHER,—Respondent.

Criminal Misc. No. 6111-M of 1986

February 23 1987.

Code of Criminal Procedure (II of 1974)—Section 321—Decision for withdrawal of a prosecution taken only by the State Government—Decision aforesaid—Whether vests solely in the Public Prosecutor—Public Prosecutor—Whether can be guided solely by the

government without taking into account other relevant consideration for the withdrawal of criminal case.

Held, that in the matter of withdrawal of criminal cases under Section 321 of the Code of Criminal Procedure, 1974, the statutory responsibility for deciding upon withdrawal squarely vests in the Public Prosecutor and it is non-negotiable and cannot be bartered away in favour of those who may be above him on the administrative side. The Code is the master of the Public Prosecutor and he has to guide himself with reference to the Code only. So guided, the consideration which must weigh with him is whether the broader cause of public justice will be advanced or retarded by the withdrawal or continuation of the prosecution. If some policy consideration bearing on the administration of justice justifies withdrawal the Court may accord permission. The interest of Public justice being essentially of paramount consideration has to weigh with the Court. Hence, it has to be held that a Public Prosecutor must satisfy himself in accordance with the Code and he cannot be guided solely by a government decision in the matter without taking into account relevant considerations in the withdrawal of criminal cases. (Paras 2 and 3)

Petition Under Section 482 of Cr. P.C. praying that both the impugned orders of Shri S. K. Chopra, Additional Sessions Judge, Hoshiarpur dated 3rd September, 1986 and Shri N. S. Mundra, JMIC, Hoshiarpur, dated 3rd February, 1986 may kindly be set aside and the trial court be directed to proceed with the trial of the aforesaid case against respondent No. 2 in accordance with the law.

Criminal Misc. No. 6112 of 1986.

Petition Under Section 482 Cr. P.C. praying that the exemption from filing the certified copies of the order of the trial court and the grounds of revision may kindly be granted.

J. B. S. Gill, Advocate, for the Petitioner.

S. S. Bajwa, Advocate, for the Respondent-State.

Chattar Singh, Advocate, for the Accused.

ORDER

This is a prayer under section 482 Cr. P. C. to quash the order of the trial Magistrate and also the revisional order of the Additional Sessions Judge, Hoshiarpur, passed on an application made by

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the Public Prosecutor under section 321 Cr. P. C. The relevant contents of this application are;—

“It is submitted as under:—

1. That the above noted case is fixed for 21st January, 1986 for the evidence of prosecution.
2. That in the above noted case, keeping in view public tranquility and communal harmony at large, Government has decided to withdraw this case.
3. That it is therefore, prayed that prosecution may be allowed to withdraw from the prosecution keeping in view the interest at large.

Sd/- Assistant District Attorney,
Hoshiarpur.

(2) In the light of this application, the Magistrate though referred to some judgments of this Court as well as of the Supreme Court indicating as to what have to be the guiding factors in such matters, yet without analysing the same vis-a vis the facts of the case in hand, concluded the matter with the following observations:—

“I am fully satisfied that the request for withdrawal from prosecution of the case is fully justified. The prayer of the A. P. P. is, therefore, granted and the accused is acquitted. File be consigned to the record room.”

By now it has repeatedly been laid down by the Final Court that in such matters the statutory responsibility for deciding upon withdrawal of cases squarely vests in the Public Prosecutor and it is non-negotiable and cannot be bartered away in favour of those who may be above him on the administrative side. The Criminal Procedure Code is the only master of the Public Prosecutor and he has to guide himself with reference to the Criminal Procedure Code only. So guided, the consideration which must weigh with him is whether the broader cause of public justice will be advanced or retarded by the withdrawal or continuation of the prosecution. If some policy consideration bearing on the administration of

justice justifies withdrawal the Court may accord permission. The interest of public justice being essentially of paramount consideration has to weigh with the Court. (See *Balwant Singh and others Vs. State of Bihar* (1).

(3) As already pointed out the learned Magistrate, after noticing certain judgments, has not said a word as to what was the policy decision taken by the Government, how the facts of this case were covered by that policy and how the object of the said policy was going to be achieved by the withdrawal of the present case. Similarly the public Prosecutor also did not care to apprise himself of his responsibilities under the Code of Criminal Procedure. What appears to have weighed with him for the withdrawal of the case was a Government decision and not his own. I am, therefore, satisfied that the entire process of withdrawal has been gone through mechanically and without taking into consideration the relevant considerations.

(4) At one stage, it was sought to be argued by Mr. Chattar Singh, the learned counsel for the accused that the petitioner having failed in the revisional Court, the present petition under section 482 Cr. P. C. is not maintainable and this Court should be reluctant to exercise the inherent powers.

(5) In the light of conclusion recorded above, I find that it is one of the fittest cases wherein inherent powers should be invoked to set right the course of justice. I, therefore, allow this petition and while setting aside the order of the Magistrate dated 3rd February, 1986 and of the Revisional Court dated 3rd September, 1986, dismiss the application of the Public Prosecutor dated 21st January, 1986 filed under section 321 Cr. P. C.

(6) The net result is that the case would go back to the trial Court and the said Court would conclude the same in accordance with law. The respondents through their counsel are directed to appear before the Court on 20th March, 1987.

H.S.B.

(1) 1977 S.O.C. (Cr.) 633.