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BALWANT SINGH & ORS.

v.

STATE OF BIHAR

October 4, 1977

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[V. R. KRISHNA IYER, JASWANT SINGH AND D. A. DESAI, JJ.]

"Nolle prosequi"—Withdrawal from the prosecution u/s. 321 of the Criminal Procedure Code (Act II of 1974), 1973 (1898 Code, sec. 494), scope of—Duties of the court, the State and the Public Prosecutor, explained.

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The public prosecutor, in charge of a criminal case where charges had already been framed and pending before a Magistrate in the State of Bihar, was directed by the magistrate to withdraw the case at the instance of the State Criminal Intelligence Department on the ground that a second investigation made by the Police in the said matter was truer than the first which proved to be false. The Public Prosecutor acted on the direction and withdrew the case. Unable to get the relief from the High Court, the petitioners moved this Court for grant of special leave to appeal. Refusing the leave, the Court,

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HELD: (1) The sole consideration for the Public Prosecutor when he decides to withdraw from the prosecution is the larger factor of the administration of justice—not political favours nor party pressures nor like concerns. The interests of public justice being the paramount consideration they may transcend and overflow the legal justice of the particular litigation. [605AB]

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(2) Justice ordinarily demands that every case must reach its destination, not interrupted *en route*. If some policy consideration bearing on the administration of justice justifies withdrawal, the court may accord permission; not if no public policy bearing on the administration of justice is involved. The court has to be vigilant when a case has been pending before it and not succumb to executive suggestion made in the form of application for withdrawal with a bunch of papers tacked on. [606-B-C]

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(3) The statutory responsibility for deciding upon withdrawal squarely rests on the Public Prosecutor. It is non-negotiable and cannot be bartered away in favour of those who may be above him on the administration side. The Criminal Procedure Code is the only master of the Public Prosecutor and he has to guide himself with reference to 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 continuance of the prosecution. [605E-F]

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(4) It may be open to a District Magistrate to bring to the notice of the public prosecutor materials and suggest to him to consider whether the prosecution should be withdrawn or not. He cannot command where he can only commend. In the instant case (a) ordering the public prosecutor to move for withdrawal was not proper for a District Magistrate to do. It is not proper to have the Public Prosecutor ordered about; (b) The Public Prosecutor obeyed and not acted in the instant case and, therefore, the statutory responsibility vested in him was not properly exercised; (c) the surrender of discretion by the Public Prosecutor and the Magistrate are unfortunate; and (d) the State should not stultify the court by first stating that there is a true case to be tried and then make a *volte face* to the effect that on a second investigation the case has been discovered to be false. [605G-H, 606A, C, D]

CRIMINAL APPELLATE JURISDICTION : Special Level Petition (Crl.) No. 863 of 1977.

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From the Judgment and Order dated 28-3-1977 of the Patna High Court in Crl. Misc. No. 824 of 1977.

S. K. Sinha for the Petitioners.

The Order of the Court was delivered by

KRISHNA IYER, J. We are not inclined to grant leave for reasons which we may indicate briefly so that similar error may not be committed later.

The sole consideration for the Public Prosecutor when he decides to withdraw from a prosecution is the larger factor of the administration of justice—not political favours nor party pressures nor like concerns. Of course, the interests of public justice being the paramount consideration they may transcend and overflow the legal justice of the particular litigation. For instance, communal feuds which may have been amicably settled should not re-erupt on account of one or two prosecutions pending. Labour disputes which might have given rise to criminal cases, when settled, might probably be another instance where the interests of public justice in the broader connotation may perhaps warrant withdrawal from the prosecution. Other instances also may be given where public justice may be served by withdrawal even apart from the merits of the case. In the present case, the situation is totally different. Here is an ordinary criminal case where the first informant gave information to the police, investigation followed and charge sheet was filed. Thereafter, the learned magistrate who tried the case framed charges. Somehow---by a suspiciously mysterious process---the State Criminal Intelligence Department went into the veracity of the prosecution story by a second investigation. At that time the criminal case was already pending and the Magistrate was seized of the case. There was no reason for the police to start off on a second investigatory course. Moreover, the District Magistrate, on a report from the Superintendent of Police examined the matter and satisfied himself that the second investigation was truer than the first and therefore came to the conclusion that the case which the police brought before the Court was a false one and directed the Public Prosecutor to withdraw from the case. The statutory responsibility for deciding upon withdrawal squarely vests on the public prosecutor. 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 matter of the public prosecutor and he has to guide himself with reference to 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 continuance of the prosecution. As we have already explained, public justice may be a much wider conception than the justice in a particular case. Here, the Public Prosecutor is ordered to move for withdrawal. This is not proper for a District Magistrate to do. Indeed, it is not proper to have the public prosecutor ordered about. It is entirely within the discretion of the public prosecutor. It may be open to the District Magistrate to bring to the notice of the Public Prosecutor materials and suggest to him to consider whether the prosecution should be withdrawn or not. He cannot command where he can only command. In this case, the facts clearly bring out that the Public Prosecutor obeyed and not acted, and therefore the statutory responsibility vested in him was not properly exercised. If he comes to

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- A the conclusion, on the materials passed on to him that the case deserves to be withdrawn, he may initiate action in that behalf. Likewise, the Court's order in this case is a puzzle to us. The order says that records have been perused by the court; the District Magistrate has directed the Public Prosecutor; the Public Prosecutor has duly obeyed and the District Magistrate has also mentioned that the Superintendent of Police has reported to him "to withdraw the case".
- B The independent judgment brought to bear on the desirability or otherwise of according permission is nil. What is curious is that the Public Prosecutor says that the Court encores that public policy is not involved in this case for the administration of justice. That must be reason why the law must run its course. For justice ordinarily
- C demands that every case must reach its destination, not interrupted *en route*. If some policy consideration bearing on the administration of justice justifies withdrawal, the court may accord permission; not if no public policy bearing on the administration of justice is involved. We think that surrender of discretion by the Public Prosecutor and the Magistrate are unfortunate. The court has to be vigilant when a case has been pending before it and not succumb to executive suggestion made in the form of application for withdrawal with a bunch of papers tacked on. Moreover, the State should not stultify
- D the court by first stating that there is a true case to be tried and then make a *volte face* to the effect that on a second investigation the case has been discovered to be false. In these circumstances, we refuse leave.

S.R.

Leave refused.