

PETITIONER:
STATE OF PUNJAB

Vs.

RESPONDENT:
SURJIT SINGH & ANOTHER

DATE OF JUDGMENT:
06/01/1967

BENCH:
VAIDYIALINGAM, C.A.
BENCH:
VAIDYIALINGAM, C.A.
RAO, K. SUBBA (CJ)
SHAH, J.C.
SIKRI, S.M.
RAMASWAMI, V.

CITATION:
1967 AIR 1214 1967 SCR (2) 347
CITATOR INFO :
R 1983 SC 194 (17,50,55)

ACT:
Criminal Procedure Code, 1898, s. 494--Prosecution on private complaint being conducted by complainant--Public Prosecutor not in charge of case--Whether can file application--for withdrawal of case.

HEADNOTE:

The first respondent instituted a complaint before the Magistrate of certain offences under the Penal Code and the Magistrate, after holding a preliminary enquiry, issued summons to the second respondent and another accused. The Prosecuting Deputy Superintendent of Police, in his capacity as Public Prosecutor for the District, filed an application before Trial Magistrate under s. 494 Cr.P.C. for permission to withdraw from the prosecution of the case and for discharging the second respondent on the ground that it had come to his knowledge during an investigation of an earlier complaint that the second respondent was innocent and that he had been falsely involved in the case by the complainant. This application was opposed by the first respondent, but the trial Magistrate granted permission for the withdrawal of the case and the Sessions Judge, in revision, upheld this decision.

However, the High Court, in appeal, accepted the contentions of the first respondent and held that a Public Prosecutor cannot withdraw under s. 494 of the Code from the prosecution of a case pending before the Magistrate, instituted upon a private complaint despite the complainant's objection to the withdrawal of the case.

On a further appeal to this Court,

HELD: As the prosecution was being conducted by the complainant, the High Court was right in holding that the Public Prosecutor was not entitled to file an application for withdrawal. [360 E]

The reasonable interpretation to be placed upon s. 494 is that it is only the Public Prosecutor who is in charge of a particular case and is actually conducting the prosecution

that can file an application under that section seeking permission to withdraw from the prosecution. [360 C-D]
There was no force in the contention that the expression 'the Public Prosecutor in s. 494 is to be understood as referring to any person who is a Public Prosecutor, whether he is a Public Prosecutor appointed generally under s. 492(1) or for the purpose of a particular case, as contemplated under s. 492(2) of the Code. If any Public Prosecutor, who had nothing to do with a particular case, is held entitled to file an application under s. 494 the result will be very anomalous in that if there are two Public Prosecutors appointed for a particular Court, and one of the Public Prosecutors is conducting the prosecution in a particular case, and desires to go on with the proceedings, it will be open to the other Public Prosecutor to ask for withdrawal from the prosecution. [359 F; 360 A-B]

State of Bihar v. Ram Naresh Pandey [1957] S.C.R. 279; Queen Express v. Murarji Gokuldass I.L.R. (1889) 13 Bom, 389; State v. Atmam M. Ghosale, I.L.R. [1965] Bom. 103; referred to.
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Gulli Bhagat v. Narain Singh, I.L.R. [1923] 2 Pat. 708; Amar Narain v. State of Rajasthan A.I.R. 1952 Raj. 42; Pratap Chand v. Behari Lal, A.I.R. 1955 J. 12; distinguished; Sher Singh v. Jitendranath, A.I.R. 1931 Cal. 607, disapproved;
Ratansha Kavasji v. Behramsha Pardiwala, I.L.R. [1945] Bom. 141, approved.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 97 of 1966.

Appeal by special leave from the judgment and order dated December 20, 1965 of the Punjab High Court in Criminal Revision No. 671 of 1965.

Bishan Narain and R. N. Sachthey, for the appellant.
Nuruddin Ahmed, Anil Kumar Sablok and R. B. Datar, for respondent No. 1.

S. V. Gupte, Solicitor-General and A. G. Pudissery, for the Advocate-General for the State of Kerala.

-R. H. Dhebar and S. P. Nayyar, for the Advocate-General for the State of Gujarat.

O. P. Rana, for the Advocate-General for the State of Uttar Pradesh.

Naunit Lal, for the Advocate-General for the State of Assam.

A. V. Rangam, for the Advocate-General for the State of Madras.

The Judgment of the Court was delivered by Vaidialingam, J. The question that arises for consideration by special leave, is regarding the right of a an application, under s. 494 of the Code of Criminal Procedure (hereinafter called the Code), in respect of a complaint, filed by a private party, and which was being prosecuted by him as such.

The facts giving rise to this appeal are, briefly, as follows. Harnek Singh lodged a complaint at the Police Station, Phul, on October 15, 1964, at about 10.40 p.m., that while coming out of a picture house, along with Surjit Singh, first respondent herein, his foot accidentally struck against a third party, Avtar Singh, who was also coming out of the picture house, along with Raj Pal, the second respondent. According to the complaint, Avtar Singh and the second respondent picked up a quarrel with Harnek Singh but

they were pacified and separated by the Manner of the cinema, who intervened. It is also alleged that when later, Harnek Singh and the first respondent were near the Civil Hospital, Phul, the second

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respondent fired a shot at Harnek Singh. The Police appears to have invested this complaint and took the view that the second respondent had not participated in the occurrence and that he, has been falsely implicated on account of enmity. But, before the police actually filed a complaint before the Magistrate against Avtar Singh alone, the first respondent instituted a complaint before the Magistrate under ss.307, 504 and 323 read with S.34, I.P.C., against both Avthar Singh and the second respondent. The Magistrate, after holding a preliminary enquiry, issued summons to both the accused.

On January 8, 1965, the Prosecuting Deputy Superintendent of Police, Bhatinda, Shri Harbans Singh, filed an application, in his capacity as Public Prosecutor, before the trial Magistrate, under s. 494 of the Code, for permission to withdraw from the prosecution of the case and for discharging the second respondent. According to that officer, the second respondent was innocent and had been falsely involved, in the case, by the complainant and that this fact hid come- to his knowledge during the investigation.

The said application was opposed by the first respondent on two grounds : (1) that Shri Harbans Singh, Prosecuting Deputy Superintendent of Police, did not exercise the powers of a Public Prosecutor and therefore that he had no locus standi to file the application; and (2) that the application was not bona fide.. In consequence, the second respondent prayed that permission should not be granted for withdrawal. The trial Magistrate, by his order dated February 8, 1965, over ruled the objections raised by the first respondent and held that the Prosecuting Deputy Superintendent of Police was the Public Prosecutor for the entire district of Bhatinda, within whose Jurisdiction the Magistrate's Court at Phul was situated, and that the application was bona fide. In consequence, the Magistrate gave permission for the withdrawal of the case, as against the second respondent, 'who was one of the two accused.'

This order was challenged by the first respondent, in revision before the learned Sessions, Judge, Barnala. Apart from contending that the officer, who presented the application under s. 494 of the Code, for withdrawal, was not a public Prosecutor, the first respondent urged a slightly new ground of attack. That ground of attack was that, even assuming that the said Officer was a Public Prosecutor, nevertheless, he could not file an application under s. 494 of the Code, inasmuch as the Public Prosecutor was not in charge of the prosecution, which was being conducted by the complainant, a private party. The learned Sessions Judge held that the Officer, who filed the application under s. 494 of the Code, had been appointed as Public Prosecutor for the Magistrate's Court at Phul by the Government. The Sessions Judge also held that the said

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Public Prosecutor could intervene in a criminal case, instituted on a private complaint and such Public Prosecutor could be considered to be one who had taken charge of the case when he made an application to withdraw from the prosecution. In this view, both the objections, raised by the first respondent, were overruled. The learned Sessions Judge, on the merits, had also taken the view that, in

giving permission to withdraw from the prosecution, the Magistrate had exercised his jurisdiction judicially, and not in any arbitrary manner, and that he gave permission only after considering the reasons given by the Public Prosecutor in the application filed by him. Ultimately, the order of the trial Magistrate was confirmed by the learned Sessions Judge.

The first respondent, again, went up in revision to the Punjab High Court, challenging the two orders passed by the trial Magistrate and the learned Sessions Judge. A Division Bench of the Punjab High Court, consisting of Falshaw, C.J., and Khanna J., by their order dated December 20, 1965, have accepted the contentions of the first respondent herein and have, ultimately, held that a Public Prosecutor cannot withdraw, under s. 494 of the Code, 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 learned Judges, in consequence, directed the complaint filed by the first respondent, against both the accused, to be proceeded with. In the High Court, the first respondent has accepted the position that Shri Harbans Singh, Prosecuting Deputy Superintendent of Police, Bhatinda, has been vested with powers of a Public Prosecutor, and therefore he was a Public Prosecutor. But the main objection taken before the High Court to the legality of the orders of the learned Sessions Judge and the trial Magistrate, was that, as the case before the Magistrate had been started on a private complaint and the Public Prosecutor being nowhere in the picture, he had no locus standi to file an application under s. 494 of the Code. The High Court, after a review of the decisions placed before it, has held that when a case is pending before a Magistrate and has been initiated on a police report, it is the State that normally arranges for the conduct of the prosecution; but, in the case of a private complaint before a Magistrate, which is conducted by the complainant or by his duly authorized counsel, the Public Prosecutor does not come into the picture in the conduct of such cases, and therefore he has no locus standi to file an application under s. 494 of the Code in respect of such case. It is the further view of the High Court that when neither the Public Prosecutor, nor, for the matter of that, any agency of the State, was in charge of the conduct of the prosecution it is difficult to hold that the Public Prosecutor can withdraw from such prosecution. The learned Judges have also held that, if it is

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accepted that any public prosecutor can file an application under s. 494, in a case which is being proceeded with by the complainant, on a private complaint, it will lead to all kinds of abuses and mischief.

Before we advert to the contentions of the learned counsel for the appellant and for the respondents, and the Advocates-General of some States, who have intervened in the matter, on notice issued to them, it will be convenient to refer to the material provisions of the Code, dealing with Public Prosecutors, contained in Chapter XXXVIII, Part IX of the Code. Those provisions are ss. 492 to 495. Public Prosecutors are appointed by the State Government under s. 492(1), or by the District Magistrate or the Sub-Divisional Magistrate, under sub-s. (2) of s. 492. The appointment, under sub-s. (1) of s. 492, can be a general appointment, or for a particular case, or for any specified class of cases, in any local area. Under this provision, more than one officer can be appointed as Public Prosecutors by the State

Government. Under sub-s. (2), the appointment of the Public Prosecutor is only for the purpose of a single case. There is no question of a, general appointment of the Public Prosecutor, under sub-s. (2). Therefore, it will be seen, that a Public Prosecutor or Public Prosecutors, appointed either generally, or for any case, or for any specified classes of cases, under sub-s. (1), and a Public Prosecutor appointed specifically for a single case, under sub-s. (2), are all Public Prosecutors, under the Code.

Section 493 dispenses with the necessity of the Public Prosecutor having to file any written authority, when he is in charge of a particular case. That section clearly deals with a particular case and refers to the Public Prosecutor being in charge of that particular case. Under those circumstances, he is not required to file any written authority. That s. 493 deals with a single specified case and that it applies only to the Public Prosecutor, who is actually in charge of that case, is also made clear by the later part of s. 493. That is to the effect that if the Public Prosecutor is in charge of a particular case and, in that particular case, a private person instructs a pleader to prosecute any person, the Public Prosecutor alone is entitled to conduct the prosecution and the pleader appearing in that case for the private person is only to act under his instructions. The expression 'any person in any such case', occurring in the later part of s. 493, clearly leads to the conclusion that both the Public Prosecutor and the private person, through a pleader, are prosecuting the same case. Hence it is, in our view, that s. 493 deals with a particular case.

Section 494 deals with withdrawal from prosecution. The expression 'any case of which he has charge', occurring in s. 493, is not found in s. 494. But the expression 'withdraw from the

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prosecution of any person,' occurring in s. 494, in our opinion, contemplates that the Public Prosecutor, who files the application for withdrawal under that section, must be Public Prosecutor, who is already in charge of that particular case, in which the application is filed. Section 494 indicates the stage at which the Public Prosecutor can file an application for withdrawal and it also deals with the effect of such withdrawal. In cases tried by jury, the application must be filed before the return of the verdict and, in all other cases, before the judgment is pronounced. The effect of such withdrawal is also indicated in clauses (a) and (b) of s. 494.

We may, at this stage, note that an argument was attempted to be raised by learned counsel for the appellant that s. 494, when it speaks of an application being filed 'in other cases before the judgment is pronounced', clearly contemplates that in all cases, which are not tried by a jury, whether a Public Prosecutor is in charge or not, he is entitled to file an application under s. 494. In our opinion, this contention has only to be stated to be rejected. As we have already pointed out, s. 494 deals only with the stage when an application can be filed, depending upon whether it is a case tried by a jury-in which case it must be filed before the return of the verdict and, in other cases, before the judgment is pronounced. The expression 'in other cases' occurring in s. 494, must be understood in, this context and, if so understood, it only means that it takes in cases, other than those tried by jury.

We then come to s. 495. Under that section, power is given to a Magistrate, enquiring into, or trying any case, to

permit the prosecution to be conducted by any person, other than an officer of police below a rank to be prescribed by the State Government in that behalf; and such an officer, under s. 495 (2), is again clothed with the power of 'withdrawing from the prosecution, as provided by S. 494. It will be seen that s. 495 deals with a person permitted by the Magistrate to conduct the prosecution of a particular case. But for the specific provision made in sub-s. (2) of s. 495, such an officer will not have the power, which could be exercised by a Public Prosecutor, under s. 494. Sub s. (3) also indicates that a prosecution can be conducted by a private complainant, either by himself or by pleader. It will be noted, that both s. 492(2) and 495(1) deal with the appointment of a person to prosecute a particular case. The State Government can also appoint, under s. 492(1), a public Prosecutor for a particular case.

Mr. Bishan Narain, learned counsel for the appellant, has urged that the view taken by the learned Judges of the Punjab High Court, is quite opposed to the clear wording of s. 494 of the Code. Learned counsel points out that the said section is unambiguous, and that it gives an unqualified right to any person, who, in law, is a Public Prosecutor; to file an application to withdraw from the Prosecution.

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Counsel also points out that all offences affect the public and that all prosecutions are conducted by the State, through its officer, viz., the Public Prosecutor; and, even though the criminal prosecution, in the instant case, has been initiated on a private complaint by the first respondent, nevertheless, the prosecution, in law, is in the hands of the State and so the Public Prosecutor, appointed under s. 492 is entitled to intervene at any stage and file an application under s. 494.

Mr. Bishan Narain further points out that there is no limitation, prescribed by s. 494 of the Code, that the application for withdrawal can be filed only by a Public Prosecutor, who is already in charge of the case. Even assuming that it is necessary that the Public Prosecutor, who files an application under s. 494 of the Code, should have charge of the case in question, that is amply satisfied in this case. According to learned counsel, the first respondent has accepted that the Public Prosecutor, who filed the application in question, is the Public Prosecutor appointed by the State Government to conduct cases in the Magistrate's Court at Phul, where the first respondent's complaint was being enquired into. When the said Public Prosecutor intervened, in this case, by filing an application under s. 494, he must be considered to have taken charge of the case. If so, counsel points out, the Public Prosecutor amply satisfies the requirements of his being in charge of this case.

Counsel was also prepared to contend for the larger proposition that, even when a Public Prosecutor is appointed generally, by the Government, for any local area, under s. 492(1) of the Code, by virtue of his appointment as such Public Prosecutor, he must be considered to be in charge of every prosecution that is being conducted before that Court, irrespective of the fact whether he actually conducts the prosecution or not. Counsel also pointed out that a duty is cast, in law, on the Public Prosecutor, who is an officer of Court, to bring to the notice of the Court that there is no case which has to go to trial as against a particular accused and it is, for that purpose, that power is given to him, under s. 494, to file an application to withdraw from

the prosecution. Therefore, according to learned counsel, the High Court has taken a very narrow view, when it held that, in this case, the Public Prosecutor, who filed an application under s. 494, cannot be considered to be in charge of the case, inasmuch as it was initiated as a private complaint, filed by the first respondent, and was being conducted by him as such.

The learned Solicitor General, Mr. S. V. Gupte, has appeared on behalf of the Advocate-General of Kerala. The Advocates-General of Assam, Uttar Pradesh and Madras, were also represented before us, by counsel. Respondent No. 1 was represented by learned counsel, Mr. Nuruddin Ahmed. Counsel appearing for the Advocates-General of the States of Assam, Uttar Pradesh and Madras, have supported the appellant's contentions.

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The learned Solicitor General, on the other hand, has supported the views expressed by the Punjab High Court. He pointed out that sub-s. (1) of s. 492, of the Code, provides for the appointment of Public Prosecutors. The appointment of a Public Prosecutor, by a State Government, can be a general one, or, for a particular case, or, for any specified classes of cases, for any local area. Under sub-s. (2), the District Magistrate, or the Sub-Divisional Magistrate, is given power to appoint, in circumstances mentioned therein, any person not being an Officer of the Police below such rank as the State Government may prescribe in that behalf, to be Public Prosecutor for the purpose of any case. Therefore there can be two types of Public Prosecutors, as contemplated in sub-ss. (1) and (2), i.e., Public Prosecutors appointed generally, and Public Prosecutor appointed for any particular case. Section 493 of the Code dispenses with the filing of any written authority, by a Public Prosecutor appointed under sub-ss. (1) or (2) of s. 492. The learned Solicitor General points out that S. 493 deals with a Public Prosecutor, with specific reference to the particular case of which he has charge. It is pointed out that if the contention of the appellant that any Public Prosecutor can file an application under S. 494-even when he is not in charge of that case-is accepted, then the position will be that a Public Prosecutor, who is appointed for a particular case, say Case A, either by the State Government, under s. 492(1), or by the District Magistrate, under sub-s. (2) of that section, will become a Public Prosecutor and, as such, entitled to file an application, under s. 494, for permission to withdraw from the prosecution of Case B, with which he has nothing to do. That will lead, the Solicitor General points out, to very anomalous results, and such a situation is not contemplated by the provisions of the Code. The learned Solicitor points out that s. 494 must be interpreted in the light of s. 493 of the Code and, if so interpreted, it will follow that the Public Prosecutor, who is referred to, under s. 494, as being entitled to file an application to withdraw from the prosecution, can only be the Public Prosecutor who is actually in charge of that particular case. He points out that the expression 'withdraw from the prosecution', used in S. 494, shows that the Public Prosecutor is already in charge of that case. If he is not in charge of the case, in which the application under s. 494 is filed, there is no question of the Public Prosecutor withdrawing from the prosecution, in that case.

The learned Solicitor General also points out that the idea underlying s. 494 is that the Public Prosecutor, who is an

officer of Court and who is conducting the prosecution, would have considered the materials available in the case and formed an opinion, on that basis, to withdraw from the prosecution of any person. If a Public Prosecutor, who had nothing to do with the case, and who has not been in charge of that case, is allowed to step in and file an application under S. 494, in any case, the entire object and purpose

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for which that section has been enacted, the learned Solicitor points out, will be completely defeated. He also points out that no general power, as such, is intended to be conferred by s. 494, on all Public Prosecutors. He further urges that, inasmuch as a privilege or a right is given to an officer under s. 494, the scope of authority, conferred by that section, must be very strictly limited to serve the purpose for which that section has been enacted.

Mr. Nuruddin Ahmed, learned counsel appearing for the first respondent, has also supported in full, the contentions advanced by the learned Solicitor General. Counsel for the appellant points out that the scheme of the Code itself shows that a complainant is allowed to file a private complaint and prosecute the same. That may be necessary, according to learned counsel, when, for some reason or the other, the police do not file a complaint, implicating a particular person as an accused. In such cases, when the complainant himself prosecutes the complaint, learned counsel points out, the Public Prosecutor is nowhere in the picture and he cannot be considered to be in charge of the case, so as to give him a right to file an application under s. 494. Counsel also points out that s. 493, when it refers to a Public Prosecutor in conjunction with a case of which he has charge, it refers to the Public Prosecutor, not in the abstract, but to the Public Prosecutor who is actually in charge of a particular case. Under s. 494 also, counsel points out, the Public Prosecutor, who can ask for withdrawing from the prosecution, must be the one who is in charge of the particular case in which he asks for such permission from the Court. Therefore, according to Mr. Nuruddin Ahmed, in this case, when his client had filed a criminal complaint and was prosecuting the same, the public Prosecutor, who was nowhere in the picture, had no right to ask for withdrawal from the prosecution under S. 494 of the Code, as held by the High Court in the order under attack.

After giving due consideration to the contentions raised before us, and referred to above, in our opinion, the contentions of the learned Solicitor General and of Mr. Nuruddin Ahmed will have to be accepted. We have already referred to the relevant provisions of the Code and pointed out their salient features. We will refer, now, to some of the decisions placed before us by counsel for the appellant, Mr. Bishan Narain.

Before we refer to those decisions, however, it is necessary to advert to the decision of this Court in *The State of Bihar v. Ram Naresh Pandey*(1) where, after tracing the history of the present s. 494, the Court has observed that it is right to remember that the Public Prosecutor, though an executive officer, is, in a larger sense, also an officer of the Court and that he is bound to assist the Court

(1) [1957] S.C.R. 279.

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with his fairly considered view and the Court is entitled to have the benefit of the fair exercise of his function. But the question which is posed, in the present case, did not arise for consideration in that decision.

In *Queen Empress v. Murarji Gokuldas*(1), there are no doubt

observations to the effect that all offences affect the public and that in all prosecutions the Crown is the Public Prosecutor and that a proceeding is always treated as a proceeding between the Crown and the accused. In our opinion, these general observations will not, in any manner, assist the contentions of the appellant.

In *State v. Atmaram M. Ghosale*(2), the learned Judges have observed that it is very obvious to think that all prosecutions, however initiated, are always to be deemed as prosecutions by the State. That decision also does not advance the case of the appellant any further.

In *Gulli Bhagat v. Narain Singh*(3), the learned Judges had to consider, whether a permission granted under s. 494 of the Code, to the Public Prosecutor, to withdraw from the prosecution, can be challenged in revision, by a private party. Rejecting the revision, the learned Judges have, no doubt, observed that

"there is a deeper and indeed a fundamental reason for non-interference which turns upon the position of a private prosecutor in prosecutions for cognizable offences."

The learned Judges also state that the Crown is the prosecutor and the custodian of the public peace and if it decides to let an offender go, no other aggrieved party can be heard to object. A careful study of the facts, in that case, will show that the learned Judges were dealing with a case where the Public Prosecutor was conducting the prosecution and he was in charge of the particular case in which he asked for leave to withdraw the prosecution as against some of the accused, and leave was granted. That order, was challenged by a private party, by way of revision, before the High Court. That decision, again, does not assist the appellant.

In *Amar Narain v. State of Rajasthan*(4), the learned Judges had occasion to deal with a matter similar to the one that came up before the Patna High Court in *Gulli Bhagat's Case*(3). A private party had challenged, before the High Court, in revision, the order of the Magistrate permitting the public prosecutor to withdraw from the prosecution under s. 494 of the Code. That again was a case, as will be seen from the facts gathered from the judgment, in which the prosecution was launched by the State and it was also being

(1) I.L.R. (1889) 13 B om. 389.

(3) I.L.R. (1923) 2 Pat. 708.

(2) I.L.R. (1965) Bom. 103.

(4) A.I.R. 1952 Raj. 42.

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conducted by the Public Prosecutor and the Public Prosecutor filed an application under s. 494 for withdrawal from the prosecution and that was allowed, Wanchoo, C.J., in dismissing the revision petition of the private party, challenging the order of the Magistrate,, observed that the private party, under those circumstances, had no right to go to the High Court in revision. The learned Chief Justice also states that in a criminal case, it is the State which is in control of proceedings, particularly where the prosecution is launched at the instance of the State, and observes, at p. 43;

"In cases, therefore, in which the Public Prosecutor appears it is for him to decide whether he would continue with the prosecution or withdraw from it. If he decides to withdraw, he has the power to apply to the Court under s. 494 Criminal, P.C., for giving consent to his withdrawal. This power cannot,

in our opinion, be subject to the wishes of a third person even though he might be interested directly in the case."

The Rajasthan High Court, in the above decision, had no occasion to consider as to whether a Public Prosecutor, who is not in charge of a particular case, has got a right to apply under s. 494 of the Code. Therefore, this decision also, is not, in our opinion, in any way, helpful to the appellant.

In *Sher Singh v. Jitendranath*(1), the learned Judges had occasion to consider the question as to the legality of an application for withdrawal of prosecution filed by a Public Prosecutor, entering appearance for that purpose only. Ghose, J., expresses the view that such an application filed by a Public Prosecutor, who has not been in charge of the case, though not regular, cannot be considered to be illegal. On the other hand, Lord Williams, J., the other member of the Bench, was prepared to take the view that the action of the Public Prosecutor, in entering appearance simply for the purpose of withdrawal, though unusual, is neither illegal nor irregular. No doubt, this decision of the Calcutta High Court, *prima facie*, supports the contention of the appellant. But we are not inclined to accept the reasoning, adopted by the learned Judges, in this case.

In *Pratap Chand v. Bihari Lal*(2), the Public Prosecutor entered appearance, in a case instituted on a private complaint, which was being prosecuted by the said private complainant, and asked for withdrawal from the prosecution, under S. 494 of the Code, and that application was granted by the Additional District Magistrate. That order was challenged on the ground that the Public Prosecutor had no right to intervene in the proceedings, initiated on a private complaint, and ask for withdrawal from the prosecution and that,

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

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

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in any event, the Public Prosecutor should not have asked for such withdrawal without consulting the complainant. The learned Judges were not prepared to accept this contention and they held that the Public Prosecutor, in that case, had taken charge of the case, under instructions of the District Magistrate, on a date much earlier to the date when the application for withdrawal from the prosecution was made by the Public Prosecutor. On this ground, the learned Judges dismissed the revision filed by the private complainant. This decision, again, in our opinion, must be restricted to the facts of the case and as one based upon the finding that the Public Prosecutor had taken charge of the case long before the date on which he filed the application under S. 494. If that is so the Public Prosecutor can be considered to be in charge of the case in which he filed an application under S. 494. Therefore, this decision also, in our opinion, does not assist the appellant. But, if, on the other hand, the effect of this decision is to lay down, as is contended before us, that a Public Prosecutor, merely by virtue of his office, is entitled to file an application under S. 494, even in a case of which he is not in charge, in our opinion, that decision cannot be accepted as lying down the correct law.

Mr. Nuruddin Ahmed, learned counsel for the first respondent, has referred us to the observations of the Bombay High Court in *Ratansha Kavasji v. Behramsha Pardiuala*(1). In that case it will be seen that in respect of a complaint

filed by the police before a Magistrate, the Public Prosecutor applied for permission to withdraw the complaint and the Court granted the same and allowed the case to be withdrawn, and discharged the accused under S. 494 of the Code. Immediately after the withdrawal of the said complaint, a private complaint was filed by the revision-petitioner before the High Court, against the same accused, on the same facts and before the same Magistrate. The Magistrate dismissed the complaint on the ground that, as the police case on the same facts has been allowed to be withdrawn, the second complaint was not maintainable. This order of the Magistrate was challenged, in revision, before the High Court, by the complainant. No doubt, ultimately, the learned Judges set aside the order of the Magistrate and remanded the proceedings as, in their opinion, there has been no sufficient compliance with the provisions of S. 203 of the Code. But, it is necessary to note that, on behalf of the respondents before the High Court, one of the grounds urged, for not interfering with the order of the Magistrate, was that even the second prosecution, initiated by the private complainant, can, in law, be withdrawn by the Public Prosecutor. On this ground, it was further urged that the mere circumstance that a fresh complaint has been privately lodged by the revision-petitioner on the same facts as the police prosecution had been based, would not be sufficient ground for pro-

(1) I.L.R. 1945 Bom. 141.

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ceeding with the complaint. In rejecting this contention, the learned Judges observed, as follows :

"We may at once say that we do not agree with the contention that in the second case the Public Prosecutor or the Police Prosecutor could have withdrawn from the prosecution. The remarks that Mr. Thakor has relied on in *Queen Empress v. Murariji Gokuldas* (1888 13 Bom. 389) appear to have been made with reference to cases in which the prosecution is conducted by the Public Prosecutor. The words 'any Public Prosecutor may withdraw from the prosecution' in s. 494 clearly imply that the prosecution referred to must be one which is already being conducted by the Public Prosecutor and it seems clear to us that unless the Public Prosecutor is already in charge of the prosecution, he cannot withdraw from it, and that the Public Prosecutor was here not in charge of the second prosecution."

The learned Judges of the Bombay High Court quite rightly emphasised that an application under s. 494 can be made only when the prosecution referred to therein is one which is already being conducted by the Public Prosecutor and that, unless the Public Prosecutor is already in charge of the prosecution, he cannot withdraw from it. We are in entire agreement with these observations of the learned Judges of the Bombay High Court as, in our opinion, that is the correct interpretation to be placed on s. 494 of the Code. In our opinion the Public Prosecutor, who can file an application under s. 494 of the Code, must be the Public Prosecutor who is already in charge of the particular case in which that application is filed. We are not inclined to accept that contention of the learned counsel for the appellant that the expression 'the Public Prosecutor' in s. 494 is to be understood as referring to any person who is a Public Prosecutor, whether he is a Public Prosecutor

appointed generally, under s. 492(1) or for the purpose under of a particular 'case, as contemplated s. 492(2) of the Code. Section 492 only deals with the appointment of Public Prosecutors by the Government or by the District Magistrate, in circumstances mentioned therein and s. 493 specifically refers to the Public Prosecutor who is in charge of the case which is under enquiry, trial or appeal, when appearing and pleading before such Court. Section 493 only dispenses with the Public Prosecutor having to file any written authority. That section also makes it clear that if any private person is instructing a pleader to prosecute any person in any such case'-which must have reference to the case of which the Public Prosecutor is in charge-nevertheless the Public Prosecutor shall conduct the prosecution and the pleader is to act under his directions. Section 494 also, in our opinion, must refer only to the Public Prosecutor who is in charge of the particular case

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in which he makes a request to withdraw from the prosecution. Some of these aspects have been already adverted to by us earlier. If any Public Prosecutor, who had nothing to do with a particular case is held entitled to file an application under s. 494, in our opinion, the result will be very anomalous. For instance, if there are two Public Prosecutors appointed for a particular Court, and one of the Public Prosecutors is conducting the prosecution in a particular case, and desires to go on with the proceedings, it will be open to the other Public Prosecutor to ask for withdrawal from the prosecution. Similarly, a Public Prosecutor appointed for case A, before a particular Court, can, by virtue of his being a Public Prosecutor, file an application in case B, with which he has nothing to do, and ask for permission of the Court to withdraw from the prosecution.

The reasonable interpretation to be placed upon s. 494, in our opinion is that it is only the Public Prosecutor, who is incharge of a particular case and is actually conducting the prosecution, that can file an application under that section, seeking permission to withdraw from the prosecution. If a Public Prosecutor is not in charge of a particular case and is not conducting the prosecution, he will not be entitled to ask for withdrawal from prosecution, under S. 494 of the Code.

In the case on hand, it is found by the High Court, that the prosecution is being conducted by the complainant, viz. the first respondent herein, and the Prosecuting Deputy Superintendent of Police, Bhatinda, was nowhere in the picture, when he filed the application under s. 494 of the Code. The view of the High Court that such a Public Prosecutor is not entitled to file an application for withdrawal, in the circumstances is perfectly correct.

The appeal therefore fails and is dismissed.

R.K.P.S.

Appeal dismissed.

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