

PETITIONER:
SHRI ABDUL KARIM

Vs.

RESPONDENT:
THE STATE OF KARNATAKA & ORS.

DATE OF JUDGMENT: 07/11/2000

BENCH:
Y.K. Sabharwal, J.

JUDGMENT:

Y. K. SABHARWAL, J.

I have gone through the elaborate and learned judgment prepared by my brother Justice S.P. Bharucha. I respectfully agree that the orders granting consent on the special Public Prosecutor's Applications do not meet the requirements of Section 321 of the Code of Criminal Procedure (for short, 'Cr.P.C.') and the orders are bad in law. The questions raised in these matters have wide ranging repercussions regarding the scope of Section 321 Cr.P.C. and what is required to be considered by the Public Prosecutor before consent of court is sought under Section 321 to withdraw from the prosecution of any person. I record these additional reasons for concurring with decision arrived at by Justice Bharucha and Justice Mohapatra.

The facts in detail have been set out in the judgment of Justice Bharucha and it is unnecessary to repeat them except to briefly notice the broad admitted and/or well established facts for appreciating the points involved. They are as under :

(A) Veerappan is a dreaded criminal and despite various attempts over a number of years could not be apprehended.@@
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(B) Veerappan and his associates are alleged to be responsible for killing of a large number of people (over 100) including Police personnel, Forest personnel and others besides being responsible for causing injuries to a large number of people and loss of property to the tune of crores of rupees.

(C) Veerappan and his gang members hatched a conspiracy to kill Superintendent of Police, Mysore District, Shri Harikrishna and Sub-Inspector of Police of MM Hills Shri Shakeel Ahmed and other Police personnel who had been to nab Veerappan with a view to terrorise the Police force and to put fear of death into the minds of Policemen who were performing duty in attempting to arrest the wanted persons. Various charges relating to murder, ambush, attempt to overawe the Government of Karnataka, killing of elephants, smuggling of Sandal wood etc. from the forest, possession of arms and ammunition, opening of fire on task force personnel, have been framed against accused who are said to

be the associates of Veerappan. Cases filed against them are under the provisions of Terrorist and Disruptive Activities Act (TADA) and other penal provisions, i.e., Indian Penal Code, Arms Act and Explosive Substances Act.

(D) from their source information police authorities had learnt that Veerappan intended to kidnap Rajkumar during his visit to his farmhouse in Gajanoor. More than a year back, Director General of Police of the State of Karnataka had informed the Inspector General of Police of the State of Tamil Nadu requesting for adequate security arrangements being made for Rajkumar whenever he visited the said farmhouse.

(E) Rajkumar is a very popular film actor of Karnataka. In case any harm is caused to Rajkumar, there may be backlash on Tamils in Karnataka and it may lead to problems between the two linguistic communities in the States. The people may indulge in acts of violence.

(F) On 30th July, 2000, Veerappan abducted Rajkumar from his farm house along with three others. As of today, Rajkumar and one Nag esh are still in Veerappan's custody.

(G) No Police protection or security was provided when Rajkumar visited the farm house.

(H) Soon after the abduction of Rajkumar and others, the two State Governments decided to accept the demands of Veerappan to release those in respect of whom TADA charges and detention orders under the National Security Act have been withdrawn. The decision was taken in the meeting held on 4/5th August, 2000 between the Chief Ministers of the two States.

(I) Applications under Section 321 Cr.P.C. seeking consent of court to withdraw TADA charges were filed to facilitate ultimately the release of accused persons from judicial custody so as to meet Veerappan's demand. The arrangement was that once TADA charges are withdrawn, the accused in judicial custody will move bail applications in cases of offences under IPC and other penal enactments. The Public Prosecutor will concede and will not oppose the grant of bail. The court will grant the bail and, thus, accused will come out from judicial custody and, thus, this demand of Veerappan would be met.

Keeping in view the aforesaid facts, let me now revert to application filed under Section 321 Cr.P.C. The application filed under Section 321 has been reproduced in extenso in the judgment of Justice Bharucha. The application makes no reference whatsoever to any such arrangement as mentioned at (I) above. The main ground stated in the application is that in order to restore the peace and normalcy in the border area and among the people living in the border area and to maintain peace among the public at general and inhabitants of the particular village, the Prosecutor has decided to withdraw from the prosecution the accused charged of the offences punishable under Sections 3, 4 and 5 of the TADA. Abdul Karim, father of Shakeel Ahmed, opposed the application on various grounds, inter alia, stating in the objection petition that if the

cases against the hardcore criminals are withdrawn or if they are released on bail that may expose the families of the victims to terror unleashed by the TADA detenus, who may unleash terror and jeopardize public order and cause detriment to the general public interest. In reply to the said objections, instead of admitting that TADA charges are being withdrawn to facilitate grant of bail, the stand taken by the Public Prosecutor, inter alia, is that Veerappan and his associates will not be let out freely as they will be facing prosecution for other offences and, therefore, the submission that the State Government has yielded to blackmail tactics of outlaw Veerappan is not correct.

The Public Prosecutor has to be straight, forthright and honest and has to admit the arrangement and inform the court that the real arrangement is to ultimately facilitate the release of these accused from judicial custody by not opposing the bail applications after the withdrawal of TADA charges. The arrangement as set out above has neither been disputed nor is it capable of being disputed. It is well established that real purpose for withdrawal of TADA charges was to facilitate the grant of bail to the accused. In such circumstances, why the camouflage? Why it is not so stated in the application filed under Section 321? In fact, it is a deceit. These are the questions for which there is no plausible answer. No court of law can be a party to such a camouflage and deceit in judicial proceedings. The answer to these basic questions cannot be that the judge knew about it from the very nature of the case. Under these circumstances, it cannot be said that the application was made in good faith. The satisfaction for moving an application under Section 321 Cr.P.C. has to be of the Public Prosecutor which in the nature of the case in hand has to be based on the material provided by the State. The nature of the power to be exercised by the Court while deciding application under Section 321 is delineated by the decision of this Court in Sheonandan Paswan v. State of Bihar & Ors. [(1987) 1 SCC 288]. This decision holds that grant of consent by the court is not a matter of course and when such an application is filed by the Public Prosecutor after taking into consideration the material before him, the court exercises its judicial discretion by considering such material and on such consideration either gives consent or declines consent. It also lays down that the court has to see that the application is made in good faith, in the interest of public policy and justice and not to thwart or stifle the process of law or suffers from such improprieties or illegalities as to cause manifest injustice if consent is given. True, the power of the court under Section 321 is supervisory but that does not mean that while exercising that power, the consent has to be granted on mere asking. The court has to examine that all relevant aspects have been taken into consideration by the Public Prosecutor and/or by the Government in exercise of its executive function. Besides the eight questions noticed in the main judgment, the question and aspect of association of Veerappan with those having secessionist aspirations were also not considered. Further though it may have been considered as to what happened on 1st August, immediately after the abduction of Rajkumar, but what does not seem to have been considered is that those were spontaneous outburst and the authorities may have been taken unaware but what would be the ground realities when the law enforcing agencies have sufficient time to prepare for any apprehended contingency. The application and order under Section 321 is a result of

panic reaction by overzealous persons without proper understanding of the problem and consideration of the relevant material, though they may not have any personal motive. It does not appear that anybody considered that if democratically elected governments give an impression to the citizens of this country of being lawbreakers, would it not breed contempt for law; would it not invite citizens to become a law unto themselves. It may lead to anarchy. The Governments have to consider and balance the choice between maintenance of law and order and anarchy. It does not appear that anyone considered this aspect. It yielded to the pressure tactics of those who according to the Government are out to terrorise the Police force and to overawe the elected Governments. It does not appear that anyone considered that with their action people may lose faith in the democratic process, when they see public authority flouted and the helplessness of the Government. The aspect of paralysing and discrediting the democratic authority had to be taken into consideration. It is the executive function to decide in public interest to withdraw from prosecution as claimed. But it is also for the Government to maintain its existence. The self-preservation is the most pervasive aspect of sovereignty. To preserve its independence and territories is the highest duty of every nation and to attain these ends nearly all other considerations are to be subordinated. Of course, it is for the State to consider these aspects and take a conscious decision. In the present case, without withdraw consideration of these aspects the decision was taken to the TADA charges. It is evident from material now placed on record before this Court that Veerappan was acting in consultation with secessionist organisations/groups which had the object of liberation of Tamil from India. There is no serious challenge to this aspect. None of the aforesaid aspects were considered by the Government or the Public Prosecutors before having recourse to Section 321 Cr.P.C. With these additional reasons, I am in complete respectful agreement with the conclusion and opinion of my senior colleague Hon'ble Mr. Justice S.P. Bharucha.