

PETITIONER:
ABDUL KARIM ETC. ETC.

Vs.

RESPONDENT:
STATE OF KARNATAKA & OTHERS ETC. ETC.

DATE OF JUDGMENT: 07/11/2000

BENCH:
S.P. Bhuracha, & D.P. Mohapatra.

JUDGMENT:

Bharucha, J.

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The border between the States of Karnataka and Tamil Nadu runs through mountainous forest. On about 16,000 acres of this forestland, half in Karnataka and half in Tamil Nadu, a man named Veerappan has held sway for more than 10 years. He is alleged to have poached elephants and smuggled out ivory and sandalwood in a very big way. He is alleged to be guilty of the most heinous crimes, including the murder of 119 persons, among them Police and Forest Officers, and kidnapping. Task forces set up by the States of Karnataka and Tamil Nadu for the purpose have been unable to apprehend him and bring him to justice for 10 years.

On the night of 30th July, 2000, between 20.45 and 21.10 hours, Veerappan abducted from Gajanoor a film actor named Rajkumar, who is very popular in Karnataka, and three others, namely, Govindraj, who is a son-in-law of Rajkumar, Nagesh, who is a relative of Rajkumar, and Nagappa, who is an Assistant Film Director. As of today, Rajkumar and Nagesh remain in Veerappans custody. Nagappa is said to have escaped and Govindraj was released by Veerappan. Gajanoor is a town in Tamil Nadu close to the border with Karnataka.

On 8th July, 1999 the Director General of Police of the State of Karnataka had informed the Inspector General of Police of the State of Tamil Nadu that it had been reliably learnt that Veerappan intended to kidnap Rajkumar during the latter's visit to his farmhouse in Gajanoor and had requested adequate security arrangements for Rajkumar whenever he visited Gajanoor. The record before us reveals that Rajkumar did not want police protection and considered the presence of the police a problem. He had visited Gajanoor on 22nd June, 2000, but no information in this behalf had been intimated to the police authorities at Gajanoor; however, they had come to know of his presence and had made security arrangements. No information had been received in regard to the visit of Rajkumar to Gajanoor on 28th July, 2000, and they had not learnt of it until after the kidnapping.

At the time of the kidnapping, Veerappan handed over to Rajkumar's wife an audio cassette to be delivered to the Chief Minister of the State of Karnataka. The audio cassette required that he send an emissary to Veerappan. On

31st July, 2000 the Chief Ministers of the States of Karnataka and Tamil Nadu met in Chennai and decided to send as an emissary one Gopal, he having served as an emissary when, on 12th July, 1997, Veerappan had kidnapped nine Forest Officers of the State of Karnataka and he had obtained their release thereafter. On 1st August, 2000 Gopal left on his first mission to meet Veerappan in the forest along with two members of his staff and a videographer. On 5th August, 2000 Gopal sent an audio cassette to Chennai which, in the voices of Veerappan and an associate, set out ten demands for the release of Rajkumar. On the next day, that is, 6th August, 2000, the Chief Ministers of the States of Karnataka and Tamil Nadu met in Chennai to discuss the demands and their responses were made public at a press conference held on that very day.

The ten demands and the responses thereto, as released to the Press, are as follows :@@
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DEMAND :

1. Permanent solution for the Cauvery water issue and implementation of the interim orders of the Cauvery Tribunal.

RESPONSE :

For implementation of the interim orders, the Cauvery River Water Authority has been set up under the chairmanship of the Prime Minister.

DEMAND :

2. Adequate compensation for Tamil victims of 1991 riots.

RESPONSE :

Karnataka has constituted Cauvery Riots Relief Authority as directed by the Supreme Court. About 10,000 claims have been received. The time limit for completion of the work has been extended up to 31.5.2001.

DEMAND :

3. Karnataka Government should accept Tamil as additional language of administration.

RESPONSE :

As per the G.O.I. instructions, Karnataka has issued orders on 20.5.99 that where linguistic minorities constitute more than 15 percent of the population, Government notices, orders and rules shall be issued in the language of the minorities as well.

DEMAND :

4. Unveiling of Tiruvalluvar statue at Bangalore.

RESPONSE :

Status of Tiruvalluvar and Sarvajna will be installed and unveiled at Bangalore and Chennai respectively with the participation of both the Chief Ministers.

DEMAND :

5. Vacation of stay issued by High Court against Justice Sathasivam Commission to enquire into the atrocities by the Task Forces of the Two States. Compensation for victims and punishment for those held guilty by the Commission.

RESPONSE :

Karnataka Government will take steps to have the stay vacated.

DEMAND :

6. Innocent persons languishing in Karnataka Jails should be released.

RESPONSE :

TADA charges will be dropped immediately facilitating release of the prisoners.

DEMAND :

7. Compensation for the families of nine Dalits killed in Karnataka.

RESPONSE :

Will be considered favourably after collecting particulars.

DEMAND :

8. Minimum procurement price of Rs.15/- per kg. for tea leaves grown in the Nilgiris.

RESPONSE :

A series of steps taken by the Central and the State Governments has already brought about substantial increase in the price of tea leaves from Rs.4.50 to Rs.9.50.

DEMAND :

9. Five persons now in Tamil Nadu prisons should be released.

RESPONSE :

Will be considered favourably.

DEMAND :

10. Minimum daily wage of Rs.150/- for Coffee and Tea Estate Workers in Tamil Nadu and Karnataka.

RESPONSE :

Estate workers in Tamil Nadu get a minimum wage of Rs.74.62 inclusive of various allowances the wages add upto Rs.139/- per day. Further increase through negotiations would also be considered.

On 11th August, 2000 Gopal returned to Chennai with a written message and a video cassette that contained an elaboration of two earlier demands and two new demands. The elaboration related to the release of prisoners in the State of Karnataka, which was reiterated, and the payment of compensation based on the Sathasivam Commission Report. The new demands and the responses thereto were as follows:

DEMAND :

1. Tamil should be the compulsory medium of instruction till Standard 10 in Tamil Nadu. Tamil should be declared official language.

RESPONSE :

The Government move to make Tamil the medium of instruction till Standard 5 has been stayed by the High Court and an appeal has been preferred in the Supreme Court.

DEMAND :

2. Compensation of Rs.10 lakhs each for innocent rape victims of Vachathi and Chinnampathi in Tamil Nadu.

RESPONSE :

Compensation has already been paid on rates determined by Court/Commission.

On 10th August, 2000 an application was filed by the Special Public Prosecutor under the provisions of Section 321 of the Criminal Procedure Code in fourteen cases (Special Case Nos.44/94, 63/94, 66/94, 67/94, 119/95, 11/97, 12/97, 13/97, 14/97, 3/98, 19/98, 20/98, 21/98 and 79/99) being heard by the Designated Court at Mysore. The cases were filed under the provisions of the Terrorist and Disruptive Activities Act and other penal enactments against Veerappan and a large number of his alleged associates. The application needs to be reproduced in extenso: "It is submitted by the Special Public Prosecutor as follows :

A charge sheet has been filed against the accused for the offences punishable U/sec.143, 147, 148, 341, 342, 120B, 326, 307, 302, 396 R/w 149 IPC. And U/sec. 3, 4 and 5 of the Indian explosives Act, and U/sec.3 and 25 of the Arms Act, and also for the offences pun.U/sec. 3, 4 and 5 of the TADA Act, alleging that on the afternoon of 14-8-92 Veerappan along with his associates attacked the then Supt. of Police, Mysore District, Sri. Harikrishna, and the then S.I. of Police of M.M. Hills, Sri. Shakeel Ahamed and other police personnel who had been to nab Veerappan on the information furnished by the informant Kamala Naika, who also died in the incident, and also had resulted killing of six police personnel and injuring others and damaging the vehicles and also removing of the weapons and wire-less set belonging to police Department.

There are in all 166 accused persons and out of which 30 accused are in custody and 48 accused are on bail.

It is submitted by the Prosecutor that the accused who are on bail have not repeated the offences and they have also not involved themselves in any similar offences and terrorist activity have not been noticed recently in the area.

It is submitted by the Prosecutor 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 charged under the offences of the provision punishable under Sec.3,4 and 5 of the TADA.

It is submitted further by the Prosecutor that the trial regarding other offences are being continued and the charges under the Arms Act and Explosive Substances Act, to certain extent cover the provisions of Sec.3 and 4 of the TADA. Therefore, no injustice would be caused if the prosecutor withdraws the charges for the offences punishable U/sec.3,4 and 5 of the TADA Act.

It is further submitted by the Prosecutor that as a matter of policy, since the Central Government has already withdrawn Central enactment, no purpose would be served immediately the prosecution for the offences punishable U/sec.3,4 and 5 of the TADA Act.

It is submitted by the Prosecutor that in the larger interest of the State and in order to avoid any un-pleasant situation in the border area, it is necessary to withdraw from prosecution of the charges under Section 3,4 and 5 of the TADA Act.

It is submitted by the Prosecutor that no in-justice would be caused to the State by withdrawing from the prosecution, the offences punishable under Sections 3, 4 and 5 of the TADA Act.

Therefore, it is submitted by the Prosecutor that the Hon'ble Court be pleased to accord consent to the prosecutor to withdraw the charges for the offences punishable U/s 3,4, and 5 of the TADA Act, against the accused and the case may be withdrawn from the Designated Court and be transferred to the regular Sessions Court for the continuance of the trial for the other offences in interest of justice."

The appellant in Criminal Appeal Nos.741-743/2000 before us opposed the Special Public Prosecutor's application. He is the father of Shakeel Ahmed who, as the application recites, had, allegedly, been killed by Veerappan and his associates. The appellant's statement of opposition referred to the abduction of Rajkumar and alleged that, consequent thereupon, the Government of the State of Karnataka had yielded to the demands of Veerappan and had issued notifications that it would withdraw all cases against Veerappan and his associates, and this had been widely publicised by the media. The statement of opposition submitted that no cogent reasons had been given for the decision to drop the TADA cases. It submitted that it was the duty of the Special Public Prosecutor to inform the court of the reasons prompting him to withdraw the

prosecution and of the court to apprise itself of these reasons. The Special Public Prosecutor rejoined to the statement of opposition by contending that all cases against Veerappan and his associates were not being withdrawn, and they would be prosecuted. He, therefore, denied the submission in the statement of opposition that the Government of the State of Karnataka had yielded to blackmail by Veerappan.

The Special Public Prosecutor's application was made when the trial of the cases to which it related was in progress and the evidence of 51 witnesses had been recorded. The trial had been going on until 30th July, 2000, on the night of which Rajkumar was abducted.

The Principal District and Sessions Judge, Mysore, was the Special Judge designated for the trial of TADA offences. (He is now referred to as "the learned Judge.") On 19th August, 2000 the learned Judge passed on the Special Public Prosecutor's application the order that is impugned in these appeals. He set out in paragraphs 2 to 6 the details of the cases before him, thus:

" 2. The Special Cases in nos.44/1994, 11/1997 and 3/1998 arise out of a charge sheet in Crime No.70/1992 of Ramapura Police Station against Veerappan and others for offences under Sections 143, 147, 148, 341, 342, 120-B, 326, 307, 302, 396 r/w 149 of I.P.C., Sections 3, 4 and 5 of Indian Explosives Act, Sections 3 and 25 of the Arms Act and also under Sections 3, 4 and 5 of the Terrorist and Disruptive Activities Act, alleging that on the after-noon of 14-8-1992, Veerappan and Associates had attached the then Superintendent of Police, Mysore, Sri Harikrishna and the then Sub-Inspector of Police Sri Shakeel Ahamed and other Police Personnel, who had been to nab Veerappan and in the encounter, six Police Personnel were killed and many of them were injured and vehicles were damaged and the weapons and wireless set belonging to the Police Department were taken away. The charge sheet had been laid against 168 persons, of them 30 accused are in custody and 45 are on bail and rest of them are shown as absconding.

3. The Special Case Nos.63/1994, 13/1997 and 20/1998 arise out of a charge sheet filed in Crime No.41/1992 of Ramapura Police Station against Veerappan and 162 others alleging that on the night of 19/20-5-1992, the accused had attacked Ramapura Police Station and caused death of five Police Personnel and caused injuries to other Police staff, thereby the accused are said to have committed offences punishable u/ss. 302, 307, 324, 326, 396 r/w 149 I.P.C., Sections 3 and 25 of Indian Arms Act, Sections 3, 4 and 5 of the Terrorist and Disruptive Activities Act. Of the said accused, 46 accused are on bail and 30 accused are in custody and rest of them have been shown to be absconding.

4. The Special Case Nos.66/1994, 14/1997 and 21/1998 arise out of a charge sheet submitted by M.M. Hills Police in Cr.No.12/1993 alleging that the accused had attacked Police Personnel on 24-5-1993 near Rangaswamy Voddu on M.M. Hills - Talabetta Road, near 18/28 S : Curve and in the attack the Superintendent of Police Sri Gopal Hosur and his driver Ravi were injured and six Police Personnel were killed and four Police Personnel were injured and thereby the accused are said to have committed offences punishable under Sections 143, 148, 120B, 341, 353, 395, 302, 109, 114

r/w 149 IPC, Sections 3, 4 and 5 of Indian Explosives Act, Sections 3 and 25 of Indian Arms Act and also U/S 3, 4 and 5 of the Terrorist and Disruptive Activities Act. The chargesheet has been submitted against 98 accused persons. Of them, 7 accused are on bail, 26 accused are in custody and others are shown to be absconding.

5. The Special Cases Nos.67/1994, 12/1997 and 19/1998 arise out of a chargesheet submitted by M.M. Hills Police against 143 accused persons alleging that on 9-4-1993 at Sorekayee Madu the accused had attacked and killed 22 persons belonging to both Police and Forest Department and their informants by planting bombs in the forest area of Palar and thereby the accused are said to have committed offences punishable u/S 143, 147, 148, 341, 342, 120B, 324, 326, 307, 302 and 396 r/w 149 of IPC, Sections 3 and 25 of the Arms Act, 3, 4 and 5 of Indian Explosives Substances Act and also 3, 4 and 5 of Terrorist and Disruptive Activities Act. Of the 143 accused persons, 17 accused are on bail, 33 accused are in custody and rest of them are shown to be absconding.

6. The Special Cases in Nos.119/1995 and 79/1999 arise out of a charge sheet submitted by Ramapura Police in Cr. No.5/1994 against 17 accused persons alleging that on 17-1-1994 at Changadi Forest, the accused had attacked staff of Special Task Force and informants of the Police and Forest Department and killing one police personnel and one Gun- man and thereby the accused are said to have committed offences under Sections 143, 147, 148, 326, 307, 302 r/w 149 IPC, sections 3 and 25 of the Indian Arms Act and also Sections 3,4 and 5 of Terrorist and Disruptive Activities Act."

The learned Judge then noted that the trial had begun and many material witnesses had been examined. He referred to the pleadings in the application before him and the arguments of the Special Public Prosecutor; among them, "There is no terrorist activity in the area. The instant application has been filed with an intention to maintain peace and tranquility. He has not been directed by the State. It is the act of the Public Prosecutor only." The learned Judge opined that the present appellant could not be said to be an aggrieved party who could be permitted to raise objections to the application. He then dealt with precedents relevant to the application and concluded that his power was limited. It was only a supervisory power over the action of the Special Public Prosecutor. The function of the court was to prevent abuse. Its duty was to see, in furtherance of justice, that the permission was not sought on grounds extraneous to the interest of justice. Permission to withdraw could only be granted if the court was satisfied on the materials placed before it that its grant subserved the administration of justice and it was not being sought covertly, with an ulterior purpose unconnected with the vindication of the law, which the executive organs were duty-bound to further and maintain. The learned Judge stated that it was seen from the material on record that terrorist activity had not been noticed recently in the area. The learned Judge did not accept the contention of the Special Public Prosecutor that, since the TADA Act had been withdrawn, the permission should be granted. The learned Judge noted that it had been mentioned in the statement of objections that Rajkumar had been abducted by the prime accused before him; as such, he said that he would have to take notice of this aspect. He mentioned that

the trial of one of the special cases involved in the application had been posted for hearing on 30th July, 2000 but, on account of the changed situation, he had felt "that there was a likelihood of danger to the person of accused, who are in custody, if they are insisted to be produced before the court on the said hearing dates." The learned Judge stated that he was satisfied that the Special Public Prosecutor had applied his mind in filing the application. In view of the grounds and circumstances mentioned by the Special Public Prosecutor, he was satisfied, on the materials placed before him, "that the grant of permission to withdraw subserves the administration of justice and the permission had not been sought covertly with a ulterior purpose unconnected with the vindication of law, which the executive organs are in duty-bound to further and maintain". The learned Judge observed that things could have been viewed from a different angle altogether if the Special Public Prosecutor had sought for blanket withdrawal of the cases against the accused; but this was not the situation in the case on hand for the case against the accused for other offences would be proceeded with. Accordingly, the learned Judge allowed the application, according consent to withdrawal of the charges relating to offences punishable under the TADA Act against the accused. He ordered, "The accused in custody and on bail, facing trial for offences under TADA Act stand acquitted/discharged as the case may be." He transferred the cases to the court of the Principal District and Sessions Judge, Mysore for disposal in accordance with law of all charges other than under the TADA Act.

The accused who were in custody and were discharged by the Special Court in respect of the TADA charges against them immediately filed an application for bail before the Court of District and Sessions Judge, Mysore. On 28th August, 2000, the learned Judge, now as Principal District and Sessions Judge, noted in his order that learned counsel for the present appellant had informed him that the appellant had filed a petition for special leave to appeal against the order on the Special Public Prosecutor's application which was to be taken up for hearing on the next day and that learned counsel had prayed that orders on the bail petition should not be pronounced until thereafter. The Special Public Prosecutor had submitted in reply that the special leave petition related only to the withdrawal of charges under the TADA Act and the passing of orders on the bail petitions would not be affected thereby. The learned Judge found that no order of stay had been passed by this Court, and, therefore, he overruled the prayer and passed orders on the bail petitions. In the course thereof, the learned Judge referred to "the urgency of the matter". The learned Judge found force in the contention on behalf of the accused that there had been a change in the circumstances in view of the fact that the Designated Court had permitted the State to withdraw the TADA charges against them. Having carefully gone through the material on record and the nature of the accusations made against the accused and the evidence projected, it was the learned Judge's opinion that "there is no prima facie case made out against the accused for the said offence. Having regard to the facts and circumstances, the social status of the accused and other relevant factors, the Court is of the opinion that the bail petition will have to be allowed on the following terms in the ends of justice. The accused were directed to be released on bail on each of them executing a bond for Rs.10,000 with one

surety for the like sum or, in the alternative, on each furnishing cash security of Rs.20,000, on the conditions that they would appear before the court regularly, as and when required, they would not tamper with the prosecution witnesses and they would not commit any other offence.

The order dated 19th August, 2000 on the Special Public Prosecutors application is impugned in the appeals before us.

On 14th August, 2000 the Government of the State of Tamil Nadu issued a Government Order directing that charges against one Radio Venkatesan in respect of two cases registered against him under the provisions of the TADA (Prevention) Act be withdrawn in the public interest. The Inspector General of Police, Intelligence, Chennai was directed to take necessary action accordingly. On 16th August, 2000 the Special Public Prosecutor before the Designated Court (TADA Act) at Chennai made two applications to that court under the provisions of Section 321 of the Criminal Procedure Code. They stated that Radio Venkatesan was charged before the Designated Court in cases arising under the TADA Act, the Explosive Substances Act, the Indian Penal Code and the Arms Act and the cases were pending for framing charges. The applications added, It is further submitted that after perusal of records I am satisfied that under the new change of circumstances and also in the Public Interest I hereby request this Honble Court to permit me to withdraw the charges under Section 3(1), 3(3), 4(1) & 5 of Tamilnadu Terrorist & Disruptive Activities Preventive Act 1987 against the accused Venkatesan @ Radio Venkatesan and thus render justice. A copy of the Government Order of 14th August, 2000 was submitted with the applications. On 16th August, 2000, the Designated Court, Chennai passed an order on the applications. It noted, The Government have passed an order stating that TADA offences against the accused Venkatesan @ Radio Venkatesan is withdrawn in the public interest. There is no mention in the Government Order for withdrawal of cases against the said accused under IPC Offences and other laws. The court referred to the applications before it and the provisions of Section 321 which permitted withdrawal from prosecution of one or more offences when the accused was charged with more than one offence. It then stated, So far as this case is concerned the Government have passed order to withdraw the TADA case alone as against the accused Venkatesan @ Radio Venkatesan, who is involved in Cr. No.50/93 and Cr. No.346/93. As this application has been filed by the learned Special Public Prosecutor on the basis of the Government Order referred above. Permission is granted to withdraw the TADA case against the accused Venkatesan @ Radio Venkatesan and he has been discharged from the various offences of the TADA Act. The applications were allowed accordingly.

Insofar as four detainees under the National Security Act were concerned, the Government of the State of Tamil Nadu passed orders on 14th August, 2000. As an example, that relating to Sathyamoorthy is reproduced below :

Kannada film actor Dr. Rajkumar and few others were kidnapped by sandalwood brigand Veerappan and his men in the night of 30.7.2000. He has made 10 demands to release them from hostage. One of the demands is to release 5 prisoners from the various prisons in Tamil Nadu. Thiru Sathyamoorthy @ Sathya @ Kandasamy @ Neelan, is one among the NSA detenus

or damage to, any property belonging to the Central Government, or

(iv) was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty,

and the Prosecutor in charge of the case has not been appointed by the Central Government, he shall not, unless he has been permitted by the Central Government to do so, move the Court for its consent to withdraw from the prosecution and the Court shall, before according consent, direct the Prosecutor to produce before it the permission granted by the Central Government to withdraw from the prosecution.

The law as it stands today in relation to applications under Section 321 is laid down by the majority judgment delivered by Khalid, J. in the Constitution Bench decision of this Court in Sheonandan Paswan v. State of Bihar & Ors., [1987 (1) SCC 288]. It is held therein that when an application under Section 321 is made, it is not necessary for the court to assess the evidence to discover whether the case would end in conviction or acquittal. What the court has to see is whether 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. The court, after considering the facts of the case, has to see whether the application suffers from such improprieties or illegalities as would cause manifest injustice if consent was given. When the Public Prosecutor makes an application for withdrawal after taking into consideration all the material before him, the court must exercise its judicial discretion by considering such material and, on such consideration, must either give consent or decline consent. The section should not be construed to mean that the court has to give a detailed reasoned order when it gives consent. If, on a reading of the order giving consent, a higher court is satisfied that such consent was given on an over all consideration of the material available, the order giving consent has necessarily to be upheld. Section 321 contemplates consent by the court in a supervisory and not an adjudicatory manner. What the court must ensure is that the application for withdrawal has been properly made, after independent consideration by the Public Prosecutor and in furtherance of public interest. Section 321 enables the Public Prosecutor to withdraw from the prosecution of any accused. The discretion exercisable under Section 321 is fettered only by a consent from the court on a consideration of the material before it. What is necessary to satisfy the section is to see that the Public Prosecutor has acted in good faith and the exercise of discretion by him is proper.

The law, therefore, is that though the Government may have ordered, directed or asked a Public Prosecutor to withdraw from a prosecution, it is for the Public Prosecutor to apply his mind to all the relevant material and, in good faith, to be satisfied thereon that the public interest will be served by his withdrawal from the prosecution. In turn, the court has to be satisfied, after considering all that material, that the Public Prosecutor has applied his mind independently thereto, that the Public Prosecutor, acting in good faith, is of the opinion that his withdrawal from the prosecution is in the public interest, and that such withdrawal will not stifle or thwart the process of law or cause manifest injustice.

It must follow that the application under Section 321 must aver that the Public Prosecutor is, in good faith, satisfied, on consideration of all relevant material, that his withdrawal from the prosecution is in the public interest and it will not stifle or thwart the process of law or cause injustice. The material that the Public Prosecutor has considered must be set out, briefly but concisely, in the application or in an affidavit annexed to the application or, in a given case, placed before the court, with its permission, in a sealed envelope. The court has to give an informed consent. It must be satisfied that this material can reasonably lead to the conclusion that the withdrawal of the Public Prosecutor from the prosecution will serve the public interest; but it is not for the court to weigh the material. The court must be satisfied that the Public Prosecutor has considered the material and, in good faith, reached the conclusion that his withdrawal from the prosecution will serve the public interest. The court must also consider whether the grant of consent may thwart or stifle the course of law or result in manifest injustice. If, upon such consideration, the court accords consent, it must make such order on the application as will indicate to a higher court that it has done all that the law requires it to do before granting consent.

The applications under Section 321 made by the Special Public Prosecutor before the Designated Court at Mysore submitted that the Special Public Prosecutor had decided to withdraw from prosecution the charges under the T.A.D.A. Act 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 and that such withdrawal from prosecution was necessary in the larger interest of the State and in order to avoid any unpleasant situation in the border area. The applications did not state why the Special Public Prosecutor apprehended a disturbance of the peace and normalcy of the border area or the particular village, nor was any material in this behalf, or a summary thereof, set out. There was, therefore, no basis laid in the applications upon which the learned Judge presiding over the Designated Court could conclude that the Special Public Prosecutor had applied his mind to the relevant material and exercised discretion in good faith and that the withdrawal would not stifle or thwart the course of the law and cause manifest injustice. The order of the learned Judge noted that the statement of opposition filed by the present appellant averred that Rajkumar had been abducted by Veerappan and it said that he would have to take notice of this aspect. The order did not note that the statement of opposition also said that, consequent upon such abduction, the State of Karnataka had yielded to the demands made by Veerappan and had issued notifications that it would withdraw all cases against Veerappan and his associates. No query in this regard was made by the learned Judge with the Special Public Prosecutor. The learned Judge said that he was satisfied on the material placed before him that the grant of permission to withdraw subserved the administration of justice and it had not been sought covertly, but he did not state what those materials were. It is not the case of anybody that any materials were placed before the learned Judge upon the basis of which he could have been satisfied that the Special Public Prosecutor had applied his mind thereto and had

reached, in good faith, the conclusion that the withdrawal he sought was necessary for the reasons he pleaded. The learned Judge placed on record, as he called it, the decision of this Court in the case of Sheonandan Paswan, referred to above, but he did not appreciate what it required of a Public Prosecutor and of a court in regard of Section 321, and he did not follow it. The order granting consent on the Special Public Prosecutors application, therefore, does not meet the requirements of Section 321 and is bad in law.

The applications under Section 321 filed before the Designated Court at Chennai sought consent to the withdrawal from the T.A.D.A. prosecution against Venkatesan @ Radio Venkatesan after perusal of records by the Special Public Prosecutor, and they submitted that under the new change of circumstances and also in the public interest the permission was sought. What the record was that the Special Public Prosecutor had perused was not set out nor was it annexed nor a summary thereof recited. What the changed circumstances were was not set out. The order on the applications was founded only upon the relevant Government Order, thus: So far as this case is concerned the Government have passed order to withdraw the TADA case alone as against the accused Venkatesan @ Radio Venkatesan, who is involved in Cr.No. 50/93 and Cr. No. 346/93. As this application has been filed by the learned Special Public Prosecutor on the basis of the Government Order referred above. Permission is granted to withdraw the TADA case against the accused Venkatesan @ Radio Venkatesan. The order, therefore, was not passed after meeting the requirements of Section 321, and it is bad in law.

It was submitted by the learned Solicitor General, appearing for the State of Karnataka, that we, sitting in appeal, should consider the grant of consent under Section 321 based upon the state of knowledge of the Special Public Prosecutor on the date on which he made the application before the Designated Court at Mysore. In this behalf, two affidavits, both dated 19th October, 2000, were filed. One affidavit is made by the Minister of Law and Parliamentary Affairs of the State of Karnataka and the other by the Special Public Prosecutor.

The affidavit of the Minister for Law states:

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2. That I have been party to most of the decisions which have been taken in this matter, which has culminated in the issuance of the Government order dated 8th August, 2000 requesting the Special Public Prosecutor, in charge of the TADA cases pending before the Designated Court at Mysore against Veerappan and his associates, to withdraw the charges under TADA.

3. I also held a meeting with the Special Public Prosecutor in charge of the cases, on the 5th August, 2000 in my office in Vidhan Soudha, Bangalore. The discussions held during the meeting and the persons present have already been stated in the affidavit of Shri Ashwini Kumar Joshi which I confirm.

4. Prior to this meeting, the problems arising out of

the abduction of Dr. Rajkumar, the options available to the State Government to deal with this crisis and the responses of the Government publicly announced to Veerappans demands, have all been discussed at various levels including in informal meetings held between me, the Home Minister and the Chief Minister as well as the Cabinet meetings which have been held frequently during the period 1st August to 8th August, 2000.

5. I submit that one option, which the Government had always considered relates to the use of force for the release of Dr. Rajkumar. While considering this option and evaluation of the risk factors, as advised by the senior officials at the level of Home Secretary, and the Chief Secretary as well as our own experience in the past were also considered. After detailed discussions on more than one occasion, the option of use of force in the present circumstances and as at present advised was ruled out in favour of acceding to some of his demands.

6. The demands made by Veerappan were discussed informally at various levels of the Secretaries, at the level of the Ministers and also informally in the Cabinet.

7. I submit that the Government made public its response to Veerappans demands in which it indicated, inter alia, that only TADA charges (and not all cases) against the 51 accused would be withdrawn.

8. I submit that the matter of withdrawal of TADA charges had been informally discussed in the Cabinet on 3rd August and the final decision taken between 4-5th August, 2000 between myself, the Home Minister and the Chief Minister of Karnataka.

9. I respectfully state that it was after considering the options and the likely repercussions in future of succumbing to his demands (i.e. the signals sent by agreeing to such demands, and the fact that it may encourage further such acts) and after weighing it against the problems apprehended if any harm were to be caused to Dr. Rajkumar, that this decision to withdraw TADA charges were taken.

10. xxxxxxxx

11. xxxxxxxx.

12. In the informal Cabinet meeting held on 3rd August, 2000, the Cabinet had authorized the Chief Minister, the Home Minister and myself as well as the Chief Secretary to take a final decision in this matter and pursuant to this, we took a final decision between 4-5th August, 2000.

The decision of the Government of the State of Karnataka, therefore, was that, in view of its apprehension of the unrest that would follow if any harm were to come to Rajkumar, it was better to yield to Veerappans demand and to withdraw the TADA charges against Veerappan and his associates, including the accused respondents. In this context, the Special Public Prosecutor should have considered and answered the following questions for himself before he decided to exercise his discretion in favour of such withdrawal from prosecution of the TADA charges.

1. Was there material to show that the police and intelligence authorities and the State Government had a reasonable apprehension of such civil disturbances as would justify the dropping of charges against Veerappan and others accused of TADA offences and the release on bail of those in custody in respect of the other offences they were charged with?

2. What was the assessment of the police and intelligence authorities and of the State Government of the risk of leaving Veerappan free to commit crimes in future, and how did it weigh against the risk to Rajkumar's life and the likely consequent civil disturbances?

3. What was the likely effect on the morale of the law enforcement agencies?

4. What was the likelihood of reprisals against the many witnesses who had already deposed against the accused respondents?

5. Was there any material to suggest that Veerappan would release Rajkumar when some of Veerappan's demands were not to be met at all?

6. When the demand was to release innocent persons languishing in Karnataka jails, was there any material to suggest that Veerappan would be satisfied with the release of only the accused respondents?

7. In any event, was there any material to suggest that after the accused respondents had secured their discharge from the TADA charges and bail on the other charges Veerappan would release Rajkumar?

8. Given that the Governments of the States of Karnataka and Tamil Nadu had not for 10 years apprehended Veerappan and brought him to justice, was this a ploy adopted by them to keep Veerappan out of the clutches of the law?

The affidavit of the Special Public Prosecutor states:

6. On 5th August, 2000, I was called by the Office of the Honble Law Minister for a meeting in his chamber in Vidhan Soudha, Bangalore.

7. When I went to the meeting, the Special Secretary (Law) and the Director of Prosecutions as well as the Additional Director General of Police (Intelligence) were present. We discussed the matter relating to withdrawal of TADA charges against these 51 accused at considerable length for over 2 hours. In the course of the discussion, I recall that I was informed, inter alia, that the negotiations had reached a point where it was felt that withdrawal of TADA charges against these 51 accused would secure the release of Dr. Rajkumar. I was informed that the Government had intelligence reports and that if any harm were to be caused to Dr. Rajkumar, it would lead to problems between the two linguistic communities in the State. I was informed that apprehending trouble, schools and colleges had been declared closed immediately in the whole State and they were closed upto 5th August, 2000. I was informed of the incidents, which had occurred in Bangalore City on 31st July, 2000 as an aftermath of this incident of kidnapping also showed that

the abduction was being construed by the people as an issue between two communities. The character of the incident showed that these people were ready to indulge in acts of violence. I was also informed that acting on intelligence reports, the Government had taken steps to arrange for deployment of Central Forces, such as the Rapid Action Force, Armed Reserve Police, and Para Military Force from the neighbouring States and some steps had already been taken and others were likely to be taken.

8. I was informed by the Honble Law Minister that the Cabinet had also informally discussed this matter in its urgent meeting held on 3.8.2000 and that a decision had been taken to take appropriate steps and on that basis the Government would formally request me to take appropriate steps to withdraw the TADA charges.

9. On 8th August, 2000, the G.O. issued by the Government along with its covering letter was duly forwarded to me through the Law Department. A copy of the said G.O. and the connected documents are collectively annexed hereto and marked as Annexure A.

10. Based on my understanding of the situation, which in turn, was based on the aforesaid material, and the information which had been given to me which I believed to be true, I decided that it would be in the interest of public peace and maintenance of law and order in the State to withdraw the charges against the 51 TADA detenus.

11. I respectfully submit that the information which had been provided to me by the Additional Director General of Police (Intelligence), the Honble Law Minister and others present in the meeting as well as my own knowledge of local events (being a resident of Mysore for 27 years and having witnessed the problems which had resulted after the Cauvery riots), I felt there was substance in the Government's request that any such step which could secure the release of Dr. Rajkumar would be a step to protect public peace. I felt that if withdrawal of the TADA charges which would enable the accused to file necessary bail applications and their consequent release on bail could preserve amity between the two communities, it would outweigh the likely problems which would arise on the release of these 51. In arriving at this decision that I was influenced by the fact that the 73 co-accused who had already been enlarged on bail (by the Court) had complied with the bail conditions which suggested that they had not gone back to their old ways. There were 12 women, 3 old persons of 70 years age and 3 persons aged between 55-60 amongst the TADA accused. I also considered the fact that they had been in the jail for six to seven years. 12. xxxxxxxx 13. xxxxxxxx 14. I was also informed in the course of the aforesaid meetings that in other districts also some incidents have been reported. I believed the statement as I had no reason to doubt its credibility. I have subsequently ascertained the particulars of the cases which are hereto annexed and marked as Annexure C.

The affidavit of the Special Public Prosecutor reveals that he was informed that the Government of the State of Karnataka had intelligence reports that if any harm were to be caused to Rajkumar, it would lead to problems between two

linguistic communities. Clearly, he was not shown the intelligence reports. Throughout the affidavit the phrase I was informed recurs. There is no statement therein which shows that the Special Public Prosecutor had the opportunity of assessing the situation for himself by reading primary material and deciding, upon the basis thereof, whether he should exercise his discretion in favour of the withdrawal of TADA charges. Acting upon information, which he could not verify, the Special Public Prosecutor could not be satisfied that such withdrawal was in the public interest and that it would not thwart or stifle the process of the law or cause manifest injustice. The Special Public Prosecutor, in fact, acted only upon the instructions of the Government of the State of Karnataka. He, therefore, did not follow the requirement of the law that he be satisfied and the consent he sought under Section 321 cannot be granted by this Court.

The affidavit of the Special Public Prosecutor speaks of withdrawal of the TADA charges which would enable the accused to file necessary bail applications and their consequent release on bail ... It is, thus, clear that what was envisaged by the Government of the State of Karnataka and the Special Public Prosecutor was a package which comprised of the withdrawal of the TADA charges against the accused respondents and their release on bail on applications filed by them. This indicates complicity with the accused respondents. It will have been noticed that stress was laid by the Special Public Prosecutor in his application under Section 321 on the fact that the prosecutions against the accused respondents on charges other than under the TADA Act would continue, and this was noted in the order of the Designated Court. The Designated Court was not told either in the application or thereafter that the Government of the State of Karnataka and the Special Public Prosecutor had in mind that the accused respondents would file bail applications subsequent to the order under Section 321 which would not be opposed. There can, in the circumstances, be little doubt that after their release on bail the accused respondents were not expected to attend the court to answer the remaining charges against them and that the stress laid as aforesaid was intended to mislead the Designated Court. We deprecate the conduct of the Government of the State of Karnataka and the Special Public Prosecutor in this behalf. We deem it appropriate, in the facts and circumstances, to set aside the orders granting bail to the accused respondents.

Having set aside the order under Section 321 passed by the Designated Court at Chennai in the matter of Radio Venkatesan, the Government of the State of Tamil Nadu cannot comply with Veerappans demand to release the five prisoners from its jails. It is appropriate in the circumstances to set aside the orders of the Government of the State of Tamil Nadu under the National Security Act releasing the other four persons from detention.

The questions that we have posed above were put to learned counsel for the State of Karnataka in the context of the State Governments decision to concede to the demand of Veerappan that prisoners in Karnataka jails should be released. The answers do not satisfy us. We do not find on the record, including that placed before us in sealed covers, material that could give rise to a reasonable apprehension of such civil disturbances as justifies the

decision to drop TADA charges against Veerappan and his associates, including the accused respondents, and to release the latter on bail. There is nothing on the record which suggests that the possibility of reprisals against the witnesses who have already deposed against the accused respondents or the effect on the morale of the law enforcement agencies were considered before it was decided to release the accused respondents. There is also nothing to suggest that there was reason to proceed upon the basis that Veerappan would release Rajkumar when his demands were not being met in full. The Government of the State of Karnataka would appear to be unaware that once the accused respondents were discharged from TADA charges, the deal was done; and that when they were released on bail they could not be detained further, whether or not Rajkumar was released in exchange. While we cannot assert that conceding to Veerappan's demands was a ploy of the Government of the State of Karnataka to keep him out of the clutches of the law, we do find that it acted in panic and haste and without thinking things through in doing so. That this is so is clear from the fact that the demands were conceded overnight and also from the fact that the Government of the State of Karnataka did not ascertain the legal position that it was not for it but for the court to decide upon the release of persons facing criminal prosecutions.

What causes us the gravest disquiet is that when, not so very long back, as the record shows, his gang had been considerably reduced, Veerappan was not pursued and apprehended and now, as the statements in the affidavit filed on behalf of the State of Tamil Nadu show, Veerappan is operating in the forest that has been his hideout for 10 years or more along with secessionist Tamil elements. It seems to us certain that Veerappan will continue with his life of crime and very likely that those crimes will have anti national objectives.

The Government of the State of Tamil Nadu had been apprised that Rajkumar faced the risk of being kidnapped by Veerappan when he visited his farmhouse at Gajanoor. It knew that Rajkumar was unlikely to give advance intimation of his visits: he had visited Gajanoor for the house-warming ceremony of his new farmhouse in June, 2000 without prior notice. To put it mildly, it would have been prudent, in the circumstances, to post round the clock at Rajkumar's farmhouse in Gajanoor one or two policemen who could inform their local station house of his arrival there and thus ensure his safety.

The locus standi of the present appellant has not been contested before this Court. Had it not been for his appeal, a miscarriage of justice would have become a fait accompli.

The accused respondents may have individual grounds for challenging the continued prosecution of the TADA charges against them or for bail. They shall be free to adopt proceedings in that regard, if so advised. Such proceedings shall be decided on their merits and nothing that we have said in this judgment shall stand in the way.

The appeals are allowed and the order under appeal, dated 19th August, 2000, is set aside. The order dated 28th

August, 2000 passed by the Principal District and Sessions Judge, Mysore granting bail to the accused respondents is also set aside.

Further, the order of the Designated Court at Chennai dated 16th August, 2000 is set aside. The orders of the Government of the State of Tamil Nadu passed on 14th August, 2000 under the National Security Act in respect of Sathyamoorthy and three others revoking the orders of their detention under the National Security Act are also set aside. The writ petitions are made absolute accordingly.

JUDIS