CASE NO.:
Appeal (crl.) 964 of 2002

PETITIONER:
Balkar Singh

RESPONDENT:
Jagdish Kumar & Ors.

DATE OF JUDGMENT: 22/02/2005

BENCH:
N. Santosh Hegde & P.K. Balasubramanyan

JUDGMENT:
J U D G M E N T
WITH

Criminal Appeal No.334 of 2005
(@ SLP(crl.) No. 510 of 2004)

SANTOSH HEGDE, J.

The appellant is the complainant in FIR No. 26 dated 10.2.1998 registered with the Police Station, Majitha in Punjab. In the said complaint he alleged that the respondent herein Jagdish Kumar and some others of M/s Bhalla Kheti Store and the respondent Rakesh Kumar and others of M/s. Bina Khad Store had committed criminal acts punishable under Section 382, 353, 506, 186 of the Indian Penal Code (hereinafter referred to as the 'IPC') when he along with the staff had gone to check the stock register and quality of the goods namely super phosphate sold by them. After registering the case the concerned police authorities were investigating the same. During the pendency of the investigation the accused Jagdish Kumar and Rakesh Kumar named herein above filed two separate Criminal Misc. Petitions under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') before the High Court of Punjab and Haryana at Chandigarh. When the High Court was seized of the above criminal misc. petitions, in both the petitions a statement was made on behalf of the State that a decision has been taken by the Government to withdraw the complaint filed in FIR No. 26 dated 10.2.1998 registered at the police station, Majitha (Punjab) for the above said offence. Recording the said statement the High Court in two identical orders quashed the said FIR and gave directions to the police and the learned Magistrate not to prosecute the respective petitioners on the basis of the said FIR. It is these two orders which are challenged before us in the above criminal appeal.

Before we proceed to examine the correctness of the impugned orders of the High Court it is necessary to note certain other developments that took place during the pendency of the quashing petition in the High Court. On the very day the complaint was lodged in the police station, the two concerned accused sent complaints to the State Government making certain allegations against the appellant herein who was then the Agricultural Development Officer (Enforcement) in the Department of Agriculture, Punjab State alleging among other things, demand of bribe and consequent harassment meted out by him to them for non-payment of bribe.

On the basis of the above-mentioned complaints of the respondents herein the Government initiated certain inquiries and based on the report received on such inquiries the opinion

of the District Attorney was sought who as per his opinion recommended to file an application under Section 321 of the Code for withdrawal of the prosecution. The State also consulted the Addl. Public Prosecutor who was appearing in the trial, who also recommended the withdrawal of the prosecution. It is at this stage when Section 321 application was still pending, the High Court by the impugned orders quashed the proceedings and directed to the police authorities and the learned Magistrate not to prosecute the petitioners on the basis of the above said FIR.

It is also noticed from the material on record that immediately on coming to know of the recommendation made by the authorities for withdrawal of the prosecution, the appellant herein filed reply to the application opposing such withdrawal and sought for permission to prosecute the case personally as a complainant in the event of State Government was not desiring to pursue the prosecution.

In view of the order of the stay granted by the High Court in the quashing proceedings the proposed framing of the charge by the trial court fixed for 25th October, 2000 could not be proceeded with and in view of the impugned order made by the High Court on 19th October, 2001 consideration of an application under Section 321 of the Code by the trial court became futile.

It is in this background the appellant in criminal appeal No. 964 of 2002 first preferred the said appeal which was entertained by this court and after issuance of notice, leave was granted on 13th September, 2002. Criminal Appeal No. 964/02 which pertains only to the complaint against Jagdish Kumar was listed for hearing before this Court when this Court found the technical problem in granting relief to the appellant only as against Jagdish Kumar since the appellant had not challenged the quashing of the criminal complainant made against Rakesh Kumar. In this fact situation, criminal appeal No. 964 of 2002 was adjourned by 6 weeks to facilitate the appellant to prefer a special leave petition against the order of the High Court in Crl. M.P. No. 11127/03 pertaining to Rakesh Kumar also and when such a special leave petition was filed the same was tagged along with the criminal appeal No. 964 of 2002 and the said special leave petition is also before us today for hearing.

The learned counsel appearing for the appellant submitted the High Court without going into the merits of the complaint that was sought to be quashed under Section 482 of the Code erred in accepting the statement made on behalf of the State Government and then proceedings to quash the complaint solely on the ground that the government had decided to drop the prosecution. He further contended that the High Court further erred in issuing a direction to the police authorities and the learned Magistrate not to prosecute the petitioners on the basis of the concerned FIR even before an application under Section 321 of the Code was entertained by the trial court. Therefore, the learned counsel submitted that the impugned orders of quashing the complaint are liable to be dismissed on the ground of non-application of mind itself. He relied upon the judgment of this Court in the case of Sheo Nandan Paswan Vs. State of Bihar and Ors. [AIR 1987 (74) SC 877] to contend that in what circumstances an application under Section 321 of the Code could be allowed by the trial court and submitted that since the Magistrate did not even have an opportunity of looking into such application, the High Court could not exercise such power. He also submitted that the allegations made in the complaint specifically established the various criminal acts of the respondents, therefore, High court could not have quashed the complaint on the basis of a proposed withdrawal of the prosecution. The learned counsel also pointed out that there was

some other inquiry conducted by the superior officers of the police in regard to the prima facie case against the respondents and the said officers after inquiry had reported that the allegations made in the complaint were true.

He also submitted that the opinion of the learned Addl. Public Prosecutor to withdraw the complaint is basically influenced by the desires of the higher officers of the Government and the reasons given by the learned Addl. Public Prosecutor for withdrawing the complaint cannot be accepted without there being a trial.

Shri Dhruv Mehta, learned counsel appearing for the respondent-accused in criminal appeal no. 964/02 submitted whether the complaint filed by the appellant is motivated by co-lateral consideration and the respondent accused had already made a complaint in this regard and it is only after making proper inquiry and seeking proper legal advice the Government had decided to withdraw the case hence, filing of an application under Section 321 before the Magistrate and an order thereon being only a formality, the High Court was justified in passing the impugned order based on the statement made by the learned counsel for the State. He also submitted that if the High Court only had gone into the merits of the complaint, a plain reading of the said complaint could have convinced the High Court that there was absolutely no case made out to pursue the said complaint hence, the petitioner before the High Court was entitled to the quashing of the complaint on merits also. He also submitted that presuming for argument sake that the appellant has been able to point out some error in the judgment of the High court even then this court ipso facto would not interfere with the erroneous orders of the High Court because exercise of powers under Article 136 is discretionary and it is only in a case when the appellant is able to show exceptional circumstances exist in his case and that non-interference would cause grave injustice, then alone, this Court could exercise its power under Article 136 of the Constitution. For this proposition, he relied on a decision of this Court in Taherakhatoon (D) by Lrs. Vs. Salambin Mohammad [1999 (2) SCC 635]. The learned counsel tried to point out the complaint in question was of the year 1998 and there has been no progress before the trial court and assuming that the High Court is technically wrong in quashing the complaint based on the submission of the learned advocate for the State no injustice would be caused to the appellant. In the facts of the present case, therefore, on the basis of the decision in Taherakhatoon (D) by Lrs.(supra) we should refuse to exercise our discretion vested under Article 136 of the Constitution. Though, we are in agreement with the ratio laid down by this Court in Taherakhatoon (D) by Lrs.u (supra) we do not think the facts of this case would persuade us to refuse relief sought for by the appellant. As stated above, what is pending before the High court was a quashing petition filed under Section 482 of the Code wherein the scope of interference the High Court is quite restricted. In such a petition in our opinion, accepting a statement made by the counsel for the State, High Court could not have quashed the petition solely on that ground. It could only have quashed the petition if it came to the conclusion that the complaint of the appellant did not make out a triable case against the petitioners before it. The decision of the Government to withdraw the prosecution is an irrelevant ground so far as High Court is concerned to allow a petition for quashing. It is rather surprising why further directions were issued by the High Court to the police and the Magistrate not to prosecute the petitioners once it quashed the complaint. The direction issued in the impugned order by the High Court in our opinion is wholly without jurisdiction even under Section 482 of the Code. The High Court ought to have noticed the fact that but

for the grant of stay order, there was a possibility of the trial court even framing charge against the respondents accused as for back as on 25th October, 2000 when the case was listed for the said purpose in which event there could have been room for argument that even a Section 321 petition would not be maintainable.

Noticing this error in the judgment of the High Court Shri Dhruv Mehta, learned counsel submitted that in the interest of justice we should remand the matter back to the High Court to consider the quashing petition on merits since according to him the complainant did not make out any triable case at all. We do not think that this prayer can be granted. Since we have come to the conclusion that the impugned judgment is unsustainable in law, it must suffer the consequences. Shri Dharuv Mehta, learned counsel then submitted that a direction may be given to the Magistrate to dispose of the application filed by the Addl. Asstt. Public Prosecutor under Section 321 of the Code for withdrawing the prosecution. On the material on record it is not clear whether such an application has already been filed or not. Assuming that such an application is filed, then such an application will have to be dealt with by the trial court in accordance with law as interpreted by various judgments of this Court in the cases of Abdul Karim & Ors. Vs. State of Karnataka & Ors.[2000 (8) SCC 710], N. Natarajan Vs. B.K. Subba Rao [2003 (2) SCC 76] and Ayyub Vs. Abdul Jabbar [2002 (3) SCC 510] wherein this Court has consistently laid down the parameters, the duty of the Law Officer and the Court in filing and considering such an application under Section 321 of the Code. Any direction from our side at this stage would only hinder an independent application of mind by the concerned court if and when such application is taken up for consideration. Therefore, without expressing any opinion on the merits of the complaint filed by the appellant or the application for withdrawal filed or to be filed by the Asstt. Public Prosecutor under Section 321 of the Code, we think it prudent to merely quash the impugned order of the High Court and leave the parties to pursue their remedies available in law.

The appeal, therefore, stands allowed.

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Heard learned counsel for the parties.

There is a delay of 680 days in preferring this petition which as noted above came to be filed only after criminal appeal No. 964 of 2002 came up for hearing before this Court. At that point of time itself the court felt that there was an error on the part of the appellant not to have challenged the impugned order which error was considered as a technical error since the complaint against the accused in criminal appeal no. 964/02 and in the above special leave petition was a joint complaint with a single no. 26. And what was challenged before the High Court was also a single FIR, though by way of two petitions even the High Court on an identical date by an identical order allowed the petitions, quashing the complaint against both the accused. In such circumstances, though Shri M.N. Krishnamani, learned Sr. counsel very strongly opposed the condonation of delay, we do not think interest of justice would be served by refusing to condone the delay, the consequence of which would be to perpetuate an illegal order and more so, in the background of the fact when we have today quashed an identical order arising from the complaint. In the said view of the matter we are of the opinion, that the delay in filing the special leave petition should be condoned and it is ordered accordingly.

Leave granted.

Heard learned counsel for the parties on merits.

Shri M.N. Krishnamani, learned Sr. counsel for the respondent herein submitted that the petitioner herein has no locus standi to file this appeal. We fail to see how an aggrieved complainant who was a respondent before the High Court and has suffered an adverse order, which according to us cannot be sustained; can be prevented from agitating his grievance by way of this appeal. Hence we reject this contention. The other arguments of the learned Sr. counsel for the respondent in this appeal being similar to the one addressed by Shri Mehta, learned counsel for the respondent in the above said connected appeal, we reject the same for the very same reasons recorded herein above.

For the reasons stated in Criminal appeal No. 964 of 2002 and the additional reasons recorded in this appeal, this appeal also succeeds and is allowed.