

Before : V. Ramaswami, CJ and G. R. Majithia, J.

GUR RATTAN PAL SINGH, ADVOCATE,—Petitioner.

versus

UNION OF INDIA AND ANOTHER,—Respondents.

Civil Writ Petition No. 7431 of 1989

October 4, 1989.

Code of Criminal Procedure (II of 1974)—S. 321—Withdrawal of cases of Jodhpur detenus—Petitioners claiming damages for malicious prosecution—Withdrawal in public interest—No breach of duty.

Held, that the object of S. 321 of Criminal Procedure Code, 1974 appears to be preserve power to Executive Government to withdraw any criminal case on larger ground of public policy such as inexpediency of prosecution for reasons of State; broader public interest like maintenance of public peace and harmony, social economic and political and the like.

(Para 4)

Held, that damages for malicious prosecution are in the realm of torts. Tortious liability arises from the breach of a duty primarily fixed by the law. This duty is towards the persons generally and its breach is redressible by an action for unliquidated damages. There is no breach of duty fixed by law in the instant case and the action is unwarranted and unsustainable.

(Para 6).

CIVIL WRIT PETITION UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA *praying that this Hon'ble Court may be pleased to grant this writ petition and to issue an appropriate writ, order or direction calling upon the respondents to pay rupees 4 lacs as interim compensation to each of the Jodhpur detenus. It is further prayed that costs of the writ petition may also be awarded to the petitioner. It is also prayed that the respondents be called upon to furnish the names and addresses of the detenus illegally held in Jodhpur Jail.*

Gur Rattan Pal Singh (In person).

None, for the Respondents.

ORDER

(1) The petitioner, an advocate of this Court, has moved this Court for issuance of a mandate to the respondents to pay Rs. Four lacs each as interim compensation to the Jodhpur detenus.

(2) A First Information report under Sections 121/121-A/122/109/123/302/326 read with Sections 34, 148 and 149 of the Indian Penal Code and Sections 25 and 27 of the Arms Act was registered against the accused numbering 350 (for short referred to as the Jodhpur detenus).

(3) We have not thought it fit to refer in detail the other allegations made in the petition like petitioner's participation in Sikh affairs and politics, his arrest in Akali Agitations and the news items appearing in the Indian Express regarding Jodhpur detenus, since these are wholly irrelevant for the purpose of adjudicating the question raised in the writ petition.

(4) The object of Section 321 Criminal Procedure Code (for short 'the Code') appears to be to preserve power to Executive Government to withdraw any criminal case on larger ground of public policy such as inexpediency of prosecution for reasons of State; broader public interest like maintenance of public peace and harmony, social economic and political and the like. In *Rajender Kumar Jain vs. State through Special Police Establishment and others* (1), apex Court observed as under:

"Wherever issues involve the emotions and there is a surcharge of violence in the atmosphere it has often been found necessary to withdraw from prosecutions in order to restore peace, to free the atmosphere from the surcharge of violence to bring about a peaceful settlement of issues and to preserve the calm which may follow the storm. To persist with prosecutions where emotive issues are involved in the name of vindicating the law may even be utterly counter productive. An elected Government, sensitive and responsive to the feelings and emotions of the people, will be amply justified if for the purpose of creating an atmosphere of goodwill or for the purpose of not disturbing a calm which has descended it decides not to prosecute the offenders involved or not to proceed further with prosecutions already launched. In such matters who but the Government can and should decide, in the first instance, whether it should be baneful or beneficial to launch or continue prosecutions! If the Government decides that it would be in the public interest to

(1) AIR 1980 S.C. 1510.

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withdraw from prosecutions, how is the Government to go about this task?"

The scope and ambit of Section 321 of the Code was stated in Sheo Nandan Paswan *vs.* State of Bihar and others (2), by V. Kalid, J. as under :

"Section 321, Cr. P. C. is virtually a step by way of composition of the offence by the State. The State is the master of the litigation in criminal cases. It is useful to remember that by the exercise of functions under S. 321, the accountability of the concerned person or persons does not disappear.

Summarising the ambit of Section 321 of the Code, the apex Court observed thus:

"It would, therefore, be just and reasonable to hold that while conferring powers upon the subordinate courts under Section 494 to give consent to a public prosecutor withdrawing the prosecution, the legislature had only intended that the courts should perform a supervisory function and not an adjudicatory function in the legal sense of the term."

(5) The acquittal or discharge as observed by the apex Court is not the same thing as the normal final order in criminal cases. The detention was not found to be illegal.

(6) Damages for malacious prosecution are in the realm of torts. Tortious liability arises from the breach of a duty primarily fixed by the law. This duty is towards the persons generally and its breach is redressible by an action for unliquidated damages. There is no breach of duty fixed by law in the instant case and the action is unwarranted and unsustainable.

(7) The learned counsel referred to the following judgments in support of his submissions:

(i) *Smt. Kalawati and others vs. State of Himachal Pradesh and another*, (3).

(2) AIR 1987 S.C. 877.

(3) AIR 1989 H.P. 5.

(ii) *Jaram Singh vs. State of H. P. and others* (4).

(8) In *Smt. Kalawati's case* (supra), the Bench allowed interim compensation taking into consideration Section 92-A (No Fault Liability) of the Motor Vehicles Act. The Section provides for the payment of compensation in the sum of Rs. 15,000 on the basis of no fault liability where a motor vehicle accident results in death. This case has no bearing to the facts of the instant case.

(9) In *Jaram Singh's case* (supra), a Bench of the Himachal Pradesh High Court presided over by P. D. Desai, C.J. observed that the writ Court is empowered to award a reasonable sum by way of compensation as an *ad interim* or *interim* measure.

(10) The Bench proceeded on the assumption that *ad-interim* compensation by way of damages be awarded in case when a suit is filed for the relief, the decree will follow as a matter of course. This judgment has not even remotest applicability to the facts of the instant case. The general observations are with reference to peculiar facts of that particular case.

(11) For the reasons aforesaid, this petition is dismissed in *limine*.

P.C.G.

Before : I. S. Tiwana and Amarjeet Chaudhary, JJ.

GULSHAN KUMAR AND ANOTHER,—Petitioners.

versus

MAHARISHI DAYANAND UNIVERSITY, ROHTAK AND
OTHERS,—Respondents.

Civil Writ Petition No. 5631 of 1989

October 6, 1989.

Constitution of India, 1950—Arts. 226 and 227—Admission to various post graduate degree/diploma courses—Condition imposed for regulating the admission to different courses and change of speciality—Such conditions—Whether in public interest.

Held, that the petitioners whose ardent desire is to have admissions in various degree courses cannot be permitted to bypass the

(4) AIR 1988 H.P. 13.