

P L D 2009 Lahore 87

Before Muhammad Akram Qureshi, J

ALLAH YAR---Petitioner

Versus

HUSSAIN ALI and another---Respondents

Criminal Revision No.757 of 2004, decided on 20th June, 2008.

(a) Criminal Procedure Code (V of 1898)---

---S. 494---Withdrawal from prosecution---Rule of caution---Guide lines---Court, in view of the discretionary power vested in the Public Prosecutor to withdraw from prosecution of a case under S.494, Cr.P.C. acts in a supervisory capacity to see that such power is not used arbitrarily and contrary to public interest causing interference with the ordinary course of justice---Court must satisfy itself about the reasons advanced by the public prosecutor for his withdrawal from the prosecution and existence of the said reasons on record---Supervisory function of the court can be exercised only considering all the facts and circumstances of the case, without disregarding any material factor or circumstance having a bearing on the issue---Court in undertaking such exercise cannot embark upon a detailed analysis of the evidence which can only be appropriately done at the conclusion of a judicial trial---Any such attempt would throttle the prosecution or interfere with the ordinary course of justice.

Mir Hassan v. Tariq Saeed and 2 others PLD 1977 SC 451 ref.

(b) Criminal Procedure Code (V of 1898)---

---S. 494---Penal Code (XLV of 1860), Ss.409/382---Prevention of Corruption Act (II of 1947), S.5---Trial Court had permitted Public Prosecutor to withdraw from the prosecution of the case--
-Validity--Trial Court had taken cognizance of the offence being of the opinion that sufficient reasons were existing to proceed with the trial---Any executive opinion of the District Prosecutor counselling the case should not have prevailed upon the said judicial order of the Trial Court---
Trial Court should not have permitted the withdrawal of the case by a mechanical order---
Impugned order being not in accordance with the dictums of Superior Courts, was illegal, incorrect and improper and the same was consequently set aside---Case was remanded to Trial Court with the direction to proceed with the trial in accordance with law.

Mir Hassan v. Tariq Saeed and 2 others PLD 1977 SC 451; The State v. Navid Asif and others PLD 1991 Lah. 268; Pahalwan Machhi v. Abdul Wahid and another 1991 PCr.LJ 728; Habib-ul-Wahab el Khairi v. Pakistan through Secretary, Interior Division Islamabad and others 1998 MLD 1523; Khizer Hayat v. I.G. Punjab Lahore PLD 2005 Lah. 470 and Muhammad Alam and another v. Additional Secretary to Government of N.-W.F.P. Home and Tribal Affairs Department and 4 others PLD 1987 SC 103 ref.

Ch. Asghar Ali and M. Nazir Kamboh for Petitioner.

Arif Saeed for Respondent No.1.

Farzana Shehzad Khan, DPG for the State.