

1. Heard Mr. Anurag Varma, learned Additional Government Advocate, on behalf of revisionist-State, as well as Mr. Sunil Kumar Singh, learned counsel for respondent, and gone through the entire record.

2. This criminal revision under Section 397(1)/497 CrPC has been filed on behalf of the State having been aggrieved by the order dated 10th January, 2020 passed by the Special Judge, M.P. M.L.A./Additional Sessions Judge, Court No. 5, Pratapgarh in Criminal Case No.2 of 2017, arising out of Crime/FIR No.0356 of 2016, under Section 143, 341 and 186 IPC lodged at Police Station Raniganj, District Pratapgarh, rejecting the application filed by the Public Prosecutor under Section 321 CrPC.

3. The learned trial Court has rejected the said application on the ground that the Public Prosecutor filed the application after the State Government passed an order for withdrawal from prosecution in the said case. The Public Prosecutor, in the application, had not mentioned that what facts and evidence he had considered to come to conclusion to that effect and, he had only mentioned that the order passed by the Government for withdrawing from prosecution was completely legal and in the interest of justice and, he agreed with the decision of the Government having been satisfied himself and from perusal of the record.

4. The facts of the case are that on 11.09.2016, when Sub-Inspector, Mr. Prakash Narain Yadav, In-charge of Police Station Raniganj, District Pratapgarh along with a few constables and driver of the jeep were on duty for maintaining peace in town Raniganj, Dr. R.K. Verma, M.L.A. from Vishwanathganj Constituency, Pratapgarh, along with his supporters, named in the FIR, and around 150 other supporters were sitting on National Highway, staging a protest and, they had blocked the National Highway. They were raising slogans and, were not allowing vehicles to ply on the National Highway. It was said that despite efforts made by the police officers/officials to remove the blockage from the National Highway, the accused, named in the FIR, and supporters of the M.L.A. did not agree and, they became aggressive and, demanded that higher officials should come on the site. It was also said that due to blockage of National Highway there was a jam on both sides of the Highway for kilometers as a result thereof passengers had to face great difficulties, ambulances, carrying patients, were not allowed to ply. This resulted in disturbances of public order. Considering the situation, higher officials, along with force, came there, however, Dr. R.K. Verma and his supporters continued to block the National Highway from 13.10 hours to 19.30 hours on 11.09.2016. It was further said that Dr. R.K. Verma and his supporters had committed offence under Sections 143, 341 and 186 IPC, which should be registered. On the said complaint, the FIR came to be registered.

5. In the present case the complainant is police official. The police, after investigating the offence, filed charge sheet on which cognizance was taken and the accused were summoned by the learned trial Court.

6. It appears that the Government had taken a decision vide Order No.44 WC/Sat-Nyay-5-2018-337 WC/2017 dated 19th March, 2018 whereby the Public Prosecutor had been given permission to withdraw from prosecution.

7. Pursuant to the aforesaid decision of the State Government, the Public Prosecutor had moved application dated 06.04.2018 under Section 321 CrPC to withdraw from prosecution. In the application under Section 321 CrPC the Public Prosecutor had stated that he had applied his independent mind on the facts, evidence and record of the case. It was further stated that after perusing record of the case in detail, the Public Prosecutor was in agreement with the decision taken by the Government to withdraw from prosecution and, found the decision of the Government wholly legal and in the interest of justice. It was further stated that from perusal of the evidence collected against the accused, the Public Prosecutor was of the opinion that evidence was very weak and success of the prosecution was doubtful and, it would be appropriate to withdraw from prosecution and, therefore, the application was filed in the interest of justice and in public interest.

8. As mentioned above, the learned Special Judge, vide its impugned order, has rejected the application under Section 321 CrPC on the ground that the Public Prosecutor did not state that how the evidence collected by the investigating agency was of weak quality. The Public Prosecutor had stated that he was in complete agreement with the decision taken by the Government to withdraw from prosecution, which would show that the Public Prosecutor had applied his independent mind and, decision to move the application under Section 321 CrPC had been taken by him in compliance of the decision taken by the Government, allowing him to move application for withdrawal from prosecution.

9. On behalf of the revisionist, Mr. Anurag Varma, learned Additional Government Advocate, has submitted that the question, which requires to be considered, is whether the Public Prosecutor, while moving the application under Section 321 CrPC, is required to mention in detail his analysis and reasoning for reaching to conclusion that the evidence collected by the prosecution is weak and success of the prosecution appears to be remote and doubtful or it would suffice for him to say that he has perused the case diary, material and evidence collected by the prosecution and, in his view it would be in the interest of justice and in public interest to withdraw from prosecution

10. Section 321 CrPC, as amendment made by the State of Uttar Pradesh, would read as under:-

"S. 321. **Withdrawal from prosecution.** The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, *on the written permission of the State Government to that effect (which shall be filed in Court)* with the consent of the Court, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and, upon such withdrawal,-

(a) *if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;*

(b) *if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences:*

Provided that where such offence-

(i) *was against any law relating to a matter to which the executive power of the Union extends, or*

(ii) *was investigated by the Delhi Special Police Establishment under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or*

(iii) *involved the misappropriation or destruction of, 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."*

11. Thus, an application under Section 321 CrPC can be moved by the Public Prosecutor in the State of Uttar Pradesh only on written permission of the State Government to that effect.

12. The scope of Section 321 Cr.P.C., ambit of power and manner in which it has to be exercised by the Public Prosecutor have been dealt with in several decisions by the Supreme Court. Only a few decisions rendered by the Supreme Court would be apt to quote here to throw light on the scope of Section 321 Cr.P.C. and ambit and manner of exercise of the power by the Public Prosecutor under the aforesaid section. Ultimate authority to allow withdrawal from prosecution vests with the Court and the guiding consideration must always be interest of administration of justice when deciding the question whether prosecution should be allowed to be withdrawn or not.

13. In **Bansi Lal Versus Chandan Lal and others (1976) 1 SCC 421**, the Supreme Court has held in para-5 which, on reproduction, reads as under:-

"5.....Therefore when the Additional Sessions Judge made the impugned order, there was no material before him to warrant the conclusion that sufficient evidence would not be forthcoming to sustain the charges or that there was any reliable subsequent information falsifying the prosecution case or any other circumstance justifying withdrawal of the case against the respondents. Consenting to the withdrawal of the case on the view that the attitude displayed by the prosecution made it "futile" to refuse permission does not certainly serve the administration of justice. If the material before the Additional Sessions Judge was considered sufficient to enable him to frame the charges against the respondents, it is not possible to say that there was no evidence in support of the Prosecution case. The application for stay of the proceeding made before the committing Magistrate cannot also be said to falsify the prosecution case. If the prosecuting agency brings before the court sufficient material to indicate that the prosecution was based on false evidence, the court would be justified in consenting to the withdrawal of the prosecution, but on the record of the case, as it is, we do not find any such justification....."

14. In **Balwant Singh and others Versus State of Bihar (1977) 4 SCC 448**, the Supreme Court, while considering the role of the Public Prosecutor while moving an application for withdrawal from prosecution, has dealt upon the consideration which must weigh for moving such an application. The Public Prosecutor must keep in mind the administration of justice inasmuch as he is discharging the statutory responsibility and while discharging the statutory responsibility the only factor, which should be considered, is administration of justice and nothing else. Relevant portion of paragraph-2 is reproduced hereinbelow:-

"2.The statutory responsibility for deciding upon withdrawal squarely vests on the public prosecutor. It is non-negotiable and cannot be bartered away in favour of those who may be above him on the administrative side. The Criminal Procedure Code is the only matter of the public prosecutor and he has to guide himself with reference to Criminal Procedure Code only. So guided, the consideration which must weigh with him is, whether the broader cause of public justice will be advanced or retarded by the withdrawal or continuance of the prosecution. As we have already explained, public justice may be a much wider conception than the justice in a particular case. Here, the Public Prosecutor is ordered to move for withdrawal....."

15. In **Sheonandan Paswan Versus State of Bihar and others (1983) 1 SCC 438**, the Supreme Court has held that before an application is moved under Section 321 Cr.P.C., the Public Prosecutor needs to apply his mind to the facts of the case independently, without being influenced by outside factors. Relevant paragraphs, on reproduction, read as under:-

"85. In our opinion, the object of Section 321 Cr.P.C. appears to be to reserve power to the Executive Government to withdraw any criminal case on larger grounds of public policy such as inexpediency of prosecutions for reasons of State; broader public interest like maintenance of law and order; maintenance of public peace and harmony, social, economic and political; changed social and political situation; avoidance of destabilization of a stable government and the like. And such powers have been, in our opinion, rightly reserved for the Government; for, who but the Government is in the know of such conditions and situations prevailing in a State or in the country? The Court is not in a position to know such situations.

134. The statutory responsibility for deciding upon withdrawal squarely rests upon the Public Prosecutor. It is non-negotiable and cannot be bartered away. The court's duty in dealing with the application under Section 321 is not to reappraise the grounds which led the Public Prosecutor to request withdrawal from the prosecution but to consider whether the Public Prosecutor applied his mind as a free agent un-influenced by irrelevant and extraneous or oblique considerations as the court has a special duty in this regard inasmuch as it is the ultimate repository of legislative confidence in granting or withholding its consent to withdrawal from prosecution. The court's duty is to see in furtherance of justice that the permission is not sought on grounds extraneous to the interest of justice."

16. The Supreme Court has also dealt with in a catena of decisions the manner in which an application for withdrawal from prosecution moved by the Public Prosecutor needs to be considered by the Court.

17. In **State of Punjab Versus Union of India and others (1986) 4 SCC 335**, the Supreme Court has held that while granting permission to the Public Prosecutor for withdrawal from prosecution, the Court needs to be satisfied itself that the Public Prosecutor has properly exercised statutory function and has not attempted to interfere with the normal course of justice for ulterior purposes. The administration of criminal justice should be the touchstone on which the application under Section 321 Cr.P.C. needs to be decided. Relevant portion of paragraph-1, on reproduction, reads as under:-

"1. The ultimate guiding consideration while granting a permission to withdraw from the prosecution must always be the interest of administration of justice and that is the touchstone on which the question must be determined whether the prosecution should be allowed to withdraw. The Public Prosecutor may withdraw from the prosecution of a case not merely on the ground of paucity of evidence but also in order to further the broad ends of public justice, and such broad ends of public justice may well include appropriate social, economic and political purposes."

18. Similar views have been reiterated in **Sheonandan Paswan Versus State of Bihar and others (1987) 1 SCC 288** by the Supreme Court. Paragraph-73, on reproduction, reads as under:-

"73. Section 321 gives the Public Prosecutor the power for withdrawal of any case at any stage before judgment is pronounced. This presupposes the fact that the entire evidence may have been adduced in the case, before the application is made. When an application under Section 321 Cr.P.C. is made, it is not necessary for the court to assess the evidence to discover whether the case would end in conviction or acquittal. To contend that the court when it exercises its limited power of giving consent under Section 321 has to assess the evidence and find out whether the case would end in acquittal or conviction, would be to rewrite Section 321 Cr.P.C. and would be to concede to the court a power which the scheme of Section 321 does not contemplate. The acquittal or discharge order under Section 321 are not the same as the normal final orders in criminal cases. The conclusion will not be backed by a detailed discussion of the evidence in the case of acquittal or absence of prima facie case or groundlessness in the case of discharge. All that 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 these facets of the case, will have to see whether the application suffers from such improprieties or illegalities as to cause manifest injustice if consent is given. In this case, on a reading of the application for withdrawal, the order of consent and the other attendant circumstances, I have no hesitation to hold that the application for withdrawal and the order giving consent were proper and strictly within the confines of Section 321 Cr.P.C."

19. In **S.K. Shukla and others Versus State of U.P. and others (2006) 1 SCC 314**, the Supreme Court has held that the Public Prosecutor cannot work like a post box. He needs to act objectively being an officer of the Court and it is always open to the Court to reject the prayer if it is not guided in the interest of administration of justice. Relevant portion of paragraph-32, on reproduction, reads as under:-

"32. The Public Prosecutor cannot act like a postbox or act on the dictates of the State Government. He has to act objectively as he is also an officer of the court. At the same time the court is also not bound by that. The courts are also free to assess whether a prima facie case is made or not. The court, if satisfied, can also reject the prayer."

20. In **Vijaykumar Baldev Mishra alias Sharma Versus State of Maharashtra (2007) 12 SCC 687** the Supreme Court has held as under:-

"12. Section 321 of the Criminal Procedure Code, 1973 provides for withdrawal from prosecution at the instance of the public prosecutor or Assistant public prosecutor. Indisputably therefor the consent of the Court is necessary. Application of mind on the part of the Court, therefore, is necessary in regard to the grounds for withdrawal from the prosecution in respect of any one or more of the offences for which the appellant is tried. The provisions of TADA could be attracted only in the event of one or the other of the four 'things' specified in Nalini (supra) is found applicable and not

otherwise. The Review Committee made recommendations upon consideration of all relevant facts. It came to its opinion upon considering the materials on record. Its recommendations were based also upon the legality of the charges under TADA in the fact situation obtaining in each case. It came to the conclusion that in committing the purported offence, the appellant inter alia had no intention to strike terror in people or any section of the people and in fact the murder has been committed only in view of group rivalry and because the parties intended to take revenge, the provisions of the TADA should not have been invoked.

13. *The Public Prosecutor in terms of the statutory scheme laid down under the Code of Criminal Procedure plays an important role. He is supposed to be an independent person. While filing such an application, the public prosecutor also is required to apply his own mind and the effect thereof on the society in the event such permission is granted."*

21. In **Rahul Agarwal Versus Rakesh Jain and another (2005) 2 SCC 377**, the Supreme Court has held that while considering an application moved under Section 321 Cr.P.C., the Court should consider all relevant circumstances and find out whether the withdrawal from prosecution advances the cause of justice. The withdrawal can be permitted only when the case is likely to end in an acquittal and continuance of the case would only cause severe harassment to the accused. Relevant para-10 is extracted hereunder:-

"10. From these decisions as well as other decisions on the same question, the law is very clear that the withdrawal of prosecution can be allowed only in the interest of justice. Even if the Government directs the Public Prosecutor to withdraw the prosecution and an application is filed to that effect, the court must consider all relevant circumstances and find out whether the withdrawal of prosecution would advance the cause of justice. If the case is likely to end in an acquittal and the continuance of the case is only causing severe harassment to the accused, the court may permit withdrawal of the prosecution. If the withdrawal of prosecution is likely to bury the dispute and bring about harmony between the parties and it would be in the best interest of justice, the court may allow the withdrawal of prosecution. The discretion under Section 321, Code of Criminal Procedure is to be carefully exercised by the court having due regard to all the relevant facts and shall not be exercised to stifle the prosecution which is being done at the instance of the aggrieved parties or the State for redressing their grievance. Every crime is an offence against the society and if the accused committed an offence, society demands that he should be punished. Punishing the person who perpetrated the crime is an essential requirement for the maintenance of law and order and peace in the society. Therefore, the withdrawal of the prosecution shall be permitted only when valid reasons are made out for the same."

22. This Court vide judgment and order dated 12th December, 2013 passed in writ petition bearing Writ Petition No. 4683 (M/B) of 2013 "Ms. Ranjana Agnihotri and others Versus Union of India" while dealing the scope, power and ambit under Section 321 Cr.P.C. has held in paras-116 and 117 which, on reproduction, read as under :-

"116. In view of above, the Public Prosecutor is the final authority to apply mind and take a decision whether an application for withdrawal of a criminal case is to be moved or not. For that, option is open to him to receive necessary instructions or information from the Government to make up mind on the basis of material made available. The Public Prosecutor cannot act like post box or at the dictate of the State Government. He has to act objectively as he is also an officer of the court. It is also open for the appropriate Government to issue appropriate instruction to him but he has to act objectively with regard to the withdrawal of cases. But the instruction sent by the government shall not be binding and it is the Public Prosecutor who has to take a decision independently without any political favour or party pressure or like concerns. The sole object of the Public Prosecutor is the interest of administration of justice. Power conferred on Public Prosecutor to take independent decision for the interest of administration of justice is not negotiable and cannot be bartered away in favour of those who may be above him on administrative side. He is stood to be guided by letter and spirit of Code of Criminal Procedure only and not otherwise. Neither the Public Prosecutor nor the Magistrate can surrender their discretion while exercising power at their end."

117. Similarly, the Court has duty to protect the administration of criminal justice against possible abuse or misuse by the executive by resort of the provisions contained in Section 321 Cr.P.C. The court has to record a finding that the application moved by Public Prosecutor is in the interest of administration of justice and there is no abuse or misuse of power by the Public Prosecutor or the Government. In case an application is allowed, it must be recorded by the Court that the application has been moved in good faith to secure the ends of justice and not in political or vested interest. The court has final say in the matter and the decision should be free and fair with independent exercise of mind in the interest of public policy and justice. It must ensure that the application is not moved to thwart or stifle the process of law or suffers from such improprieties or illegalities as to cause manifest injustice if consent is given."

23. In the present case, from reading of contents of the application moved by the Public Prosecutor, it is evident that the Public Prosecutor filed application under Section 321 CrPC in good faith and, after careful consideration of the material placed before him. The Public Prosecutor has stated in the application that he has considered the evidence collected by the prosecuting agency which appears to be weak and success of the prosecution is not bright. It has been further submitted that the application has been moved in good faith, in the interest of justice as well as in public interest. The present case, in which the application has been moved, has political overtone. The case got registered in relation to the political activity of the accused. The nature of offence, allegedly committed by the accused is of trivial in nature. The prosecution has remained pending for quite some time before the Court. In view thereof, the Government had taken a decision to withdraw from prosecution and had given consent to the Public Prosecutor, after considering the material, as mentioned above, to move application.

24. The Court, while considering the application under Section 321 CrPC, is required to consider whether the withdrawal from prosecution would further cause of justice or not and, whether it would be in the interest of justice to allow the withdrawal from prosecution. The application should show that the Public Prosecutor has applied his independent mind, on the basis of the material placed before him, including the evidence collected by the prosecution during the course of investigation. It is not required for him to give in detail reasoning in the application regarding analysis of every evidence available on file. If, he is of considered opinion that success of the prosecution appears to be weak and, the withdrawal from prosecution would further the cause of justice and it would be in the public interest, it cannot be said that the Public Prosecutor has not applied his independent mind.

25. Considering the law on the subject as well as the facts and circumstances of the case, this Court does not agree with the finding recorded by the trial Court that the Public Prosecutor had not applied his independent mind, but he was guided by the State Government decision to withdraw from prosecution and, the impugned finding does not appear to be correct one. The application dated 06.04.2018 under Section 321 CrPC filed by the Public Prosecutor would suggest that the had applied his independent mind and considered facts, material and evidence in the case. This Court is of the considered view that the view of the trial Court is not correct one and, therefore, the impugned order dated 10.01.2020 is hereby set-aside. The revision stands allowed. The application dated 06.04.2018 filed under Section 321 CrPC by the Public Prosecutor is allowed.
