

2025 LiveLaw (SC) 1164

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

SANJAY KAROL; J., NONGMEIKAPAM KOTISWAR SINGH; J.

December 03, 2025

CRIMINAL APPEAL No (s). 5196 OF 2025 (Arising out of SLP(Crl) No.6421 of 2025)

BAL KUMAR PATEL @ RAJ KUMAR versus STATE OF U.P.

Code of Criminal Procedure, 1973 (CrPC); Section 321 – Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS); Section 528 – Held, no prosecution against a sitting or former Member of Parliament (MP) or Member of Legislative Assembly (MLA) shall be withdrawn without the leave of the High Court - The Public Prosecutor must file the application, which should disclose all reasons that weighed with them to put forward the application, along with the records of the case, before the High Court for permission to withdraw the prosecution - The High Court must exercise its judicial mind and give a reasoned order, granting or denying such permission - The function of the Court in granting consent is a judicial one, described as supervisory in nature, to ensure the Public Prosecutor's executive function has not been improperly exercised - The Trial Court had rightly observed that permission to withdraw could not be granted because the State had not sought the High Court's permission as mandated by *Ashwini Kumar Upadhyay* case - The State had failed to seek permission even after being granted 30 day's time by the Trial Court - **Appeals dismissed. [*Relied on Ashwini Kumar Upadhyay v. Union of India, (2021) 20 SCC 599; Paras 4-10*].**

WITH CRIMINAL APPEAL No. 5197 OF 2025 @ SLP (Crl) No. 13168 of 2025 WITH CRIMINAL APPEAL No. 5198 OF 2025 @ SLP (Crl) No. 13090 of 2025 WITH CRIMINAL APPEAL No. 5199 OF 2025 @ SLP (Crl) No. 13144 of 2025 WITH CRIMINAL APPEAL No. 5200 OF 2025 @ SLP (Crl) No. 13142 of 2025 WITH CRIMINAL APPEAL No. 5201 OF 2025 @ SLP (Crl) No. 13161 of 2025

For Petitioner(s): Mr. Rohit Amit Sthalekar, AOR Mr. Sankalp Narain, Adv. Mr. B.p Tiwari, Adv.

For Respondent(s): Mr. Shaurya Sahay, AOR

J U D G M E N T

SANJAY KAROL J.

Leave Granted.

2. The appellant seeks leave to appeals under Article 136 of the Constitution of India to challenge the following judgments and orders whereby the High Court of Judicature at Allahabad has declined to exercise its jurisdiction under Section 482 Code of Criminal Procedure, 1973¹/528 Bharatiya Nagarik Suraksha Sanhita, 2023² and quash the criminal proceeding against him, on the common ground that the permission as required under law, to withdraw prosecution against sitting/former Members of Parliament or Members of Legislative Assembly, has not been sought by the State from the High Court as mandated by *Ashwini Kumar Upadhyay v. Union of India*³.

¹ Hereinafter referred to as 'CrPC'

² Hereinafter referred to as "BNSS"

³ 2021(20) SCC 599

Sr. No .	Details of FIR	Sections	Date of impugned judgment/ order	Particulars of impugned judgment/order
1	656/07 dt. 12.06.2007	u/s 25,27,30 Arms Act	07.04.2025	Application u/s 482 No. 2959 of 2025
2	652/07 dt. 12.06.2007	u/s 420,467,468,71 IPC	28.05.2025	Application u/s 482 No. 4560 of 2025
3	653/07 dt. 12.06.2007	u/s 420,467,468,71 IPC	30.05.2025	Application u/s 482 No. 4643 of 2025
4	654/07 dt. 12.06.2007	u/s 25,27,30 Arms Act	26.05.2025	Application u/s 482 No. 4420 of 2025
5	655/07 dt. 12.06.2007	u/s 25,27,30 Arms Act	27.05.2025	Application u/s 482 No. 4474 of 2025
6	728/07 dt. 20.06.2007	u/s 420,467,468,71 IPC	30.05.2025	Application u/s 482 No. 4724 of 2025

3. Since the question involved in these appeals is a question of law, it may suffice to note by way of background facts that the appellant was the holder of an arms license issued by the competent authority of the State, but the common FIR from which all these proceedings arise came to be filed against him on 12th June 2007, with the allegation that in holding the arms license, he had acted against the provisions of the Arms Act 1959. It is also required to be noted as a matter of subsequent development that the District Magistrate, Raebareli had vide order dated 11th July 2012 restored the Arms license which originally stood cancelled by order dated 24th December 2009 passed in Case No.35/2012/113/26/09 under Section 17(3)(b) of the Arms Act.

4. The FIR was processed as per law and the chargesheet was filed on 25th July 2007. The Chief Judicial Magistrate, Raebareli took cognizance of the chargesheet vide order dated 10th August 2007. By Government Order bearing particulars No.1264/WC/Seven-Nyay-5-2014-842-WC/2012, the Special Secretary Government of Uttar Pradesh wrote to the District Magistrate Raebareli on 6th August 2014 stating that the Government had decided to withdraw Case Crime No.654,655 and 656 of 2007 against the Appellant, in public interest and also in the interest of justice. The same is extracted below:

"No.1264/WC/Seven-Nyay-5-2014-842 WC/2012

From,

J.P. Singh II

Special Secretary

Government of Uttar Pradesh.

To, District Magistrate Raebareli.

Law Section-5 (Criminal)Lucknow, dated 06th August, 2014

Subject: Regarding withdrawal of prosecution in Case Crime No. 654/2007, 655/2007, 656/2007 u/s 25, 27, 30 of Arms Act, P.S. Raebareli, District- Raibareli, titled as State Vs. Bal Kumar @ Raj Kumar Pate etc.

Sir,

In reference to your above subject Letter No.1490/Nyay. Saha. Pratham/12, dated 26.10.2012, I have been directed to say that after due consideration on the facts of cases, Reports/ Letters available on record, the Government has decided to withdraw the aforesaid cases in public interest as well as in the interest of justice.

2. I have also been directed to say that his Excellency Governor is pleased to grant permission to file application for withdrawal of aforesaid cases in the Court through Public Prosecutor.

3. Kindly ensure the required proceedings accordingly and kindly also inform the Government with action taken.

Regards,

Sd/-

(J.P. Singh II)

Special Secretary

OFFICE OF DISTRICT MAGISTRATE, RAEBARELI

No.748/J.A. PrathamVad Wapasi/2014,dated 12th August, 2014

Copy to: Senior Prosecution Officer, Raebareli with this intent that by conducting the further proceedings in the present case as per the directions of Government, kindly send the information of proceedings, immediately to this office.

Sd/ -

ADM (Administration)"

Pursuant to the said G.O., the learned Public Prosecutor filed an application under Section 321 CrPC before the Trial Court on 27th August 2014 for withdrawal of the cases. The application reads as under:

"COURT OF CHIEF JUDICIAL MAGISTRATE,

RAEBARELI

COURT NO.9

Case No.3072/2007

State Vs. Bal Kumar @ Raj Kumar

Crime No.656/07

U/s 25, 27, 30 of Arms Act, P.S. Kotwali Nagar

Date: 27.08.2014

APPLICATION U/S 321 OF CR.P.C.

Sir,

Today, the aforesaid case is listed for evidence. According to the Government Letter No.1264 WC/ Nyay-5-2014-842 WC/2012(Photocopy enclosed), the Government has decided to withdraw the aforesaid case in public interest and in the interest of justice, and His Excellency Governor has directed me to file the application for withdrawal of case.

Therefore, you are prayed that by conducting hearing on the aforesaid Government Order, kindly pass order for withdrawal of aforesaid case in the public interest as well as in the interest of justice.

Regards,

Sd/- illegible Date: 27.08.2014"

The Trial Court vide order dated 8th October 2021 observed that the State had not sought permission of the High Court in accordance with **Ashwini Kumar Upadhyay** (supra) and as such permission to withdraw could not be granted. In order to grant the State ample opportunity to do so, a thirty days time period was given to seek the requisite permission and it was observed that should the same not be filed in the aforesaid time, the prosecution will be conducted as per law.

5. The State, as the record reveals, did not seek permission. The appellant, however, did file application(s) under Section 482 CrPC/528 BNSS as referred to *supra*, seeking quashing. Such application (s) was rejected and the matter now stands before us.

6. The law in this regard is well settled. In **State of Kerala v. K. Ajith**⁴ DY Chandrachud J. (as he then was) formulated the following principles for exercise of the power under Section 321 CrPC:

“25. The principles which emerge from the decisions of this Court on the withdrawal of a prosecution under Section 321CrPC can now be formulated:

25.1. Section 321 entrusts the decision to withdraw from a prosecution to the Public Prosecutor but the consent of the court is required for a withdrawal of the prosecution.

25.2. The Public Prosecutor may withdraw from a prosecution not merely on the ground of paucity of evidence but also to further the broad ends of public justice.

25.3. The Public Prosecutor must formulate an independent opinion before seeking the consent of the court to withdraw from the prosecution.

25.4. While the mere fact that the initiative has come from the Government will not vitiate an application for withdrawal, the court must make an effort to elicit the reasons for withdrawal so as to ensure that the Public Prosecutor was satisfied that the withdrawal of the prosecution is necessary for good and relevant reasons.

25.5. In deciding whether to grant its consent to a withdrawal, the court exercises a judicial function but it has been described to be supervisory in nature. Before deciding whether to grant its consent the court must be satisfied that:

(a) The function of the Public Prosecutor has not been improperly exercised or that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes;

(b) The application has been made in good faith, in the interest of public policy and justice, and not to thwart or stifle the process of law;

(c) The application does not suffer from such improprieties or illegalities as would cause manifest injustice if consent were to be given;

(d) The grant of consent subserves the administration of justice; and

(e) The permission has not been sought with an ulterior purpose unconnected with the vindication of the law which the Public Prosecutor is duty-bound to maintain.

25.6. While determining whether the withdrawal of the prosecution subserves the administration of justice, the court would be justified in scrutinising the nature and gravity of the offence and its impact upon public life especially where matters involving public funds and the discharge of a public trust are implicated.

25.7. In a situation where both the trial Judge and the Revisional Court have concurred in granting or refusing consent, this Court while exercising its jurisdiction under Article 136 of the Constitution would exercise caution before disturbing concurrent findings. The Court may in exercise of the well-settled principles attached to the exercise of this jurisdiction, interfere in a case where there

⁴ (2021) 17 SCC 318

has been a failure of the trial Judge or of the High Court to apply the correct principles in deciding whether to grant or withhold consent.

..

67. The test which has been laid down in the decisions of this Court commencing with *Ram Naresh Pandey* [*State of Bihar v. Ram Naresh Pandey*, 1957 SCC OnLine SC 22 : AIR 1957 SC 389] in 1957, spanning decisions over the last 65 years is consistent. The true function of the court when an application under Section 321 is filed is to ensure that the executive function of the Public Prosecutor has not been improperly exercised or that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes. The court will grant its consent if it is satisfied that it subserves the administration of justice and the purpose of seeking it is not extraneous to the vindication of the law. It is the broad ends of public justice that must guide the decision. The Public Prosecutor is duty-bound to act independently and ensure that they have applied their minds to the essential purpose which governs the exercise of the powers. Whether the Public Prosecutor has acted in good faith is not in itself dispositive of the issue as to whether consent should be given. This is clear from the judgment in *Sheonandan*

Paswan [*Sheonandan Paswan v. State of Bihar*, (1987) 1 SCC 288 : 1987 SCC (Cri) 82]. In para 73 of the judgment, V. Khalid, J. has specifically observed that the court must scrutinise “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”. Good faith is one and not the only consideration. The court must also scrutinise whether an application suffers from such improprieties or illegalities as to cause manifest injustice if consent is given.”

[emphasis supplied]

7. Carrying forward this stipulation in *Ajith* (supra) a bench of 3 Judges in *Ashwini Kumar Upadhyay* (supra), held as under:

“**8.** In view of the law laid down by this Court, we deem it appropriate to direct that no prosecution against a sitting or former MP/MLA shall be withdrawn without the leave of the High Court in the respective suo motu writ petitions registered in pursuance of our order dated 16-9-2020 [*Ashwini Kumar Upadhyay v. Union of India*, (2021) 20 SCC 613] . The High Courts are requested to examine the withdrawals, whether pending or disposed of since 16-9-2020 [*Ashwini Kumar Upadhyay v. Union of India*, (2021) 20 SCC 613] , in light of guidelines laid down by this Court.”

[emphasis supplied]

8. Regarding the duty of the Court, the Court as far back as 1957 in *State of Bihar v. Ram Naresh Pandey*⁵, speaking in the context of Section 494 of the old Code whose counterpart is Section 321 CrPC referred *supra* observed as under:

“...The section is an enabling one and vests in the Public Prosecutor the discretion to apply to the Court for its consent to withdraw from the prosecution of any person. The consent, if granted, has to be followed up by his discharge or acquittal, as the case may be. The section gives no indication as to the grounds on which the Public Prosecutor may make the application, or the considerations on which the Court is to grant its consent... The function of the Court, therefore, in granting its consent may well be taken to be a judicial function. It follows that in granting the consent the Court must exercise a judicial discretion. But it does not follow that the discretion is to be exercised only with reference to material gathered by the judicial method. Otherwise the apparently wide language of Section 494 of the Code of Criminal Procedure would become considerably narrowed down in its application. In understanding and applying the section, two main features thereof have to be kept in mind. The initiative is that of the Public Prosecutor and what the Court has to do is only to give its consent and not to determine any matter judicially. As the Privy Council has pointed out in *Faqir Singh v. Emperor* [AIR 1938 Privy Council 266, 269] “It (Section 494 of the Code of Criminal Procedure) gives a general executive discretion (to the

⁵ 1957 SCC OnLine SC 22

Public Prosecutor) to withdraw from the prosecution subject to the consent of the Court, which may be determined on many possible grounds". The judicial function, therefore, implicit in the exercise of the judicial discretion for granting the consent would normally mean that the Court has to satisfy itself that the executive function of the Public Prosecutor has not been improperly exercised, or that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes. In this context it is right to remember that the Public Prosecutor (though an executive officer as stated by the Privy Council in *Faqir Singh v. Emperor* [AIR 1938 Privy Council 266, 269]) is, in a larger sense, also an officer of the Court and that he is bound to assist the Court with *his* fairly-considered view and the Court is entitled to have the benefit of the fair exercise of *his* function..."

[emphasis supplied]

9. The Court in ***Ram Naresh*** (*supra*) spoke in the context of a Trial Court and the duty that is cast upon it when an application for withdrawal is made by the Public Prosecutor, after the latter has made an independent assessment of the justifiability of such an application. Undoubtedly this is the duty of the Trial Court when applications for withdrawal from prosecution is made in regular course before the Court, however, we are of the considered view that the duty described above, of the applications of judicial mind, applies in letter and spirit to the High Court as well, when considering applications for permission in cases concerning MPs or MLAs, which can only be filed before it in terms of the law referred to *supra*. The Public Prosecutor who has a duty to assist the Court 'with a fairly considered view' on the case, in his application and in the interest of justice should disclose all reasons that weighed with them to put forward this application to the Court. This is in furtherance of the well recognised principle that reasons are the soul of a judicial as well as administrative function. In view of ***Ashwini Kumar Upadhyay*** (*supra*) this application disclosing the reasons for withdrawal of prosecution given by the Public Prosecutor as also the records of the case should be before the High Court which would exercise its judicial mind and give a reasoned order, granting or denying such permission.

10. As is obvious, this permission is missing in the present case. The impugned judgment therefore cannot be faulted with. The High Court has rightly dismissed the petition for quashing. The Appeals are dismissed. We clarify that we have not expressed any view on the merits of the case and any and all contentions available to the appellant are left open for him to take at the appropriate stage be it discharge or trial.

Pending application(s) if any, shall stand disposed of.