

High Court of Judicature at Allahabad

Sitting at Lucknow

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Neutral Citation No. – 2024:AHC-LKO:19025

A.F.R.

Reserved

Judgment reserved on : 05.12.2023

Judgment Pronounced on : 01.03.2024

Court No. - 27

1- Case :- APPLICATION U/S 482 No. - 2718 of 2023

Applicant :- **Akshay Pratap Singh @ Gopalji And Others**

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And
Another

Counsel for Applicant :- Meenakshi Singh Parihar, Abhiuday Pratap
Singh

Counsel for Opposite Party :- G.A.

2- Case :- APPLICATION U/S 482 No. - 4038 of 2023

Applicant :- **Sudhakar Singh**

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home Civil
Secrett. U.P. Lko. And Another

Counsel for Applicant :- P.K. Singh Bisen

Counsel for Opposite Party :- G.A., Ravi Shanker Singh

3- Case :- APPLICATION U/S 482 No. - 5595 of 2023

Applicant :- **Sanjay Pratap Singh @ Guddu Singh**

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home Civil
Secrett. U.P. Lko. And Another

Counsel for Applicant :- P.K. Singh Bisen

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi J.

1. Heard the submissions of Sri H.G.S Parihar, Senior Advocate assisted by Smt. Meenakshi Singh Parihar and Abhiuday Pratap Singh Advocates, the learned counsel for the applicants in Application under

Section 482 Nos. 2718 of 2023, Sri. P. K. Singh Bisen Advocate, the learned Counsel for the applicant in Applications under Section 482 No. 4038 of 2023 and 5595 of 2023 and Sri Rao Narendra Singh, the learned A.G.A-I for the State, Sri Ravi Shanker Singh, the learned counsel for the informant and Sri Ajmal Khan, the learned counsel for the intervener.

2. The application No. 2718 of 2023 has been filed by (1) Akshay Pratap Singh alias Gopalji, (2) Satyendra Singh, (3) Kailash Nath Ojha, (4) Lalji Nigam, (5) Hitesh Kumar alias Pankaj Singh, (6) Rohit Singh alias Rohit Kumar Singh, (7) Raghvendra Pratap Singh alias Mukur alias Raghvendra Singh, (8) Monu sinsh alias Ashutosh Singh, (9) Yogendra Singh, (10) Sarvesh Singh, (11) Prafulla Kumar Singh alias Dabbu Singh, (12) Zulfeqar Ahmad alias Zulfeqar Ahmad Siddiqui, (13) Shailendra Kumar, (14) Vinod Kumar, (15) Raghuraj Pratap Singh alias Raja Bhaiya alias Kunwar Raghuraj Pratap Singh, (16) Ram Kumar alias Banti, (17) Hariom Shankar Srivastava alias Hariom Shankar, (18) Narendra Singh alias Nanhe Singh, (19) Sheetla Singh alias Sheetla Prasad Singh and (20) Dron Kumar Upadhyay alias Dron Upadhyay. Application No. 4038 of 2023 has been filed by the applicant Sudhakar Singh. Application No. 5595 of 2023 has been filed by the applicant Sanjay Pratap Singh alias Guddu Singh.
3. By means of the all the aforesaid three applications filed under Section 482 Cr.P.C. the applicants have challenged the validity of an order dated 17.03.2023 passed by the Special Judge MP/MLA/ Civil Judge (SD)/FTC-II, District Pratapgarh in Case No. 236 of 2011 (State v. Raghuraj Pratap Singh & Others) arising out of Case Crime No. 513 of 2010, under Sections 395/397/307/364/323/325/504/506/427/34 of the Indian Penal Code (hereinafter referred to as 'IPC') & Section 7 of the Criminal Law Amendment Act, Police Station Kunda, District Pratapgarh, whereby the application under Section 321 Cr.P.C. for withdrawal of the prosecution against the applicants, has been rejected.

4. The points involved in these cases are similar, therefore, these cases are being decided together by a common judgment.
5. The informant-opposite party no. 2 had lodged First Information Report (hereinafter referred to as 'FIR') No. 189/2010 on 19.12.2010 against 13 named persons alleging that he was Bahujan Samaj Party's candidate for Babaganj Block. When he had gone to have dinner with some other political leaders and numerous other party workers to have dinner at a *Dhaba* (roadside eatery) in Kunda, the accused persons Sudhakar Singh, Pradeep Singh and about a dozen other persons riding two SUVs stopped the vehicles of the complainant and started abusing them. When the complainant and other persons tried to escape, the accused persons fired shots with weapons. The complainant and the persons accompanying him reached in front of Kotwali Kunda but several persons riding two Fortuner SUVs and about a dozen other vehicles started firing shots with weapons towards the informant and his companions. The complainant and the persons accompanying him went inside the Kotwali to save themselves but the accused persons damaged the vehicles of the complainant and assaulted the persons accompanying him with butts of rifles causing fractures to Pushpendra Shukla and Rohit Mishra. The F.I.R. further alleges that some companions of the complainant had been taken away in the vehicles to some unknown destination and their whereabouts could not be known and that some weapons and goods had been snatched away by the accused persons.
6. A charge sheet no. 01 of 2011 was submitted by the police on 03.01.2011 against 11 persons. Thereafter another charge sheet was submitted on 15.03.2011 against 15 persons.
7. On 04.03.2014, the Public Prosecutor filed an application for withdrawal of prosecution under Section 321 Cr.P.C. stating that the Government had taken a decision to withdraw the prosecution and that the Public Prosecutor had also applied his independent mind and perused the entire material available on record and he was of the view that the decision taken by the Government to withdraw the

prosecution was in accordance with law and that from a perusal of the case diary it appears that the evidences collected against the accused persons are very weak and success in the prosecution was doubtful.

8. The aforesaid application remained pending and meanwhile under the orders passed by the trial court, the police conducted further investigation and had submitted a supplementary charge-sheet on 22.07.2015 stating that upon investigation, the charges under Sections 182, 195, 379, 411, 120-B/34 IPC and 3/25 Arms Act were established against the accused persons Diwakar Tiwari alias Dabloo and Manoj Kumar Tiwari.
9. Yet another supplementary charge-sheet was submitted at 08.02.2019 stating that the allegations of beating, assault, abduction and loot as also of firing gun shots and damaging vehicles, could not be established and that the stolen weapons had been recovered from Rajesh Shukla alias Budul Shukla and charges under Section 379/411 IPC is established against Rajesh Shukla alias Bubul Shukla.
10. Subsequently the informant has also filed an application dated 27.02.2023 before the trial court supporting the application filed by the Public Prosecutor for withdrawal of the prosecution.
11. After submission of the aforesaid supplementary charge-sheets, the applicants had filed application under Section 482 Cr.P.C. No. 688 of 2023 before this Court praying for quashing of the proceedings of Criminal Case No. 236 of 2011 arising out of Case Crime No. 513 of 2010, cognizance orders dated 27.01.2011 and 29.03.2011 and the charge-sheet dated 03.01.2011 and 15.03.2011 filed in Case Crime No. 236 of 2011, so far as it relates to the applicants. The aforesaid application was disposed of by means of the order dated 09.02.2023 observing that the application under Section 321 Cr.P.C. was pending before the trial court and a direction was issued to the trial court to consider and disposed of the application in accordance with law.
12. The application under Section 321 Cr.P.C. filed by the prosecution was rejected by the trial court by means of the impugned order dated

17.03.2023 stating that while deciding an application under Section 321 Cr.P.C., the court has to take into consideration the following points:-

- (i) Whether the application for withdrawal of prosecution has been moved with the object of strengthening the administration of justice or it has been moved by the prosecution for improper and extraneous reasons.
- (ii) Whether withdrawal of prosecution would be in the interest of administration of justice.
- (iii) Whether the prosecution has given the application for withdrawal in a *bona fide* manner.
- (iv) Whether it has been moved to stop misuse of the judicial process by making it a vehicle of injustice.
- (v) Whether the prosecution will culminate in acquittal of the accused persons for want of evidence.
- (vi) Whether the accused persons are victims of personal/political animosity.

13. The trial court held that the offences involved in the present case fall within the category of grave and serious non compoundable offences. The missing weapons have been recovered from co-accused persons Diwakar Tiwari, Manoj Kumar Tiwari and Rajesh Kumar Shukla. The subject matter of the present case is very serious and challenges the administration of justice and it has adverse impact on a civilized society. Therefore, the application for withdrawal of prosecution moved by the State cannot be allowed.

14. The trial court further held that although the prosecution claims that withdrawal of prosecution would be in public interest but no basis for this contention has been lead. The trial court referred to the decision of the Hon'ble Supreme Court in **Daxa Ben v. State of Gujarat**, 2022 SCC OnLine SC 936 wherein it has been held that in case of grave and serious non-compoundable offences which impact the society, the

informant and/or complainant only has the right of hearing to the interest of ensuring that justice is done by conviction or punishment of the offence and the informant has no right to withdraw the FIR in respect of an offence of a grave, serious, or heinous nature, which impacts the society at large.

15. The trial court has also referred to the decision of Supreme Court in **Ashwani Kumar Upadhyay versus Union of India** decided on 10.08.2021, which is reported in (2021) 20 SCC 599, directing that prosecution against a sitting or former MP or MLA cannot be withdrawn without sanction High Court.
16. A supplementary affidavit has been filed on behalf of the applicant stating that only two persons namely Pushpendra Shukla and Rohit Mishra had suffered injuries in the incident and copies of their injury reports have been annexed with the Supplementary affidavit.
17. Pushpendra had suffered a lacerated wound of size 6 cm X 0.5 cm on the left side of his head - scalp deep, and a traumatic swelling around his left wrist joint. The injuries were simple in nature and had been caused by a hard and blunt object. Rohit had suffered two lacerated wounds - (i) 2.5 cm X 0.5 cm. 0.5 cm. and (ii) 1.5 c.m. x 0.3 cm., both on his forehead. Both the injuries were simple in nature and had been caused by a hard and blunt object. It has categorically been stated in the supplementary affidavit that no person had received any gun-shot injury in the incident.
18. The State has filed a counter affidavit and a supplementary counter affidavit annexing therewith a copy of the application for withdrawal of the prosecution and a copy of the opinion of District Government Counsel (Crl.) wherein the following points have been highlighted: -
 - (i) The place of incident is said to be the main gate of the police station whereas the guard on duty had not intervened in the matter and no police person has lodged any FIR, which fortifies the probability that the incident did not occur in the matter alleged in the F.I.R.

- (ii) The public representatives made accused in the matter were arrested soon after the incident but nothing was recovered from them, which also raises doubt against the credibility of the allegation.
- (iii) No intimation of arrest of the public representative was sent to the Chairperson of the Parliament, legislative assembly and legislative Council.
- (iv) No statement of the security guards employed in security of the public representatives was recorded by the Investigating Officer. The investigation appears to be merely a table work and the entire proceedings from the time of registration of the FIR till the arrest of the accused persons, appear to be suspicious.
- (v) The complainant was a candidate for Kshetra Panchayat Babaganj. As to why he and his companions carrying weapons were present at 12 in the night within the limits of Kshetra Panchayat, Kunda, is a matter to be questioned. The complainant and his associates were connected to the ruling party and their act was affecting the election process, which amounts to commission of offence and this fact was ignored by the administration. It appears that the entire proceedings were taken because of political vendetta and continuance of such proceedings would carry an adverse effect on administration of justice. The member of parliament, member of legislative assembly and member of legislative council are public servants and before taking cognizance of the offences committed by them no previous sanction was taken under Section 197 IPC.

In view of the aforesaid facts and circumstances, the District Government Counsel (Criminal) recommended withdrawal of prosecution under Section 321 (b) Cr.P.C.

- 19.** The Court had summoned the original record regarding withdrawal of prosecution, from which it appears that on 29.03.2012, the

Government had written a letter to the District Magistrate, Pratapgarh for furnishing certain information regarding withdrawal of prosecution of 8 cases, including the present case. The information sought included the information regarding the facts of the case, injuries suffered by the persons from the complainant's side, recoveries made during investigation, the latest status of case, assessment of public prosecutor regarding strength/weakness of the case and opinion of the public prosecutor and Superintendent of Police regarding withdrawal of prosecution.

20. The prosecution officer gave opinion that there were contradictions in the material collected, which might benefit the accused persons. However, subsequently a revised opinion was given by the prosecution officer, which has been referred to above.
21. The informant – opposite party no. 2 has also filed a counter affidavit stating that the ruling Bahujan Samaj Party was interested to win the seat of Block Pramukh of every block and he had lodged the F.I.R. under party pressure. Nothing was recovered from the applicants yet a charge-sheet was submitted against 11 persons. A supplementary charge-sheet was submitted against 15 more persons, although nothing was recovered from them also.
22. Sri H.G.S. Parihar, Senior Advocate, the learned counsel for the applicant has submitted that the impugned order dated 17.08.2023 does not make any reference to the findings in the subsequent charge-sheets to the effect that no charge was established against applicants and, therefore, the order has been passed without dealing with the relevant material available on record.
23. Sri Ajmal Khan has opposed the application on behalf of intervener Manoj Kumar Tiwari, who is co-accused in the present case. He has placed reliance on the judgment of the Hon'ble Supreme Court in **Sheonandan Paswan v. State of Bihar**, (1987) 1 SCC 288 and **Ashwini Kumar Upadhyay v. Union of India**, (2021) 20 SCC 599.

24. Sri Jayant Singh Tomar, the learned AGA-I has submitted that the application for withdrawal of prosecution was filed under political pressure and the trial court was justified in rejecting the application keeping in view the nature and gravity of the offence and its impact upon the public life.
25. Section 321 Cr.P.C., as it applies to the State of Uttar Pradesh, reads as follows: -

*“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 ...”

26. **Sheonandan Paswan versus State of Bihar**, (1987) 1 SCC 288, is a judgment of a Constitution Bench consisting of 5 Hon’ble Judges of the Hon’ble Supreme Court – (1) P. N. Bhagwati, C.J., (2) E. S. Venkataramiah, J, (3) V. Khalid, J, (4) G. L. Oza, J and (5) S. Natarajan, J. The majority view was expressed by a judgment written by Hon’ble V. Khalid, J for himself and Hon’ble S. Natarajan, J. Hon’ble E. S. Venkataramiah, J gave a separate judgment concurring with the majority view. The minority view was expressed by Hon’ble P. N. Bhagwati C.J. and Hon’ble G. L. Oza, J.
27. In the majority judgment delivered by Hon’ble V. Khalid, J with the concurrence of Hon’ble S. Natarajan, J, his lordships laid down the principles regarding Section 321 Cr.P.C. in the following words: -

“73. ... When an application under Section 321CrPC 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 321CrPC 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 321CrPC.*

*78. 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 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. The judicial function 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.***

* * *

87. ... Section 321, in view of the wide language it uses, enables the Public Prosecutor to withdraw from the prosecution any accused, the discretion exercisable under which is fettered only by a consent from court on a consideration of the materials before it and that at any stage of the case. The section does not insist upon a reasoned order by the Magistrate while giving consent. All that is necessary to satisfy the section is to see that the Public Prosecutor acts in good faith and that the Magistrate is satisfied that the exercise of discretion by the Public Prosecutor is proper.

* * *

90. Section 321 CrPC 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 Section 321, the accountability of the concerned person or persons does not disappear. A private complaint can still be filed if a party is aggrieved by the withdrawal of the prosecution but running the possible risk of a suit of malicious prosecution if the complaint is bereft of any basis.”

(Emphasis supplied)

28. Hon’ble G. L. Oza, J has expressing the following view while concurring with the majority view: -

“37. At the outset it should be stated that merely because a court discharges or acquits an accused arraigned before it, the court cannot be considered to have compromised with the crime. Corruption, particularly at high places should be put down with a heavy hand. But our passion to do so should not overtake reason. The court always acts on the material before it and if it finds that the material is not sufficient to connect the accused with the crime, it has to discharge or acquit him, as the case may be, notwithstanding the fact that the crime complained of is a grave one.”

29. Hon’ble G. L. Oza, J quoted with approval legal position flowing from Section 321 Cr.P.C. as explained by Hon’ble Krishna Iyer and Chinnappa Reddy, JJ. in **Rajender Kumar Jain versus State** (1980) 3 SCC 435: -

“14. Thus, from the precedents of this Court, we gather:

(1) Under the scheme of the Code prosecution of an offender for a serious offence is primarily the responsibility of the executive.

*(2) **The withdrawal from the prosecution is an executive function of the Public Prosecutor.***

(3) The discretion to withdraw from the prosecution is that of the Public Prosecutor and none else, and so, he cannot surrender that discretion to someone else.

*(4) **The Government may suggest to the Public Prosecutor that he may withdraw from the prosecution but none can compel him to do so.***

*(5) **The Public Prosecutor may withdraw from the prosecution not merely on the ground of paucity of evidence but on other relevant grounds as well in order to further the broad ends of public justice, public order and peace. The broad ends of public***

justice will certainly include appropriate social, economic and, we add, political purposes sans Tammery Hall enterprises.

(6) The Public Prosecutor is an officer of the court and responsible to the court.

(7) The court performs a supervisory function in granting its consent to the withdrawal.

(8) The court's duty is not to reappreciate 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, uninfluenced by irrelevant and extraneous considerations. The court has a special duty in this regard as it is the ultimate repository of legislative confidence in granting or withholding its consent to withdrawal from the prosecution.

15. We may add it shall be the duty of the Public Prosecutor to inform the court and it shall be the duty of the court to apprise itself of the reasons which prompt the Public Prosecutor to withdraw from the prosecution. The court has a responsibility and a stake in the administration of criminal justice and so has the Public Prosecutor, its 'Minister of Justice'. Both have a duty to protect the administration of criminal justice against possible abuse or misuse by the executive by resort to the provisions of Section 321, Criminal Procedure Code. The independence of the judiciary requires that once the case has travelled to the court, the court and its officers alone must have control over the case and decide what is to be done in each case."

14. Sri. Ajmal Khan has relied upon the following passage from the judgment in **Sheonandan Paswan** (Supra), which is from the minority view contained in the judgment delivered by P. N. Bhagwati C.J. with the concurrence of Hon'ble G. L. Oza, J: -

"30. Now when a warrant case instituted on a police report comes before the court, the court is required to consider only the police report and the documents sent along with it and the court may make such examination, if any, of the accused as it thinks necessary and on the basis of such material if the court, after giving the prosecution and the accused an opportunity of being heard, considers the charge against the accused to be groundless, the court is bound to discharge the accused. What the court, therefore, does while exercising its function under Section 239 is to consider the police report and the document sent along with it as also any statement made by the accused if the court chooses to examine him. And if the court finds that there is no prima facie case against the accused the court

discharges him. But that is precisely what the court is called upon to do when an application for withdrawal from the prosecution is made by the Public Prosecutor on the ground that there is insufficient or no evidence to support the prosecution. There also the court would have to consider the material placed before it on behalf of the prosecution for the purpose of deciding whether the ground urged by the Public Prosecutor for withdrawal of the prosecution is justified or not and this material would be the same as the material before the court while discharging its function under Section 239. If the court while considering an application for withdrawal on the ground of insufficiency or absence of evidence to support the prosecution has to scrutinise the material for the purpose of deciding whether there is in fact insufficient evidence or no evidence at all in support of the prosecution, the court might as well engage itself in this exercise while considering under Section 239 whether the accused shall be discharged or a charge shall be framed against him. It is an identical exercise which the court will be performing whether the court acts under Section 239 or under Section 321. If that be so, we do not think that in a warrant case instituted on a police report the Public Prosecutor should be entitled to make an application for withdrawal from the prosecution on the ground that there is insufficient or no evidence in support of the prosecution. The court will have to consider the same issue under Section 239 and it will most certainly further or advance the cause of public justice if the court examines the issue under Section 239 and gives its reasons for discharging the accused after a judicial consideration of the material before it, rather than allow the prosecution to be withdrawn by the Public Prosecutor. When the prosecution is allowed to be withdrawn there is always an uneasy feeling in the public mind that the case has not been allowed to be agitated before the court and the court has not given a judicial verdict. But, if on the other hand, the court examines the material and discharges the accused under Section 239, it will always carry greater conviction with the people because instead of the prosecution being withdrawn and taken out of the ken of judicial scrutiny the judicial verdict based on assessment and evaluation of the material before the court will always inspire greater confidence. Since the guiding consideration in all these cases is the imperative of public justice and it is absolutely essential that justice must not only be done but also appear to be done, we would hold that in a warrant case instituted on a police report — which the present case against Dr Jagannath Mishra and others admittedly is — it should not be a legitimate ground for the Public Prosecutor to urge in support of the application for withdrawal that there is insufficient or no evidence in support of the prosecution. The court in such a case should be left to decide under Section 239 whether the accused

should be discharged or a charge should be framed against him.”

However, the aforesaid view being the minority view, undoubtedly it would give way to the majority view.

15. In **State of Kerala Versus K. Ajith**, (2021) 17 SCC 318, Hon’ble Supreme Court has held as under: -

“25. The principles which emerge from the decisions of this Court on the withdrawal of a prosecution under Section 321 of the CrPC 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 sub-serves 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 scrutinizing 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; and

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 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.”

(Emphasis supplied)

30. From a cumulative reading of the aforesaid judgment, the principles which can culled out are as follows: -

- (i) The withdrawal from the prosecution is an executive function of the Public Prosecutor and he has to exercise the discretion to withdraw from the prosecution independently. However, the Government may suggest to the Public Prosecutor that he may withdraw from the prosecution, without compelling him to do so.
- (ii) The mere fact that the initiative has come from the government will not vitiate an application for withdrawal, if the public prosecutor is satisfied that the withdrawal of the prosecution is necessary for good and relevant reasons.
- (iii) The Public Prosecutor may withdraw from the prosecution on the ground of paucity of evidence or on any other relevant ground in order to further the broad ends of public justice, public order and peace.

- (iv) The Public Prosecutor is an officer of the court and responsible to the court. However, the Court is not required to reappreciate the grounds which led the Public Prosecutor to request withdrawal from the prosecution. While granting its consent to the withdrawal of prosecution under Section 321, the court performs a supervisory function and it has to examine whether the Public Prosecutor has applied his mind properly, uninfluenced by irrelevant and extraneous considerations and the application has been moved by him in good faith, in the interest of public policy and justice or whether the move for withdrawal is an attempt to interfere with the normal course of justice for illegitimate reasons or purposes.
- (v) If the court finds that the material before it is not sufficient to connect the accused with the crime, it has to discharge or acquit him, as the case may be, notwithstanding the fact that the crime complained of is a grave one.

31. When we examine the facts of the present case in light of the law laid down by the Hon'ble Supreme Court in the above mentioned cases, the relevant facts which emerge are that the informant-opposite party no. 2 had lodged the FIR against 13 named persons stating that that he was Bahujan Samaj Party's candidate for Babaganj Block. When he had gone to have dinner with some other political leaders and numerous other party workers to have dinner at a *Dhaba* in Kunda, the accused persons Sudhakar Singh, Pradeep Singh and about a dozen other persons riding two SUVs stopped the vehicles of the complainant and started abusing them. When the complainant and other persons tried to escape, the accused persons fired shots with weapons towards them with intention to kill them. The complainant and the persons accompanying him reached in front of Kotwali Kunda but several persons riding two Fortuner SUVs and about a dozen other vehicles started firing shots with weapons towards the informant and his companions. The complainant and the persons accompanying him went inside the Kotwali to save themselves but the accused persons

damaged the vehicles of the complainant and assaulted the persons accompanying him with butts of rifles causing fractures to Pushpendra Shukla and Rohit Mishra. The F.I.R. further alleges that some companions of the complainant had been taken away in the vehicles to some unknown destination and their whereabouts could not be known and that some weapons and goods had been snatched away by the accused persons.

32. Although the FIR alleges that initially only two named persons Sudhakar Singh, Pradeep Singh and about a dozen other persons riding two SUVs had apprehended the complainant and his companions and when he reached Kotwali Kunda, several persons riding two Fortuner SUVs and about a dozen other vehicles started firing shots with weapons towards the informant and his companions, he has named only 13 persons as accused in the FIR and he did not allege the involvement of any other unnamed persons in the FIR.
33. The alleged indiscriminate firing made by numerous persons riding more than a dozen vehicles towards the informant and his companions did not result in any single gun-shot injury to any person.
34. The first charge-sheet was submitted on 03.01.2011 against 11 persons. The first supplementary charge-sheet was submitted on 15.03.2011 against 15 persons although the FIR was lodged against 13 named persons only and no other unnamed person was made accused in it.
35. In the application for withdrawal of prosecution filed on 04.03.2014, the Public Prosecutor stated that he had applied his independent mind and perused the entire material available on record and he was of the view that the decision taken by the Government to withdraw the prosecution was in accordance with law and that from a perusal of the case diary it appears that the evidences collected against the accused persons are very weak and success in the prosecution was doubtful. The trial Court has not dealt with this aspect of the matter and has

rejected the application merely because the offences alleged are grave and serious non compoundable offences.

36. The trial Court has noted that the missing weapons were recovered from co-accused persons Diwakar Tiwari, Manoj Kumar Tiwari and Rajesh Kumar Shukla, but it ignored the fact that prosecution against those three persons has not been sought to be withdrawn.
37. The informant has also filed an application before the trial court supporting the application filed by the Public Prosecutor for withdrawal of the prosecution and he has filed a counter affidavit before this Court supporting withdrawal of prosecution stating that he had lodged the FIR under political pressure.
38. In these circumstances, the decision taken by the Public Prosecutor to withdraw the prosecution keeping in view the aforesaid weaknesses and discrepancies in the prosecution case is based on cogent. The continuance of prosecution against the persons against whom it has been sought to be withdrawn, will clearly result in an abuse of the process of law.
39. In view of the foregoing discussion, the application under Section 482 Cr.P.C. is allowed. The order dated 17.03.2023 passed by the Special Judge MP/MLA/ Civil Judge (SD)/FTC-II, District Pratapgarh in Case No. 236 of 2011 (State versus Raghuraj Pratap Singh & Ors) arising out of Case Crime No. 513 of 2010, under Sections 395/397/307/364/323/ 325/504/506/427/34 IPC & Section 7 Criminal Law Amendment Act, Police Station Kunda, District Pratapgarh, whereby the application under Section 321 Cr.P.C., is quashed.
40. The trial Court is directed to decide the application under Section 321 Cr.P.C. filed by the State afresh keeping in view the observations made in this judgment.

(Subhash Vidyarthi J)

Order Date : 01.03.2024

Preeti.