

Court No. - 77

Case :- APPLICATION U/S 482 No. - 1251 of 2019

Applicant :- Dilip Singh

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Ram Prasad Yadav, Shesh Narain Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Arun Kumar Singh Deshwal, J.

1. Heard Sri Ram Prasad Yadav, learned counsel for the applicant and Shri Pankaj Shukla, learned counsel for opposite party no. 2 and Shri Pankaj Srivastava, learned learned A.G.A. for the State and perused the record.

2. The present 482 Cr.P.C. application has been filed to quash the impugned order dated 04.09.2017 passed by learned Additional Chief Judicial Magistrate, Court No. 1, Basti in Case No. 1119 of 2017 (State Vs. Dilip Singh), under Sections 384, 352, 504, 506 IPC arising out of Case Crime No. 419 of 2007, P.S.- Paikoliya, District- Basti as well as quash the order dated 31.08.2018 passed in Criminal Revision No. 122 of 2017 (Dilip Singh Vs. State of U.P. and another) and prayer made to allow the application under Section 321 Cr.P.C.

3. The contention of learned counsel for the applicant is that while rejecting the application of the State under Section 321 Cr.P.C., the court below had not considered the fact that on the basis of material no case is made out against him and this fact was ignored by the revisional court and both the impugned orders are absolutely erroneous.

4. Learned counsel for the opposite party no. 2 has submitted that while filing the application under Section 321 Cr.P.C. State has not mentioned the reason for withdrawing the prosecution. As the prosecution can be withdrawn under Section 321 Cr.P.C. in public interest as there is no public interest involved in this case. Therefore, the application under Section 321 Cr.P.C. of public prosecutor was rightly rejected by the court below and revision of the applicant was also rightly

rejected. It is further submitted that the trial is advanced stage and statement of the the accused -applicant has been recorded under Section 313 Cr.P.C. It is further submitted that the applicant is history sheetee, having 32 cases against him therefore, State has for mala fide reason, moved an application to withdraw the prosecution through the Government Order dated 06.05.2013. Therefore, court below has rightly rejected the withdrawal application.

5. Learned AGA has also supported the argument of counsel for opposite party no. 2.

6. Having heard learned counsel for the parties and the perused the material on record, it appears that FIR was lodged by opposite party no. 2 against the applicant under Sections 384, 506 IPC and subsequently after the investigation, police had submitted charge sheet against the applicant under Sections 384, 352, 504, 506 IPC and during the pendency of the trial, State has filed an application under Section 321 Cr.P.C. seeking permission of court to withdraw the prosecution against the applicant on the ground that the State has decided to withdraw the prosecution against the applicant through Government Order dated 06.05.2013. In that application the public prosecutor has not mentioned any reason or public interest for withdrawal of prosecution against the applicant, though it is the duty of public prosecutor as per the judgment of Apex Court in the case of **Abdul Wahab K. Vs. State of Kerala and other (2018) 18 SCC 448**. Paragraph No. 15 of Abdul Wahab (supra) is being quoted as under:-

"15. From the aforesaid authorities, it is clear as crystal that the Public Prosecutor or an Assistant Public Prosecutor, as the case may be, has an important role under the statutory scheme and is expected to act as an independent person. He/she has to apply his/her own mind and consider the effect of withdrawal on the society in the event such permission is granted."

7. State has power to withdraw the prosecution under Section 321 Cr.P.C. at two stages, one is at before the framing of charge or after the framing of charge.

8. Section 321 Cr.P.C. is quoted hereinunder:-

"The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, 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."

9. The Apex Court in the case of **State of Kerala Vs. K. Ajith and others 2021 (17) SCC 318** had laid down the guidelines in paragraph no. 25 for withdrawal of case under Section 321 Cr.P.C. and observed the permission of withdrawal may be given for the end of public justice. An application by the prosecution must be made in good faith and in the interest of public policy and justice not to thwart or stifle the process of law and also observed in that judgment that public prosecutor should satisfy himself that withdrawal of prosecution is not merely on the ground of possibility of evidence but also end of public justice.

10 Paragraph no. 25 is being quoted hereinunder:-

"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 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."

11. In the recent judgment, the Apex Court in the case of **Ashwini Kumar Upadhyay Vs. Union of India and others 2021 (20) SCC 599** again has relied upon the judgment of State of Kerala Vs. K. Ajit (supra) and further laid down guidelines for withdrawal of cases against sitting former M.P./M.L.A. Paragraph Nos. 8 and 9 of Ashwini Kumar Upadhyay (supra) is quoted hereinunder:-

"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.

9. This Court vide order dated 16-9-2020 [Ashwini Kumar Upadhyay v. Union of India, (2021) 20 SCC 613] had recorded the submissions of the learned Amicus Curiae as under : (Ashwini Kumar Upadhyay case [Ashwini Kumar Upadhyay v. Union of India, (2021) 20 SCC 613] , SCC

para 10)

“10. ... ‘... (c) The High Courts would designate a judicial officer for all such cases, who shall try these cases on priority basis. The judicial officer can be allotted other work depending on the workload, number and nature of criminal cases against MPs/MLAs. The judicial officer so designated shall have continuity of tenure for a minimum period of two years.”

12. In view of the above judgment the legal position regarding withdrawal of cases is clear that it cannot be withdrawn merely government has issued a Government Order and public prosecutor should also apply his mind by mentioning in his application filed under Section 321 Cr.P.C. that he is satisfied that the application has been made under good faith and in the interest of public policy and justice. Therefore, on the application by public prosecutor to withdraw the criminal case on the basis of government order without mentioning any reason or his opinion, court should not permit to withdraw the prosecution as the same is not permissible in the eyes of law.

13. Coming back to the present case, it is clear from the perusal of the record that the present applicant, who is accused in the impugned proceeding is a history sheeter having 32 cases against him and no reason was assigned in the application filed by the public prosecutor under Section 321 Cr.P.C. for withdrawing the prosecution against the applicant. If the prosecution is permitted to withdraw case against such type of person on the basis of unreasoned application then it would definitely be against the public interest as well as against the guidelines laid down by the Apex Court.

14. Therefore, this Court does not find any illegality in the impugned order. Accordingly, the present application is **dismissed**.

Order Date :- 16.1.2025

Sharad/-