

Daily Order

Judge Name	Case No/Year	Date of Order	Daily Order
CHIEF JUSTICE AND S VISHWAJITH SHETTY	WP 13781/2020	01/12/2020	Heard the learned counsel appearing for the petitioner. 2. Issue notice to the respondents. 3. The learned Additional Government Advocate takes notice for the respondents. 4. There is a Cabinet decision which is impugned in this writ petition by which, it was resolved to withdraw from the prosecution in 61 cases. 5. The learned counsel appearing for the petitioner states that some of the cases are against the elected representatives who are a part of the State Legislature. Based on the Cabinet decision, the Government Order dated 31st August 2020 has been issued which reads thus: “The Government has granted permission for the withdrawal of prosecution of the 61 cases mentioned in the annexure under the section 321 of CrPC. The Director, Department of Prosecutions and Government Litigation is suggested to take appropriate steps to file necessary applications before the concerned Courts where the 61 cases, mentioned in the Annexure is pending, for their withdrawal.” 6. The law on this aspect has been laid down by the Apex Court in the case of S.K.SHUKLA AND OTHERS vs. STATE OF UTTAR PRADESH AND OTHERS . It is held that even if Government instructs to the Public Prosecutor to withdraw from the prosecution of a case, the latter after applying his mind to the facts of the case may either agree with the instructions and file a petition before the Court stating grounds of withdrawal or disagree therewith having found a good case for prosecution and refuse to file the withdrawal petition. It is further observed that in the event the Public Prosecutor disagrees, he will

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			have to return the brief. It is further observed that the Public Prosecutor cannot act like a post box or act on the dictates of the State Government and he has to act objectively as he is also an officer of the Court. 7. Moreover, the action under Section 321 of the Code of Criminal Procedure, 1973 (Cr.P.C) can be taken only with the permission of the Court. No Court is bound by such a decision taken to withdraw from the prosecution. Even if an application is made under Section 321 of Cr.P.C, the Courts are duty bound to assess whether prima facie case is made out or not and that the Court has power to reject the prayer. 8. Though the prayer for stay cannot be granted at this stage, we direct the State Government to forward copies of this order to the Public Prosecutors to whom instructions have been given to withdraw from prosecution in 61 cases. The Public Prosecutors are bound to invite attention of the concerned Court to this order when an application is made under Section 321 of Cr.P.C. 9. The notice is made returnable on 21st December 2020. 10. The learned counsel appearing for the petitioner states that the deficit Court fee has been paid.

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