

ABDUL WAHAB K.

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v.

STATE OF KERALA AND OTHERS

(Criminal Appeal No. 1047 of 2018)

SEPTEMBER 13, 2018

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[DIPAK MISRA, CJI, AND DR. D.Y. CHANDRACHUD, J.]

Code of Criminal Procedure, 1973:

s. 321 – Withdrawal of prosecution – Prosecution u/ss. 195A and 506 IPC – Application by Public Prosecutor for withdrawal of the same – Allowed by Chief Judicial Magistrate – Revision Petition – High Court dismissed the petition on the ground that the petitioners being third party had no locus to file the same – On appeal, held: Chief Judicial Magistrate passed the order not within the parameters of s. 321 – Petitioners could not have been treated as strangers, and the petition was of serious nature – High Court should have applied its mind with regard to the correctness of the order – Matter remitted to Chief Judicial Magistrate to consider the withdrawal application in accordance with law.

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s. 321 – Withdrawal of prosecution – Limit of – Public Prosecutor has authority to withdraw the prosecution – Such power can be exercised at any time before the judgment is pronounced.

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Public Prosecutor:

Role of Public Prosecutor – Held: Public Prosecutor is expected to act with responsibility – They are not supposed to be totally guided by the instructions of Government – They are required to assist the Court.

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Allowing the appeal, the Court

HELD: 1. Section 321 Cr.P.C. confers authority on the Public Prosecutor to withdraw from the prosecution of any person accused of an offence, both when no evidence is taken and even if the entire evidence has been taken. The outer limit for exercising the said power is guided by the expression “at any time before the judgment is pronounced”. [Para 7][161-C; 162-A-B]

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A **2. In the present case, the Chief Judicial Magistrate has dwelt upon the merits and expressed an opinion that the case is not likely to end in conviction. It is clearly manifest that the Public Prosecutor had not applied his mind but had only placed the Government notification on record. The High Court has unsuited the petitioners on the ground that they are third parties who are unconnected with the case. They had filed revisions and the High Court has been conferred power to entertain the revisions and rectify the errors which are apparent or totally uncalled for. This is the power of superintendence of the High Court. Thus viewed, the petitioners could not have been treated as strangers, for they had brought it to the notice of the High Court and hence, it should have applied its mind with regard to the correctness of the order. The revision petitions filed before the High Court were not frivolous ones. They were of serious nature. It is a case where the Public Prosecutor had acted like a post office and the Chief Judicial Magistrate has passed an order not within the parameters of Section 321 CrPC. He should have applied the real test stipulated under Section 321 CrPC and the precedents. [Para 12][164-G-H; 165-A-D]**

E **3. There are frivolous litigations but that does not mean that there are no innocent sufferers who eagerly wait for justice to be done. That apart, certain criminal offences destroy the social fabric. Every citizen gets involved in a way to respond to it; and that is why the power is conferred on the Public Prosecutor and the real duty is cast on him/her. He/she has to act with responsibility. He/she is not to be totally guided by the instructions of the Government but is required to assist the Court; and the Court is duty bound to see the precedents and pass appropriate orders. [Para 13][165-D-E]**

G **4. The order of the High Court and that of the Chief Judicial Magistrate are set aside and the matter is remitted to the file of the Chief Judicial Magistrate to reconsider the application in accordance with law. [Para 14][165-F]**

Sheo Nandan Paswan v. State of Bihar AIR 1987 SC 877 : [1987] 1 SCR 702 – followed.

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Bansi Lal v. Chandan Lal (1976) 1 SCC 421; *Balwant Singh v. State of Bihar* (1977) 4 SCC 448 : [1978] 1 SCR 635; *Subhash Chander v. State (Chandigarh Admn.)* (1980) 2 SCC 155 : [1980] 2 SCR 44; *Rajender Kumar Jain v. State* (1980) 3 SCC 435 : [1980] 3 SCR 982; *State of Bihar v. Ram Naresh Pandey* AIR 1957 SC 389 : [1957] SCR 279; *Rahul Agarwal v. Rakesh Jain* (2005) 2 SCC 377 : [2005] 1 SCR 521; *Bairam Muralidhar v. State of A.P* (2014) 10 SCC 380 : [2014] 8 SCR 328; *V.L.S. Finance Limited v. S.P. Gupta and another* (2016) 3 SCC 736 : [2016] 1 SCR 623 – relied on.

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Peoples Union for Civil Liberties (Delhi) v. Central Bureau of Investigation and others 1997 Cr.L.J 3242; *Rajender Kumar Jain v. State of Bihar* AIR 1980 SC 1510 – referred to.

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Case Law Reference

[1987] 1 SCR 702	followed	Para 2
1997 Cr.L.J 3242	referred to	Para 2
AIR 1980 SC 1510	referred to	Para 2
(1976) 1 SCC 421	relied on	Para 8
[1978] 1 SCR 635	relied on	Para 8
[1980] 2 SCR 44	relied on	Para 8
[1980] 3 SCR 982	relied on	Para 8
[1957] SCR 279	relied on	Para 8
[2005] 1 SCR 521	relied on	Para 9
[2014] 8 SCR 328	relied on	Para 10
[2016] 1 SCR 623	relied on	Para 11

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal no. 1047 of 2018.

From the Judgment and Order dated 01.07.2013 of the High Court of Kerala at Ernakulam in Criminal Revision No. 2021 of 2012.

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A Raghenth Basant, Mithun Verghis, Ms. Namita Wali, Senthil Jagadeesan, C. K. Sasi, Ms. Nayantara Roy, Mushtaq Salim, Usman Ghani Khan, Dev Prakash, Radha Shyam Jena, Advs. for the appearing parties.

The Judgment of the Court was delivered by

B **DIPAK MISRA, CJI** 1. The 4th respondent faced a criminal proceeding for offences punishable under Sections 195A and 506 of Indian Penal Code. During the pendency of the criminal case, a petition was filed by the Public Prosecutor to withdraw from the prosecution. The learned Chief Judicial Magistrate vide order dated 04.01.2012
C allowed the application and permitted the Public Prosecutor to withdraw from the prosecution.

2. The said order was assailed by the appellant herein, in Criminal Revision Petition Nos.2020 and 2021 of 2012. It was contended before the High Court that the learned Chief Judicial Magistrate totally ignoring the controversy involved in the case has passed the impugned order and that apart, he has not remained alive to the exercise of jurisdiction under Section 321 of the Code of Criminal Procedure (for short, 'the CrPC').
D The Court referred to the decisions in *Sheo Nandan Paswan v. State of Bihar*¹, *Peoples Union for Civil Liberties (Delhi) v. Central Bureau of Investigation and others*², *State of Kerala v. Vijayakumar*³ and
E *Rajender Kumar Jain v. State of Bihar*⁴ and came to hold that the consent to withdraw from the prosecution would jeopardize the public interest and public policy. The Division Bench further opined that a criminal proceeding is not a proceeding for vindication of a private grievance but it is a proceeding initiated for the purpose of punishment
F to the offender in the interest of the society. The objective being maintenance of stability and orderliness in the society, private interest will not come into picture. The punishment of the offender in the interest of the society is one of the objects behind the penal statute enacted for the larger good of the society. After so holding, the High Court held that the consent of the court is a pivotal factor under Section 321 CrPC. It
G indicates that the entire process is the result of a complaint and variety of considerations such as gravity of the crime, the effect of withdrawal

¹ AIR 1987 SC 877

² 1997 Cr.L.J 3242

³ Cr.L.R.P. No. 3543 of 2008

⁴ AIR 1980 SC 1510

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from prosecution and the public confidence in the entire system. The public interest and the public policy are dominant features as the objectivity displayed by the prosecution in making such application has serious impact on the society. Though the nature of the offence cannot be a valid ground for rejecting the application for withdrawal from prosecution, yet it is the duty of the court to appreciate all the grounds which prompted the prosecution to seek withdrawal from the case. A holistic approach is required rather than adherence to a particular reason. The application for withdrawal expresses the independent mind of the Public Prosecutor. The broad perspective is that public justice underlines the entire philosophy contemplated under Section 321 CrPC. The action of the Public Prosecutor in applying the mind is not only to expose its just nature but there must also be reasonableness, as the prosecutor has to keep in mind the interest of the society against which the wrong is alleged to have been committed.

3. After observing as aforesaid, the Division Bench of the High Court dealt with the principles stated in *Sheo Nandan Paswan* (supra) in detail, addressed to the grievance put forth in the FIR, the charges made against the accused persons and came to hold:-

“In the above case neither an offence under Section 195 nor an offence under Section 506 IPC is made out. If the material on record upon which the prosecution was based reveals that no purpose would served even if the trial commenced in the right direction, such prosecution could be allowed to withdraw provided no other ulterior motive is pointed out. As a matter of fact, in the process of administration of criminal justice it is said; withdrawing from prosecution can also be treated as to sub serve administration of justice. The decision of the prosecutor not to prosecute the offenders or not to proceed further with the prosecution already launched, is a decision after thorough examination of material leading to such responsible decision. The court has to see whether application is made in good faith in the interest of public policy and justice while doing the exercise it has to see it would lead to manifestation of injustice by granting such consent. Once court concludes that the application is properly made and there is independent consideration of the matter by the public prosecutor and he has acted in good faith in exercising discretion vested on him, the court should allow from such withdrawal.”

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A And again:-

“Neither complainant nor charge sheet witness has any locus standi in the exercise of discretion of the Public Prosecutor to withdraw from the prosecution. If a citizen who has some concern deeper than that of a busybody, the door of the court will be kept ajar from him. He cannot be turned away at the gates. If the issue raised by him is justifiable, may still remain to be considered. However if it is merely a question to be gone into and examined in criminal case, registered against accused persons, it is for them and they alone to raise such questions and challenge the proceedings initiated against them at the appropriate time before the proper forum and not for third parties under the grab of public interest litigant. A person who is acting bonafide and having sufficient interest in the proceedings alone can initiate Public Interest Litigation and that the Court must not allow its process to be abused for oblique consideration. Criminal law should not be allowed to be used as a weapon of vendetta between private individuals.”

Disposing of the revision petitions, the High Court further proceeded to state:-

“The petitioners are not de facto complainants, they are only third parties. In both the petitions, petitioners have nothing to do with the complaint, as the complaint is not a private complaint. When de facto ocomplainant is not questioning, how a third party can question and what is their interest in not forthcoming. From reading of the entire material as stated above, it is crystal clear that there was justification on the part of the court below in permitting the prosecutor to withdraw from the prosecution and so far as the revision petitioners, they are totally strangers to the litigation and have no locus standi to question the same.”

4. Being of this view, the High Court dismissed the petitions.

G 5. We have heard Mr. Raghuneth Basant, learned counsel for the appellant, Mr. C.K. Sasi, learned counsel for the respondent Nos. 1 to 3 and Mr. Radha Shyam Jena, learned counsel for the respondent No. 4.

6. To appreciate the controversy, it is necessary to advert to the order passed by the learned Chief Judicial Magistrate. He has referred

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to the application filed by the Deputy Director of Prosecution wherefrom it is manifest that the Government had no objection in withdrawing the case and the decision of the Government has been filed along with the application. The trial court has observed that it has gone through the petition and is satisfied that the grounds stated therein are sufficient for giving consent to withdraw the case. He has further opined on analyzing materials that there is no possibility of success in the criminal case and, therefore, the withdrawal from prosecution is necessary for the better advancement of public justice.

7. Section 321 of the CrPC reads as follows:-

“**321. Withdrawal from prosecution.** 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

A to produce before it the permission granted by the Central Government to withdraw from the prosecution.”

The said provision confers authority on the Public Prosecutor to withdraw from the prosecution of any person accused of an offence, both when no evidence is taken and even if the entire evidence has been
B taken. The outer limit for exercising the said power is guided by the expression “at any time before the judgment is pronounced”.

8. The Constitution Bench in *Sheo Nandan Paswan* (supra), after referring to *Bansi Lal v. Chandan Lal*⁵, *Balwant Singh v. State of Bihar*⁶, *Subhash Chander v. State (Chandigarh Admn.)*⁷, *Rajender Kumar Jain v. State*⁸ and the principles stated in *State of Bihar v. Ram Naresh Pandey*⁹, came to hold thus:-
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“99. All the above decisions have followed the reasoning of *Ram Naresh Pandey case* and the principles settled in that decision were not doubted.

D 100. It is in the light of these decisions that the case on hand has to be considered. I find that the application for withdrawal by the Public Prosecutor has been made in good faith after careful consideration of the materials placed before him and the order of consent given by the Magistrate was also after due consideration
E of various details, as indicated above. It would be improper for this Court, keeping in view the scheme of Section 321, to embark upon a detailed enquiry into the facts and evidence of the case or to direct retrial for that would be destructive of the object and intent of the section.”

F 9. In *Rahul Agarwal v. Rakesh Jain*¹⁰, the Court while dealing with the application under Section 321 CrPC, referred to certain decisions where the earlier decision of the Constitution Bench in *Sheonandan Paswan* (supra) has been referred and held:-

G “10. From these decisions as well as other decisions on the same question, the law is very clear that the withdrawal of prosecution

⁵ (1976) 1 SCC 421

⁶ (1977) 4 SCC 448

⁷ (1980) 2 SCC 155

⁸ (1980) 3 SCC 435

⁹ AIR 1957 SC 389

H ¹⁰ (2005) 2 SCC 377

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 of the 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.”

10. In *Bairam Muralidhar v. State of A.P*¹¹, while appreciating the said provision, it has been laid down that:-

“18. ... it is the obligation of the Public Prosecutor to state what material he has considered. It has to be set out in brief. The court as has been held in *Abdul Karim case*, is required to give an informed consent. It is obligatory on the part of the court to satisfy itself that from the material it can reasonably be held that the withdrawal of the prosecution would serve the public interest. It is not within the domain of the court to weigh the material. However, it is necessary on the part of the court to see whether the grant of consent would thwart or stifle the course of law or cause manifest injustice. A court while giving consent under Section 321 of the Code is required to exercise its judicial discretion, and judicial discretion, as settled in law, is not to be exercised in a mechanical manner. The court cannot give such consent on a

¹¹ (2014) 10 SCC 380

A mere asking. It is expected of the court to consider the material on record to see that the application had been filed in good faith and it is in the interest of public interest and justice. Another aspect the court is obliged to see is whether such withdrawal would advance the cause of justice. It requires exercise of careful and concerned discretion because certain crimes are against the State and the society as a collective demands justice to be done. That maintains the law and order situation in the society. The Public Prosecutor cannot act like the post office on behalf of the State Government. He is required to act in good faith, peruse the materials on record and form an independent opinion that the withdrawal of the case would really subserve the public interest at large. An order of the Government on the Public Prosecutor in this regard is not binding. He cannot remain oblivious to his lawful obligations under the Code. He is required to constantly remember his duty to the court as well as his duty to the collective.”

D 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.

E 11. In *V.L.S. Finance Limited v. S.P. Gupta and another*¹², a two-Judge Bench, after analyzing the law in detail, has ruled :-

F “42. We have enumerated the principles pertaining to the jurisdiction of the Court while dealing with an application preferred under Section 321 CrPC and also highlighted the role of the Public Prosecutor who is required to act in good faith, peruse the materials on record and form an independent opinion that the withdrawal from the prosecution would really subserve the public interest at large. The authorities referred to hereinabove clearly spell out that the Public Prosecutor is not supposed to act as a post office and he is expected to remember his duty to the Court as well as his duty to the collective.”

G 12. In the case at hand, as is evincible, the learned Chief Judicial Magistrate has dwelt upon the merits and expressed an opinion that the

¹² (2016) 3 SCC 736

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case is not likely to end in conviction. It is clearly manifest that the Public Prosecutor had not applied his mind but had only placed the Government notification on record. The High Court has unsuited the petitioners on the ground that they are third parties who are unconnected with the case. They had filed revisions and the High Court has been conferred power to entertain the revisions and rectify the errors which are apparent or totally uncalled for. This is the power of superintendence of the High Court. Thus viewed, the petitioners could not have been treated as strangers, for they had brought it to the notice of the High Court and hence, it should have applied its mind with regard to the correctness of the order. It may be said with certitude that the revision petitions filed before the High Court were not frivolous ones. They were of serious nature. It is a case where the Public Prosecutor had acted like a post office and the learned Chief Judicial Magistrate has passed an order not within the parameters of Section 321 CrPC. He should have applied the real test stipulated under Section 321 CrPC and the decisions of this Court but that has not been done.

13. We are compelled to recapitulate that there are frivolous litigations but that does not mean that there are no innocent sufferers who eagerly wait for justice to be done. That apart, certain criminal offences destroy the social fabric. Every citizen gets involved in a way to respond to it; and that is why the power is conferred on the Public Prosecutor and the real duty is cast on him/her. He/she has to act with responsibility. He/she is not to be totally guided by the instructions of the Government but is required to assist the Court; and the Court is duty bound to see the precedents and pass appropriate orders.

14. In the case at hand, as the aforestated exercise has not been done, we are compelled to set aside the order passed by the High Court and that of the learned Chief Judicial Magistrate and remit the matter to the file of the Chief Judicial Magistrate to reconsider the application in accordance with law and we so direct.

15. The appeal is, accordingly, allowed.