

Withdrawal of Prosecution and Role of Court

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“We must always remember that procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant not a resistant in administration of justice.

Justice Krishna Iyer

Background

An incident happened that the Kerala Finance Minister was presenting the budget in Assembly, a MLA of the opposite party, disrupted the presentation of the budget, climbed over to the Speaker's dais and damaged furniture and articles including the Speaker's chair, computer, mike, emergency lamp and electronic panel etc. The incident reported to the Police and FIR registered u/ S- 447 and 427 r/w Section 34 of the IPC and Section 3(1) of the Prevention of Damage to Public Property Act 1984. After the investigation, the report u/ S. 173 of the CrPC, submitted before CJM. On 21 July 2018, an application filed by the Assistant Public Prosecutor under Section 321 of the CrPC, seeking sanction to withdraw the case against MLA accused. By an order dated 22 September 2020, the CJM declined to give consent to the application of the Prosecutor. The State of Kerala filed a criminal revision petition before the High Court which dismissed, by its order dated 12 March 2021 and affirmed the order of the CJM. The State of Kerala and the respondent-accused have filed independent SLPs against the order of the High Court before the Supreme Court. Which inspired to analyze the provisions of law which empowered to the State agencies to withdraw the prosecution of case and Role of the Court to misuse of such powers on rationale grounds.

This article tries to identify the scope, limitations and grounds of the CrPC doctrine of the Withdrawal from prosecution

Introduction

A crime is a wrong not only against the individual victim but also the society at large. The Essential object of criminal law is to protect society against criminals and law breakers. So, the State do not leave the action for punishment against the criminal on the will or desire of the victims. For take the appropriate action the State established the functionaries or agencies- Police, Public prosecutors and courts who are discharge the duty of registration of crime, collection of evidence, arrest the criminals and law breakers, investigation, prosecution, inquiry and trail the crime, criminals & criminal cases. In the above mentioned functionaries 'the Public Prosecutor/ Assistant Public Prosecutors' are the Counsel for the State in such prosecution and trials, his duties mainly consist in conducting prosecution on behalf of the State.

The prosecutor plays a very important role in the administration of criminal justice. The duty of the prosecutor is not merely to secure conviction at all costs but to place the evidence whatever he possessed, whether it be in favour of or against the accused, and to leave the court to decide upon all such evidence- whether accused is or is not guilty of offence

which he has been charged. Further, it no part of prosecutor's duty to obtain convictions by hook or by crook. His duty is only to placing all the available evidence or circumstances before the court for proceed to prosecution and have also discretion to withdrawal from prosecution if he feels suitable for administration of justice. Keeping, the above views in mind, the legislature make room for such considerations, under Section 321 of the CrPC, by enabling the public prosecutor to withdrawal from prosecution.

1 Withdrawal of prosecution¹¹-

The provision for withdrawal of prosecution by the Public Prosecutor with the consent of the Court, for the first time, introduced in British India by the Code of Criminal Procedure, 1872 (Act X of 1872) as [s. 61](#) thereof and runs as follows :

"The public prosecutor may, with the consent of the Court, withdraw any charge against any person in any case of which he is in charge; and upon such withdrawal, if it is made whilst the case is under inquiry, the accused person shall be discharged. If it is made when he is under trial, the accused person shall be acquitted."

In the next Code of 1882 (Act X of 1882) this appears as [s. 494](#) thereof and runs as follows :

"Any Public Prosecutor appointed by the Governor-General in Council or the Local Government may, with the consent of the Courts, in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person; and, upon such withdrawal,

(a) if it is made before a charge has been framed, the accused shall be discharged;
(b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted."

Section -321 corresponds to the old s.494 and s.61 of the Code.

¹¹ **"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 to produce before it the permission granted by the Central Government to withdraw from the prosecution."

Criminal Procedure Code 1973.

A-Nature, Scope and Application-

The application by Public Prosecutor, under S.321 of the Code, for withdrawal from prosecution is an executive discretionary function in nature and granting or giving the consent by the Court is judicial function to check the executive function of the Public Prosecutor has not been improperly exercised or not attempt to interfere with course of justice for illegitimate purposes.¹² It gives a general executive discretion to Public Prosecutor to withdraw from prosecution subject to the Courts consent which may be determined on many possible grounds and it is wide and uncontrolled by any other provisions of the Code 1973.¹³

1-Who may withdraw the Prosecution- The Public Prosecutor or the Assistant Public Prosecutor, as case may be, who is in charge of a particular case and is actually conducting the prosecution can alone file an application under section 321 seeking permission to withdraw from prosecution.¹⁴ However the Public Prosecutor is not entitled to file the application for withdrawal from prosecution in case where the prosecution is being conducted by complainant on the private complaint.¹⁵

2 Withdrawal Against Whom-Person and in respect of which Offences- Provisions of sec 321 CrPC provides that the Public Prosecutor or Assistant Public Prosecutor in charge of a case may, 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; it means that to joinder of charges and of accused persons might have been charged with more than one offence and more than one accused person in the same trial, the application for withdrawal from prosecution may be filed generally or in respect of any one or more offences of any accused person.

3 Up to what stage of Trial - Withdrawal from prosecution, application by the Prosecutor, in charge of a case may, *at any time before the judgment is pronounced, by the trial court*¹⁶ but such application cannot be filed at the appellate stage.¹⁷ Further, it is important to mention, application for withdrawal from prosecution can be moved before the Magistrate in a case in which the offence is exclusively triable by the sessions court, during the committal proceeding.¹⁸ The term and words of the provision of Section-321 disclose, probably, that once the order of conviction is passed, the right to move the court for withdrawal from the prosecution ceases to exist.¹⁹

4 Conditions precedent for withdrawal- The Prosecutor, withdrawal from prosecution, is *with the consent of the Court*. But in certain offences which are provided in the proviso (i) to (iv) and the Prosecutor is not appointed by the Central Government, he must be permitted by the Central Government to do so.

¹² Ram Naresh vs State, AIR 1957 SC 389; Sharraf vs State, AIR 1964 Pat 33

¹³ M.N. Shankaranarayan vs State AIR 1972 SC 496

¹⁴ State of Punjab vs Surjit Singh AIR 1967 SC 1214;

¹⁵ Saramma Peter vs State of Kerala, 1991 Cr.L.J. 3211 (Ker); V.S. Achutanandan vs R. Balakrishnan Pillai, (1994) 4 SCC 299

¹⁶ T.C. Thiagarajan vs State of Madras 1982 Cr.L.J. 1601 (Mad)

¹⁷ Public Prosecutor vs Mandangi Varjuno, 1976 Cr.L.J. 46 (AP)

¹⁸ Rajender Kumar Jain vs State (1980) 3 SCC 435. The contrary view, expressed in A. Venkatramana vs Mudem Sanjeeva Ragudu, 1976 Andh L T 1084.

¹⁹ R.V. Kelkar, Criminal Procedure; 5th Ed. Eastern Book Company, P.457.

5 Grounds and Principles for application of withdrawal from prosecution-The provision of Section -321 of CrPC, literally in expression and words does not indicate the reasons or the grounds which weigh with the Public Prosecutor to move the court for permission nor the grounds or any indication on which the court will grant or refuse permission. The reason or grounds to application of withdrawal from prosecution and powers of the court granting such application, may explained with principle laid down by the Court on a number of occasions in several cases. Hence the necessity to go to decisions of the Courts for ascertaining the true scope, nature and principles of the power contained in it. The earlier provision contained in s. 494 CrPC 1898 and the present provision contained in s. 321 (both being substantially in parimateria)) gives a general executive discretion (to the Public Prosecutor) to withdraw from the prosecution subject to the consent of the Court, which may be determined on many possible grounds.²⁰ are necessary to deal in the light of decisions.

(a) Insufficiency or Meagreness of Reliable Evidence

1957 In **State of Bihar v. Ram Naresh Pandey**²¹, the Court while dealing with s. 494 of the old Code observed and held that where an application for withdrawal under s. 494 of the Code of Criminal Procedure is made on the ground of insufficiency or meagreness of reliable evidence that is available, it is an improper exercise of discretion for the Court to grant consent before evidence is taken, if it was reasonably satisfied, otherwise, that the evidence, if actually taken, is not likely to result in conviction.

"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.

1957 In **State of Bihar vs Ram Naresh Pandey & Anr**²², a three-judge Bench of Supreme Court analysed Section 494 of the Cr.P.C.1898 (similar to Section 321 of the CrPC). **Justice B. Jagannadhas** observed that in granting consent to withdraw a prosecution, the court exercises a judicial function. However, in doing so, the court need not determine the matter judicially. The court only needs to be satisfied 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 Supreme Court further also observed that the Magistrate's power under Section 494 was to prevent abuse of power of the executive. Addressing the question of *whether insufficiency of evidence is a ground for withdrawal of prosecution*, the Court held (in Para-9) that :

"we find it difficult to appreciate why the opinion arrived at by both the trial court and the Sessions Court that the view taken of that material by the Public Prosecutor viz. *that it was meagre evidence on which no conviction could be asked for, should be said to be so improper that the consent of the Court under Section 494 of the Code of Criminal Procedure has to be withheld*. Even the private complainant, who was allowed to participate in these proceedings in all its stages, does not, in his objection petition, or revision petitions,

²⁰As the Privy Council has pointed out in *Bawa Faqir Singh v. The King Emperor*.(1938) L.R. 65 I.A. 388, 395

²¹ Decided dt/-on 31 January, 1957, citations: AIR 1957 SC 389, 1957 (0) BLJR 406, 1957 CriLJ 567.

²² AIR 1957 SC 389

indicate the availability of any other material or better material. Nor, could the complainant's counsel, in the course of arguments before us inform us that there was any additional material available. In the situation, therefore, excepting for the view that no order to withdraw should be passed in such cases either as a matter of law or as a matter of propriety but that the matter should be disposed of only after the evidence is judicially taken, we apprehend that the learned Chief Justice himself would not have felt called upon to interfere with the order of the Magistrate in the exercise of his revisional jurisdiction." (*emphasissupplied*)

SheonandanPaswan vs State of Bihar & others²³. Naval Kishor Sinha with six other person, the Board of Directors of the Patna Urban Cooperative Bank was charged with misdemeanours such as misappropriation of the funds of the bank by giving multiple loans to the same person under different names and approving loans for fictitious persons. The Registrar of Cooperative Societies directed legal action to be initiated. In the investigation, it was found that Dr Jagannath Mishra, the ex-Chief Minister of Bihar, misused his office and made illegal personal gains for himself while holding office of the Minister. A charge sheet was filed and the CJM took cognizance of the matter. However, before the case could progress further, Dr Mishra once again took oath as the Chief Minister of Bihar and Government decided to withdraw the case. In pursuant to it's, Special Prosecutor- Lalan Prasad Sinha on dated 17.06.1981 file applicationu/Sec.321CrPC, on the grounds namely(a) lack of prospect of successful prosecution in the light of evidence, (b) the implication of the persons as a result of political and personal vendetta, (c) the inexpediency of the prosecution for the reasons of the State and Public policy and (d) the adverse effects that the continuation of the prosecution will bring on public interests in the light of the changed situation. The Special Judge passed a short reasoned order as follows:

"Having considered the legal position explained by the Supreme Court (in R.K. Jain's case) and submissions made by the learned Special P.P. in charge of this case and having perused the relevant records of the case I am satisfied that it is a fit case in which prayer of the learned Special P.P. to withdraw should be allowed and it is, therefore, allowed. Consequently the special P.P. Shri Lalan Prasad Sinha is permitted to withdraw from the prosecution and in view of section 321 (a) Cr. P. C. the accused persons are discharged."

The CJM gave consent for the withdrawal, and the High Court affirmed it. Then appeal came up before the Supreme Court, dismissed by a 2:1 majority. In deal ground (a) the Supreme Court **Chief Justice Bhagwati**(in his minority opinion) held that in a warrant cases, where a withdrawal petition u/sec.321 is filed on the ground of paucity of evidence,after filed the charge sheet but before the charge has been framed, the exercise of power by the court granting consent is similar to the power of the court to discharge the accused under Section 239 of the CrPC. It means the court will be performing whether the court acts under Section 239 or under Section 321, whichan identical exercise. Hence, in such cases, it would not be competent for the public prosecutor to file a withdrawal petition unless there is material change in the evidence. He observed:

²³ decided on dt/-16 December, 1982, AIR 1983 SC 194; 1983 SCR (2) 61

"What the court, therefore, does while exercising its function under Section 239 of CrPC²⁴. 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." (emphasis supplied)

Justice Khalid (*speaking for himself and Justice Natarajan*) rendered the majority opinion holding that the power of the court to grant consent for a withdrawal petition is similar to the power under Section 320 of the CrPC to compound offences. The court in both the cases will not have to enquire into the issue of conviction or acquittal of the accused person, and will only need to restrict itself to providing consent through the exercise of jurisdiction in a supervisory manner. It was held that though Section 321 does not provide any grounds for seeking withdrawal, "*public policy, interest of administration, inexpediency to proceed with the prosecution for reasons of State, and paucity of evidence*" are considered valid grounds for seeking withdrawal. Further, it was held that the court in deciding to grant consent to the withdrawal petition must restrict itself to only determining if the Prosecutor has exercised the power for the above legitimate reasons.

(b) Furtherance of the Object of Law"

1972In **M.N Sankarayarayan Nair vs P.V Balakrishnan**²⁵, the Supreme Court held that the powers conferred on the Prosecutor under Section 494 of the Code of Criminal Procedure 1898 are to be exercised in "*furtherance of the object of law*". On the power of the court to grant consent, **Justice P. Jaganmohan Reddy** observed that (Para-8)

"The Court also while considering the request to grant permission under the said section should not do so as a necessary formality — the grant of it for the mere asking. It may do so only if *it is satisfied on the materials placed before it that the grant of it*

²⁴Section 239 of the Criminal Procedure Code 1973.

²⁵(1972) 1 SCC 318.

subverses the administration of justice and that permission was not being sought covertly with an ulterior purpose unconnected with the vindication of the law which the executive organs are in duty bound to further and maintain."

(emphasis supplied)

(c) Interest of Administration of Justice

1976 In *State of Orissa v. Chandrika Mohapatra and Ors.*²⁶ in setting out the principles that should be kept in mind by the Court at the time of giving consent to withdrawal from the prosecution under s. 494 the Court observed thus; "It will therefore, be seen that it is not sufficient for the Public Prosecutor merely to say that it is not expedient to proceed with the prosecution. He has to make out some ground which would show that the prosecution is sought to be withdrawn because inter alia the prosecution may not be able to produce sufficient evidence to sustain the charge or that the prosecution does not appear to be well founded or that there are other circumstances which clearly show that the object of administration of justice would not be advanced or furthered by going on with the prosecution. The ultimate guiding consideration must always be the interest of administration of justice and that is the touchstone on which the question must be determined whether the prosecution should be allowed to be withdrawn."

Facts of case the prosecution of the offences was in progress under ss. 147, 148 149, 307 and 324 I.P.C. were said to have been committed, from the of rivalry between two trade unions. After incident, calm and peaceful atmosphere prevailed in the industrial undertaking. The State felt in these circumstances that it would not be conducive to interest of justice to continue the prosecution against the respondents since the prosecution with the possibility of conviction of the respondents would rouse feelings of bitterness and antagonism and disturb the calm and peaceful atmosphere prevailing in the industrial undertaking and hence permission to withdraw was sought and granted. Upholding the permission the Court observed thus:

"We cannot forget that ultimately every offence has a social or economic cause behind it and if the State feels that *elimination or eradication of the social or economic cause of the crime* would be better served by not proceeding with the prosecution the State should clearly be at liberty to withdraw from the prosecution."

1977 *Balwant Singh and ors. v. State of Bihar*²⁷ the independent role of the Public Prosecutor in making an application for withdrawal from the prosecution was emphasised and the Court pointed out that the sole consideration which should guide the Public Prosecutor before he decides to withdraw from the prosecution was the larger factor of *the administration of justice* and not political favours nor party pressures nor the like considerations; nor should he allow himself to be dictated by his administrative superiors to withdraw from prosecution, but that the consideration which should weigh with him must be whether the broader cause of public justice will be advanced or retarded by the withdrawal or continuance of the prosecution. The Court also indicated some instances where withdrawal

²⁶Decided dt/-23 August, 1976; 1977 AIR 903, 1977 SCR (1) 335

²⁷ Decided dt/-4 October, 1977 citations: 1977 AIR 2265, 1978 SCR (1) 635

from prosecution might be resorted to independently of the merits of the case *where the broader cause of public justice would be served*:

"Of course, the interests of public justice being the paramount consideration they may transcend and overflow the legal justice of the particular litigation. For instance, communal feuds which may have been amicably settled should not re-erupt on account of one or two prosecutions pending. Labour disputes which, might have given rise to criminal cases, when settled, might probably be another instance where the interests of public justice in the broader connotation may perhaps warrant withdrawal from the prosecution. Other instances may also be given where public justice may be served by withdrawal even apart from the merits of the case."

(e) Principle of Restore Peace or Free From the Violence to Atmosphere.

1980 In Rajender Kumar Jain vs State through Special Police Establishment and Ors²⁸, Mr George Fernandes, Chairperson of the Socialist Party of India, had been accused of rousing resistance against the Emergency imposed in 1975 and he charged to participating in a conspiracy, which have resulted in the destruction of property. After the revocation of Emergency, the Special Public Prosecutor filed an application under Section 321 of the CrPC for withdrawal from prosecution against the Mr Fernandes, 'in view of *the changed circumstances and public interest*'. In the context of a withdrawal of prosecution where "matters of public policy" are involved, the Court held that:

"Wherever issues involve the emotions and there is a surcharge of violence in the atmosphere it has often been found necessary to withdraw from prosecutions in order to restore peace, to free the atmosphere from the surcharge of violence, to bring about a peaceful settlement of issues and to preserve the calm which may follow the storm. To persist with prosecutions where emotive issues are involved in the name of vindicating the law may even be utterly counter-productive. An elected Government, sensitive and responsive to the feelings and emotions of the people, will be amply justified if for the purpose of creating an atmosphere of goodwill or for the purpose of not disturbing a calm which has descended it decides not to prosecute the offenders involved or not to proceed further with prosecution already launched. In such matters, the Government can and should decide, in the first instance, whether it should be baneful or beneficial to launch or continue prosecutions.

1980 In R.K. Jain's case²⁹ (supra) after reviewing the entire case law on the subject the Supreme Court enunciated eight propositions as emerging from the decided cases, out of which the six be relevant, as following-

- "1. The withdrawal from the prosecution is an executive function of the Public Prosecutor.
2. 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.
3. The Government may suggest to the Public Prosecutor that he may withdraw from the prosecution but none can compel him to do so.
4. 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

²⁸(1980) 3 SCC 435.

²⁹ 1980 AIR 1510, 1980 SCR (3) 982

public justice, public order and peace. The broad ends of public justice will certainly include appropriate social, economic and, we add, political purposes.

5. The Court performs a supervisory function granting its consent to the withdrawal.

6. 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."

It may be stated that in *M.N.S, Nair v. P.V. Balakrishnan and Ors* (1) the Sessions Court as well as the High Court had permitted withdrawal from the prosecution of a case involving offences of forgery, cheating, etc. On the ground that the dispute was of a civil nature, that there had been enormous delay in proceeding with a trial and that securing of evidence would involve heavy expenses for the state as witnesses were in far off places. The Supreme Court allowed the appeal, set aside the permission granted and held that none of the grounds alleged or even their cumulative effect would justify the withdrawal from the prosecution in particular after examining the material on record. The finding of the lower courts that the dispute was of a civil nature was incorrect. It is thus clear *that when paucity of evidence or lack of prospect of successful prosecution is the ground for withdrawal the Court must of necessity examine the material in order to determine the validity or propriety of the ground*. It is in the light of the aforesaid legal principles that two questions arising in this appeal will have to be decided.

(f) Gravity of the Offence & the Impact on Public Life

1983SheonandanPaswan vs State of Bihar & others³⁰. applicationu/Sec.321 on the grounds namely- the implication of the persons as a result of political and personal vendetta; the inexpediency of the prosecution for the reasons of the State and Public policy; and the adverse effects that the continuation of the prosecution will bring on public interests in the light of the changed situation. The Supreme Court, deal the above three grounds and held that-

Justiceopined that *In the light of the legal principles discussed above it cannot be disputed that grounds like the inexpediency of the prosecution for the reasons of State or public policy, implication of the accused persons out of political and or personal vendetta and adverse effects which the continuance of prosecution will have on public interests in the light of changed situation are appropriate and have a bearing on the broader cause of public justice, public order and peace, which might in a given case outweigh or transcend the narrower public interest of administering criminal justice in a particular litigation necessitating the withdrawal of the latter, but, as observed earlier, no question of serving and broader cause of public justice, public order or peace can arise unless the crimes allegedly committed are per se political offences or are motivated by political ambitions or considerations or are committed during or are followed by mass agitations, communal frenzies, regional disputes, conflicts, student unrest or like situations which involve emotive issues giving rise to a surcharged atmosphere of violence. Admittedly, the offences of bribery (criminal misconduct) and forgery which are said to have been committed by Respondent No.*

³⁰ decided on dt/-16 December, 1982, AIR 1983 SC 194; 1983 SCR (2) 61

2 in conspiracy with the other accused are ordinary common law crimes and were not committed during nor were they followed by any mass agitation or communal frenzy or regional dispute or industrial conflict or student unrest or the like explosive situation involving any emotive issue giving rise to any surcharged atmosphere of violence; further it cannot be disputed that these are not per se political offences nor were they committed out of any political motivation whatsoever; in fact the motivating force behind them was merely to give protection to and shield Shri Nawal Kishore Sinha, a close friend, from criminal as well as civil liability-a favouritism amounting to criminal misconduct allegedly indulged in by Respondent No. 2 by abusing his position as a Minister or the Chief Minister of Bihar. If therefore the offences did not partake of any political character nor were committed in nor followed by any explosive situation involving emotive issue giving rise to any surcharged atmosphere of violence no question serving any broader cause of public justice, public order or peace could arise and in absence there of the public interest of administering criminal justice in this particular case could not be permitted to be sacrificed. In other words, this being an ordinary criminal case involving the commission of common law crimes of bribery and forgery in ordinary normal circumstances with self-aggrandisement or favouritism as the motivating force, grounds (b), (c) and (d) were irrelevant and extraneous to the issue of withdrawal and since admittedly these were the considerations which unquestionably influenced the decision of the public prosecutor in seeking the withdrawal as well as the decision of the trial Court to grant the permission, the impugned withdrawal from the prosecution would stand vitiated in law.

An instance of the application of the SheonandanPaswan decision³¹ by the Supreme Court in **Yerneni Raja Ramchandrar vs 2009State of Andhra Pradesh &Ors**³², the withdrawal of prosecution of an MLA for offences involving misappropriation of public money. The appellant, an MLA, was accused of fabricating hospital records to repeatedly claim medical reimbursement for a sum of Rs. 2,89,489, Rs. 1,33,939, and Rs. 1,22,825 from the Government. Charges of misappropriation were levelled against him. Since the appellant was an MLA, the matter was referred to the Ethics Committee of the Legislative Assembly, where the appellant tendered an apology and refunded Rs. 60,000 to the Government. Pursuant to this, the Ethics Committee recommended a withdrawal of the prosecution against the appellant. The State Government also issued an order requiring the District Collector to direct the Prosecutor to withdraw the case. In light of it, applications for withdrawal of prosecution were made, dismissed by the Magistrate, however, the High Court allowed. In refusing to allow the withdrawal of the prosecution against the appellant, the Supreme Court opined that the power of judicial review of the High Court was limited. It could have only interfered if there was an error of law committed by the Magistrate. Further, the Supreme Court, Justice SB Sinha, speaking for the two-judge Bench, held that

18. The government order was issued even according to the State in terms of the recommendations made by the Ethics Committee alone. The Ethics Committee had no jurisdiction to make such recommendations. If the State had acted on the basis of

³¹ Supra

³²(2009) 15 SCC 604.

recommendations made by a body who had no role to play, its action would be vitiated in law, recommendations of the Ethics Committee being unauthorised, the action of the State would attract the doctrine of malice in law.

19. Even otherwise, the action on the part of the State, in our opinion, suffers from malice on fact as well. The State is the protector of law. When it deals with a public fund, it must act in terms of the procedure established by law. In respect of public fund, the doctrine of public trust would also be applicable so far as the State and its officers are concerned. It could not, save and except for very strong and cogent reasons, have issued the said government order despite the orders of the High Court.” (emphasis supplied)

In offences involving the violation of public trust by executive or legislative authorities, Supreme Court has evaluated the *gravity of the offence and the impact of the withdrawal of prosecution on public life*. (2014) In **Bairam Muralidhar vs State of Andhra Pradesh**³³, the Prosecutor was seeking a withdrawal of the prosecution against a police officer who had been accused of demanding a bribe in exchange of not implicating a particular individual for an offence of kidnapping and for reducing the charges against the individual's son. The police officer was accused of offences under Sections 7 and 13(1) of the Prevention of Corruption Act 1988. An application under Section 321 of the CrPC was filed by the Prosecutor based on the fact that *the Government had issued an order for withdrawal of prosecution against the officer given his meritorious service and directed that his case be placed before the Administrative Tribunal for disciplinary proceedings*. The Supreme Court affirmed the concurrent findings of the High Court and the Trial Court and rejected the application for withdrawal. **Justice Dipak Misra** (as he then was), speaking on behalf of the two judge Bench, held that

“ In the case at hand, as the application filed by the Public Prosecutor would show that he had mechanically stated about the conditions precedent, it cannot be construed that he has really perused the materials and applied his independent mind solely because he has so stated. The application must indicate perusal of the materials by stating what are the materials he has perused, may be in brief, and *whether such withdrawal of the prosecution would serve public interest* and how he has formed his independent opinion. As we perceive, the learned Public Prosecutor has been totally guided by the order of the Government and really not applied his mind to the facts of the case. The learned trial Judge as well as the High Court has observed that it is a case under the Prevention of Corruption Act. They have taken note of the fact that the State Government had already granted sanction. It is also noticeable that the Anti-Corruption Bureau has found there was no justification of withdrawal of the prosecution”³⁴.

2021 In recent case **State Of Kerala vs K. Ajith**³⁵, **Justice Dr. Chandrachud** (himself and on behalf of M.R. Shah, J.) opined that for consider the application under section 321 of CrPC the gravity of the offence and the impact on public life apart from the nature of application filed by the Public Prosecutor, are material. we are of the considered opinion that view expressed by the learned trial Judge as well as the High Court cannot be found

³³(2014) 10 SCC 380

³⁴ Supra Para 19

³⁵ Supra decided on dt/- 28.07.2021

fault with. We say so as we are inclined to think that *there is no ground to show that such withdrawal would advance the cause of justice and serve the public interest.*

That apart, there was no independent application of mind on the part of the learned Public Prosecutor, possibly thinking that the court would pass an order on a mere asking.” (emphasis supplied)

In this case³⁶ the principles which emerge by Supreme Court, Justice Dr.Chandrachud," on the withdrawal of a prosecution under Section 321 of the CrPC" can now be formulated:

- (i) 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;
- (ii) 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;
- (iii) The public prosecutor must formulate an independent opinion before seeking the consent of the court to withdraw from the prosecution;
- (iv) 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;
- (v) 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;
- (vi) 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
- (vii) 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

³⁶Supra.

of the High Court to apply the correct principles in deciding whether to grant or withhold consent.

Conclusion

The provision of s. 321 literally gives no indication or guideline or circumstances or grounds on which the public Prosecutor may apply nor the considerations on which the Court to grant its consent but through decisions of the Courts, guiding principles/ grounds of the withdrawal from prosecution & for ascertaining the true scope and nature of the powers contained, has been settled/established. At the time of apply the withdrawal from prosecution & giving consent on it, the Prosecutor & Court, principles that should be kept in mind are namely insufficiency or meagreness of reliable evidence ; ***furtherance of the object of law ; object of administration of justice would not be advanced or furthered by going on with the prosecution.*** The ultimate guiding consideration must always be the ***interest of administration of justice***, elimination or eradication of the social or economic cause of the crime, public justice will be advanced or retarded by the withdrawal or continuance of the prosecution *but not political favours nor party pressures nor the like considerations; nor should he allow himself to be dictated by his administrative superiors.*

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