HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

****

CRIMINAL REVISION CASE NO: 79 of 2023

Between:

1. KATI KESAIAH, , S/O NAGAIAH, AGE. 39 YRS, ASSISTANT ENGINEER, OFFICE OF THE ASST. EXECUTIVE ENGINEER, TOWER LINE, CONTRUCTION DIVISION, AP TRANSCO, RAJAMAHENDRAVARAM. EAST GODAVARI DISTRICT.

...PETITIONER

AND

1. THE STATE OF ANDHRA PRADESH, Rep. by its Public Prosecutor for ACB High Court at Amaravati.

...RESPONDENT

CRIMINAL REVISION CASE NO: 75/2023

Between:

1. SRI CHIRUMAMILLA VENKATESWARA RAO, S/O SIVARAMAKRISHNAIAH, AGED 53, WORKING AS ASSISTANT DIVISIONAL ENGINEER, OPERATION, APCPDCL, GUNTUR TOWN-III, R/O FLAT NO. 401, BRUNDAVAN PARK APPARTMENTS, 4TH LANE, BRUNDAVAM GARDENS, GUNTUR.

...PETITIONER

AND

1. THE STATE OF ANDHRA PRADESH, Rep. by Deputy Superintendent of Police, ACB, Vijayawada Range, Vijayawada.

...RESPONDENT

CRIMINAL REVISION CASE NO: 208/2023

Between:

1. K.RAMESH, S/O. LATE K. KRISHNA, AGED ABOUT 55 YEARS, OCC. . MPDO, R/O. FLAT NO. 302, MURALI NILYAM, OPP. J.K. GARDENS, J.N. ROAD, RAJ AMUNDRY - 533 103. EAST GODAVARI DISTRICT,

A.P.

...PETITIONER

AND

1. THE STATE OF ANDHRA PRADESH, Rep. by Deputy Superintendent of Police, Anti Corruption Bureau, Vijayawada Range, Vijayawada, Andhra Pradesh.

...RESPONDENT

CRIMINAL REVISION CASE NO: 263/2023

Between:

1. SRI VEJENDLA PURNA SUDHAKARA RAO, S/O. SATYANARAYANA, AGED 57 YEARS, OCC. RETD. ASSISTANT DIRECTOR OF AGIRCULTURE, R/O. FLAT NO. G-3, SRINIVASA TOWERS, PARUCHURIVARI VEEDHI, PATAMATALANKA, VIJAYAWADA - 10.

...PETITIONER

AND

1. THE STATE OF ANDHRA PRADESH, Rep. by Deputy Superintendent of Police, Anti Corruption Bureau, Vijayawada Range, Vijayawada, Andhra Pradesh.

...RESPONDENT

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DATE OF ORDER PRONOUNCED : 28.07.2026

SUBMITTED FOR APPROVAL:

THE HONOURABLE DR JUSTICE Y. LAKSHMANA RAO

1. Whether Reporters of Local Newspapers may be allowed to see the Judgment? Yes/No

2. Whether the copy of Judgment may be marked to Law Reporters/Journals? Yes/No

3. Whether His Lordship wish to see the fair copy of the Judgment? Yes/No

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Dr. Y. LAKSHMANA RAO, J

*** THE HONOURABLE DR JUSTICE Y. LAKSHMANA RAO**

+ CRIMINAL REVISION CASE NO: 867/2019

% 28.07.2026
 # CRIMINAL REVISION CASE NO: 79 of 2023

Between:

1. KATI KESAIAH, , S/O NAGAIAH, AGE. 39 YRS, ASSISTANT ENGINEER, OFFICE OF THE ASST. EXECUTIVE ENGINEER, TOWER LINE, CONTRUCTION DIVISION, AP TRANSCO, RAJAMAHENDRAVARAM. EAST GODAVARI DISTRICT.

...PETITIONER

AND

1. THE STATE OF ANDHRA PRADESH, Rep. by its Public Prosecutor for ACB High Court at Amaravati.

...RESPONDENT

CRIMINAL REVISION CASE NO: 75/2023

Between:

1. SRI CHIRUMAMILLA VENKATESWARA RAO, S/O SIVARAMAKRISHNAIAH, AGED 53, WORKING AS ASSISTANT DIVISIONAL ENGINEER, OPERATION, APCPDCL, GUNTUR TOWN-III, R/O FLAT NO. 401, BRUNDAVAN PARK APPARTMENTS, 4TH LANE, BRUNDAVAM GARDENS, GUNTUR.

...PETITIONER

AND

1. THE STATE OF ANDHRA PRADESH, Rep. by Deputy Superintendent of Police, ACB, Vijayawada Range, Vijayawada.

...RESPONDENT

CRIMINAL REVISION CASE NO: 208/2023

Between:

1. K.RAMESH, S/O. LATE K. KRISHNA, AGED ABOUT 55 YEARS, OCC. . MPDO, R/O. FLAT NO. 302, MURALI NILYAM, OPP. J.K. GARDENS, J.N. ROAD, RAJ AMUNDRY - 533 103. EAST GODAVARI DISTRICT, A.P.

...PETITIONER

AND

1. THE STATE OF ANDHRA PRADESH, Rep. by Deputy Superintendent of Police, Anti Corruption Bureau, Vijayawada Range, Vijayawada, Andhra Pradesh.

...RESPONDENT

CRIMINAL REVISION CASE NO: 263/2023

Between:

1. SRI VEJENDLA PURNA SUDHAKARA RAO, S/O. SATYANARAYANA, AGED 57 YEARS, OCC. RETD. ASSISTANT DIRECTOR OF AGIRCULTURE, R/O. FLAT NO. G-3, SRINIVASA TOWERS, PARUCHURIVARI VEEDHI, PATAMATALANKA, VIJAYAWADA - 10.

...PETITIONER

AND

1. THE STATE OF ANDHRA PRADESH, Rep. by Deputy Superintendent of Police, Anti Corruption Bureau, Vijayawada Range, Vijayawada, Andhra Pradesh.

...RESPONDENT

! Counsel for the Petitioners : T.V.S. Prabhakara Rao, Posani. Akash

^Counsel for the Respondents : 1. S. Syam Sunder Rao, Special Public for ACB

< Gist:

> Head Note:

? Cases referred:

1. (2021) 17 SCC 318

2. (2014) 10 SCC 380

3. (1972) 1 SCC 318

4. (2005) 2 SCC 377

5. (2000) 8 SCC 710

6. (1977) 4 SCC 448

7. (1980) 3 SCC 435

8. (1987) 1 SCC 288

9. (1976) 1 SCC 421

10. (1986) 4 SCC 335

11. MANU/UP/1835/2013

12. (1957) 1 SCC 140

13. (1980) 2 SCC 155

14. (1976) 4 SCC 250

THE HONOURABLE DR JUSTICE Y. LAKSHMANA RAO

CRIMINAL REVISION CASE NOS: 79, 75, 208 and 263 OF 2023

COMMON ORDER:

These four Criminal Revision Cases are heard together and are being disposed of by this common order, as they involve a common question of law, though they arise out of different Calendar Cases and the Petitioners/Accused are different in each of the cases.

2. Criminal Revision Case Nos.79, 75, 208 and 263 of 2023 are filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for brevity 'the Cr.P.C'), challenging the orders dated 18.01.2023, 03.01.2023, 19.01.2023 and 19.01.2023 passed in Crl.M.P.No.899 of 2022 in C.C.No.27 of 2018 on the file of the learned Special Judge for Trial of SPE and ACB Cases, Rajamahendravaram, Crl.M.P.No.982 of 2022 in C.C.No.11 of 2015, Crl.M.P.No.1079 of 2023 in C.C.No.18 of 2018, and Crl.M.P.No.1021 of 2022 in C.C.No.23 of 2013, respectively, on the file of the learned Special Judge for Trial of SPE and ACB Cases Vijayawada whereby and whereunder applications filed under Section 321 of 'the Cr.P.C.,' by the complainant/Inspector of ACB, Eluru, were dismissed.

3. Sri Posani Venkateswarlu, learned Senior Counsel appearing on behalf of Sri T.V.S. Prabhakara Rao, and Sri Akash Posani, learned counsel for the Petitioners, submits that once the prosecution filed applications under Section 321 of 'the Cr.P.C.,' seeking withdrawal of the prosecution, the learned Trial

Court ought to have considered the same in the proper perspective. It is submitted that the applications were filed after following the procedure contemplated under G.O.Ms.No.51 and the Government Orders and Rules in force. It is further submitted that the learned Trial Court erred in dismissing the applications on the ground that they were filed at the stage of arguments and that permitting withdrawal would amount to misuse of the provisions of Section 19 of the Prevention of Corruption Act, 1988 (for brevity 'the PC Act'). The findings that there were no valid grounds for withdrawal of the prosecution are also assailed.

4. Sri S. Shyam Sunder Rao, learned Special Public Prosecutor for ACB, fairly conceded that the applications under Section 321 of 'the Cr.P.C.,' were filed only after following the procedure contemplated under G.O.Ms.No.51 and the other Government Orders and Rules in force. He, therefore, requested this Court to pass appropriate orders in accordance with law having regard to the facts and circumstances of the case.

5. The learned Trial Court dismissed the applications primarily on the grounds that they were filed at the stages of arguments and that permission of withdrawal of the prosecutions at such stages would amount to misuse of Section 19 of 'the PC Act'. These reasonings are unsustainable for the simple reason that Section 321 of 'the Cr.P.C.,' expressly enables the Public Prosecutor or Assistant Public Prosecutor, as the case may be, with the consent of the Court, to withdraw the cases from the prosecution at any time

before the judgments are pronounced. Therefore, merely because the applications were filed at the stage of arguments, they could not have been rejected on that ground alone. In this regard it is appropriate to extract Section 321 of 'the Cr.P.C.,' as under:

> *"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—*
>
> 1. *was against any law relating to a matter to which the executive power of the Union extends, or*
> 2. *was investigated by the Delhi Special Police Establishment under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or*
> 3. *involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or*
> 4. *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.*
>
> *C] If, in the course of any inquiry into an offence or a trial before a Magistrate in any district, the evidence appears to him to warrant a presumption—*
>
> 5. *that he has no jurisdiction to try the case or commit it for trial, or*
> 6. *that the case is one which should be tried or committed for trial by some other Magistrate in the district, or*
> 7. *that the case should be tried by the Chief Judicial Magistrate, he shall stay the proceedings and submit the case, with a brief report explaining its nature to the Chief*

Judicial Magistrate or to such other Magistrate, having jurisdiction, as the Chief Judicial Magistrate directs.

D] The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial."

7. The Hon'ble Apex Court in **State of Kerala v. K. Ajith**[1], at paragraph No.25, held as under:

"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."

8. Thus, in **K. Ajit of Kerala** *supra* the Hon'ble Apex Court held that the power under Section 321 of 'the Cr.P.C.,' to withdraw from prosecution vests

[1] (2021) 17 SCC 318

in the Public Prosecutor, subject to the consent of the Court, upon formation of an independent opinion founded on relevant considerations and informed by the larger interests of public justice. The Court, in exercising its supervisory judicial jurisdiction, must satisfy itself that the proposed withdrawal is bona fide, subserves the administration of justice, and is not actuated by extraneous considerations, oblique motives, or an attempt to subvert the process of law, having due regard to the nature and gravity of the offence and its ramifications on public interest. Where the Trial Court and the Revisional Court have recorded concurrent findings, interference under Article 136 of the Constitution is ordinarily unwarranted, save where such findings disclose a manifest failure to apply the settled principles governing the grant or refusal of consent.

9. In **Bairam Muralidhar v. State of A.P**[2], the Hon'ble Supreme Court at paragraph Nos.18, 19 and 22, held as follows:

> *"18. The central question is whether the Public Prosecutor has really applied his mind to all the relevant materials on record and satisfied himself that the withdrawal from the prosecution would subserve the cause of public interest or not. Be it stated, 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 [Abdul Karim v. State of Karnataka, (2000) 8 SCC 710 : 2001 SCC (Cri) 59 : AIR 2001 SC 116] , 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 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*

[2] (2014) 10 SCC 380

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.

19. 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.

22. We have referred to these authorities only to show that in the case at hand, regard being had to the gravity of the offence and the impact on public life apart from the nature of application filed by the Public Prosecutor, we are of the considered opinion that view expressed by the learned trial Judge as well as the High Court cannot be found 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."

10. Ergo, in **Bairam Muralidhar** *supra* the Hon'ble Supreme Court held that the Public Prosecutor is duty-bound to independently apply his mind to the material on record and demonstrate, through cogent reasons, that withdrawal from prosecution would subserve public interest and advance the cause of justice, rather than mechanically acting upon the directives of the Government. The Court, while exercising judicial discretion under Section 321 of 'the Cr.P.C.,' must grant informed consent only upon being satisfied that the application is bona fide and that such withdrawal would neither stifle the process of law nor occasion manifest injustice. In the absence of demonstrable independent application of mind and any cogent justification warranting withdrawal, particularly having regard to the gravity of the offence and its impact on public life, the grant of consent is impermissible.

11. The Hon'ble Apex Court in **M.N. Sankarayarayanan Nair v. P. V. Balakrishnan**[3], at paragraph Nos.5 and 8, held thus:

> *"5. The appellant's advocate later during the course of the argument conceded that there is no force in the first of his contentions namely that the Public Prosecutor cannot either be asked by the State Government, to consider the filing of a petition under Section 494 nor would it be proper for him if he was of the opinion that the prosecution ought not to proceed to get the consent of the Government to the filing of a petition under that section for obtaining permission of the Court to withdraw from the prosecution. Section 494 which empowers the Public Prosecutor with the consent of the Court to withdraw from the prosecution is as follows:*
> *"Any Public Prosecutor may, with the consent of the Court, in cases tried by jury before the return of the verdict, and in other cases before 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."*
> *The power contained in the section gives a general executive direction to withdraw from the prosecution subject to the consent of the Court which may be determined on many possible grounds and is therefore wide and uncontrolled by any other provision in the Code nor is it in pari materia with Section 333 which enables the Advocate-General at any stage in a trial by the High Court and before the return of the verdict to inform the Court if he thinks fit on behalf of the Government that he will not further prosecute the defendant upon the charge and on such information being given the case against the accused comes to an end. This power of entering a nolle prosecui under Section 333, Criminal Procedure Code is not dependent upon any permission of the Court. A reading of Section 494 would show that it is the Public Prosecutor who is incharge of the case that must ask for permission of the Court to withdraw from the prosecution of any person either generally or in respect of one or more of the offences for which he is tried. This permission can be sought by him at any stage either during the enquiry or after committal or even before the judgment is pronounced. The section does not, however, indicate the reasons which should weigh with the Public Prosecutor to move the Court for permission nor the grounds on which the Court will grant or refuse permission. Though the section is in general terms and does not circumscribe the power of the Public Prosecutor to seek permission to withdraw from the prosecution the essential consideration which is implicit in the grant of the power is that it should be in the interest of administration of justice which may be either that it will not be able to produce sufficient evidence to sustain the charge or that subsequent information before prosecuting agency would falsify the prosecution evidence or any other similar circumstance which it is difficult to predicate as they are dependent entirely on the facts and circumstances of each case. Nonetheless it is the duty of the Court also to see in furtherance of justice that the permission is not sought on grounds extraneous to the interest of justice or that offences which are offences against the State go unpunished merely because the Government as a matter of general policy or expediency unconnected with its duty to prosecute offenders under the law, directs the Public Prosecutor to withdraw from the prosecution and the Public Prosecutor merely does so at its behest. A large number of cases have been referred to but it is unnecessary to consider them*

[3] (1972) 1 SCC 318

except for a few as typifying the approach in cases where permission to withdraw from the prosecution was sought on grounds extraneous to and not germane to the maintenance and enforcement of the law and which permission though given by the trial court was quashed by the High Court.

1. *It appears to us that the wide and general powers which are conferred under Section 494 on the Public Prosecutor to withdraw from the prosecution though they are subject to the permission of the Court have to be exercised by him in relation to the facts and circumstances of that case in furtherance of, rather than as a hindrance to the object of law and justified on the material in the case which substantiate the grounds alleged, not necessary from those gathered by the judicial method but on other materials which may not be strictly on legal or admissible evidence. 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 subserves 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."*

12. Therefore, in **M.N. Sankarayarayanan Nair** *supra* the Hon'ble Apex Court held that the Section 494 of 'the Cr.P.C.,' confers upon the Public Prosecutor the discretion to seek withdrawal from prosecution, subject to the Court's consent, which power must be exercised in the light of the facts and circumstances of the case and in furtherance of the administration of justice. Though the State Government may initiate consideration of such withdrawal, the Public Prosecutor cannot act merely at its behest, and the proposed withdrawal must be founded on relevant material and considerations germane to the interests of justice. The Court must independently satisfy itself that the grant of consent would subserve the administration of justice and is not sought on extraneous grounds or for any ulterior purpose calculated to thwart the due enforcement of law.

13. In **Rahul Agarwal v. Rakesh Jain**[4], the Hon'ble Supreme Court at paragraph No.10 held as follows:

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

14. Hence, in **Rahul Agarwal** *supra* the Hon'ble Supreme Court held that the Withdrawal of prosecution under Section 321 of 'the Cr.P.C.,' is permissible only when it subserves the interests of justice and is supported by cogent and valid reasons. The Court must exercise its judicial discretion judiciously, ensuring that such withdrawal does not stifle legitimate prosecution or prejudice the collective interest of society.

15. In **Abdul Karim v. State of Karnataka**[5], the Hon'ble Apex Court at paragraph Nos.19 and 20, observed as follows:

> *"19. The law, therefore, is that though the Government may have ordered, directed or asked a Public Prosecutor to withdraw from a prosecution, it is for the Public Prosecutor to apply his mind to all the relevant material and, in good faith, to be satisfied thereon that the public interest will be served by his withdrawal from the prosecution. In turn, the court has to be satisfied, after considering all that material, that the Public Prosecutor has applied his mind independently thereto, that the Public Prosecutor, acting in good faith, is of the opinion that his*

[4] (2005) 2 SCC 377

[5] (2000) 8 SCC 710

> *withdrawal from the prosecution is in the public interest, and that such withdrawal will not stifle or thwart the process of law or cause manifest injustice.*
> *20. It must follow that the application under Section 321 must aver that the Public Prosecutor is, in good faith, satisfied, on consideration of all relevant material, that his withdrawal from the prosecution is in the public interest and it will not stifle or thwart the process of law or cause injustice. The material that the Public Prosecutor has considered must be set out, briefly but concisely, in the application or in an affidavit annexed to the application or, in a given case, placed before the court, with its permission, in a sealed envelope. The court has to give an informed consent. It must be satisfied that this material can reasonably lead to the conclusion that the withdrawal of the Public Prosecutor from the prosecution will serve the public interest; but it is not for the court to weigh the material. The court must be satisfied that the Public Prosecutor has considered the material and, in good faith, reached the conclusion that his withdrawal from the prosecution will serve the public interest. The court must also consider whether the grant of consent may thwart or stifle the course of law or result in manifest injustice. If, upon such consideration, the court accords consent, it must make such order on the application as will indicate to a higher court that it has done all that the law requires it to do before granting consent."*

16. Hence, In **Abdul Karim *supra*** the Hon'ble Apex Court held that the Under Section 321 of 'the Cr.P.C.,' the Public Prosecutor must independently apply his mind to all relevant material and, acting in good faith, satisfy himself that withdrawal from prosecution would subserve public interest. The Court must grant informed consent only upon being satisfied that such opinion is independently formed and that the withdrawal would neither stifle the process of law nor occasion manifest injustice. The application must briefly disclose the material considered and the Court's order must reflect due application of judicial mind.

17. In **Balwant Singh v. State of Bihar**[6], the Hon'ble Supreme Court at paragraph No.2, stated as follows:

> *"2. The statutory responsibility for deciding upon withdrawal squarely vests on the Public Prosecutor. It is non-negotiable and cannot be bartered away in favour of those who may be above him on the administrative side. The Criminal Procedure Code is the only master of the Public Prosecutor and he has to guide himself with reference to Criminal Procedure Code only. So guided, the consideration which must weigh with him is, whether the broader cause of public justice will be advanced or retarded by the withdrawal or continuance of the prosecution."*

[6] (1977) 4 SCC 448

18. Accordingly, in **Balwant Singh** *supra* the Hon'ble Supreme Court held that the statutory discretion to withdraw from prosecution vests exclusively in the Public Prosecutor, who must exercise the same independently, uninfluenced by administrative directives or extraneous considerations. The paramount consideration must be whether withdrawal or continuance of the prosecution would advance the broader interests of public justice in accordance with the mandate of the Code of Criminal Procedure.

19. In **Rajender Kumar Jain v. State**[7], the Hon'ble Apex Court at paragraph Nos.15 and 17, held as under:

> *"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 361 of the 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.*
>
> *17. Under the Code of Criminal Procedure it is the Public Prosecutor that has to withdraw from the prosecution and it is the court that has to give its consent to such withdrawal. Rightly too, because the independence of the judiciary so requires it, as we have already mentioned. Now the Public Prosecutor is an officer of the court. He sets the criminal law in motion in the court. He conducts the prosecution in the court for the people. So it is he that is entrusted with the task of initiating the proceeding for withdrawal from the prosecution. But, where such large and sensitive issues of public policy are involved, he must, if he is right-minded, seek advice and guidance from the policy-makers. His sources of information and resources are of a very limited nature unlike those of the policy-makers. If the policy-makers themselves move in the matter in the first instance, as indeed it is proper that they should where matters of momentous public policy are involved, and if they advise the Public Prosecutor to withdraw from the prosecution, it is not for the court to say that the initiative comes from the Government and therefore the Public Prosecutor cannot be said to have exercised a free mind. Nor can there be any quibbling over words. If ill informed but well meaning bureaucrats choose to use expressions like "the Public Prosecutor is directed" or "the Public Prosecutor is instructed", the court will not on that ground alone stultify the larger issue of public policy by refusing its consent on the ground that the Public Prosecutor did not act as a free agent when he sought withdrawal from the prosecution. What is at stake is not the language of the letter or the prestige of the Public Prosecutor but a wider question of policy. The court, in such a situation is to make an effort to elicit the reasons for withdrawal and satisfy*

[7] (1980) 3 SCC 435

itself, that the Public Prosecutor too was satisfied that he should withdraw from the prosecution for good and relevant reasons."

20. As such, in **Rajender Kumar Jain** *supra* the Hon'ble Apex Court held that the Public Prosecutor is obligated to disclose the grounds impelling withdrawal from prosecution, while the Court must independently scrutinise the underlying reasons to ensure that executive interference does not subvert the due administration of criminal justice. Although governmental initiative on matters of public policy does not, per se, vitiate the application, the Public Prosecutor must exercise independent judgment and the Court must ascertain whether such withdrawal is founded upon cogent, bona fide and legally germane considerations. The primacy of judicial independence mandates that the Court grant consent only upon being satisfied that the proposed withdrawal is justified by legitimate considerations consonant with the interests of justice.

21. In **Sheonandan Paswan v. State of Bihar**[8], the Hon'ble Supreme Court at paragraph Nos.28, 29, 69, 73, 74, 87 and 88, held thus:

28. Now let us consider the question as to what are the grounds on which the Public Prosecutor can apply for withdrawal from the prosecution. These grounds have been variously stated in the decisions of this Court but the basic principle underlying all these grounds is that the withdrawal can be sought only for furthering the cause of public justice. If we may repeat what we have said before, the paramount consideration must always be the interest of administration of justice. That is the touchstone on which the question must be determined whether an application for withdrawal of the prosecution can be sustained. This Court tried to formulate several instances where the cause of public justice would be served better by withdrawal from the prosecution. It was observed by this Court in M.N. Sankarayarayanan v. P.V. Bala-krishnan [(1972) 1 SCC 318 : 1972 SCC (Cri) 55 : AIR 1972 SC 496 : (1972) 2 SCR 599 : 1972 Cri LJ 301] that an application for withdrawal from the prosecution may be made on the ground that (SCC p. 322, para 5) "it will not be possible to produce sufficient evidence to sustain the charge or that subsequent information before prosecuting agency would falsify the prosecution evidence or any other similar circumstance which it is difficult to predicate as they are dependent

[8] (1987) 1 SCC 288

entirely on the facts and circumstances of each case". This Court also pointed out in State of Orissa v. C. Mohapatra [(1976) 4 SCC 250 : 1976 SCC (Cri) 584 : (1977) 1 SCR 335] that (SCC p. 253, para 6) "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".

"In the past, we have often known how expedient and necessary it is in the public interest for the Public Prosecutor to withdraw from prosecutions arising out of mass agitations, communal riots, regional disputes, industrial conflicts, student unrest etc. 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 counterproductive. 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."

It will thus be seen that the Public Prosecutor cannot maintain an application for withdrawal from the prosecution on the ground that the Government does not want to produce evidence and proceed with the prosecution against the accused or that the Government considers that it is not expedient to proceed with the prosecution. The Public Prosecutor has to make out some ground which would advance or further the cause of public justice. If the Public Prosecutor is able to show that he may not be able to produce sufficient evidence to sustain the charge, an application for withdrawal from the prosecution may be legitimately made by him. But there are two clarifications which we would like to introduce where the prosecution is sought to be withdrawn on this ground.

29. The first qualification is that where a charge has been framed by the court either under Section 228 or Section 240 of the Code of Criminal Procedure, 1973, it would not be open to the Public Prosecutor to apply for withdrawal from the prosecution on the ground of insufficiency of evidence in support of the prosecution. The reason is that under Section 228 a charge can be framed by the court only if the court is of opinion that there is ground for presuming that the accused has committed an offence and so also under Section 240 the court can frame a charge only if it is of opinion that there is ground for presuming that the accused has committed an offence. The court in both these cases applies its mind to the material consisting of the police report and the documents sent with it under Section 173 and comes to a conclusion that a prima facie case has been made out against the accused and the charge should therefore be framed. When the court has come to this conclusion after full consideration and framed a charge, it is difficult to see how on the same material the court can be persuaded to hold that there is not sufficient evidence to sustain the prosecution. How can the Public Prosecutor be permitted to make a volte face on the basis of the same material? That would be mockery of justice and it would shake the confidence of the people in the purity and integrity of the administration of justice. That is why this court pointed out in Bansi Lal v. Chandan Lal [(1976) 1 SCC 421 : 1976 SCC (Cri) 39 : AIR 1976 SC 370 : 1976 Cri LJ 328] that (SCC p. 424, para 5) "if the material before the Additional Sessions Judge was considered sufficient to enable him to frame the charges against the respondents, it is not possible to say that there was no evidence in support of the prosecution case". So also in Balwant Singh v. State [(1977) 4 SCC 448 : 1977 SCC (Cri) 633 : AIR

1977 SC 2265 : (1978) 1 SCR 604 : 1977 Cri LJ 1935] this Court reiterated that (SCC p. 450, para 2) "the State should not stultify the court by first stating that there is a true case to be tried and then make a volte face to the effect that on a second investigation the case has been discovered to be false". The Public Prosecutor in this last mentioned case sought to rely on a second investigation for supporting the application for withdrawal but that was clearly and unequivocally not countenanced by this Court. Obviously, the Public Prosecutor would be on much weaker ground when on the same material which was before the court when it framed the charge, he subsequently seeks to withdraw the prosecution on the ground that there is not sufficient evidence to sustain the prosecution. It is, therefore, clear that though the prosecution can be withdrawn at any stage, even after the framing of the charge, it would not be competent to the Public Prosecutor, once the charge is framed, to apply for withdrawal of the prosecution on the ground that the same material which was before the court when it framed the charge is not sufficient to sustain the prosecution. Of course, if some material has subsequently come to light which throws doubt on the veracity of the prosecution case the Public Prosecutor can certainly apply for withdrawal on the ground that the prosecution is not well founded. It may also happen that in the meanwhile a key witness may have died or some important evidence may have become unavailable or some such thing may have happened; in that event, the Public Prosecutor may legitimately feel that it will not be possible to sustain the prosecution in the absence of such evidence and he may apply for withdrawal from the prosecution. But, on the same material without anything more, the Public Prosecutor cannot apply for withdrawal from the prosecution after the charge is framed. To allow him to do so would impair the faith of the people in the purity and integrity of the judicial process.

69. Section 321 needs three requisites to make an order under it valid: (1) the application should be filed by a Public Prosecutor or Assistant Public Prosecutor who is competent to make an application for withdrawal, (2) he must be in charge of the case, (3) the application should get the consent of the court before which the case is pending.

73.Section 321 gives the Public Prosecutor the power for withdrawal of any case at any stage before judgment is pronounced. This presupposes the fact that the entire evidence may have been adduced in the case, before the application is made. When an application under Section 321 CrPC 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 321 CrPC 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 321 CrPC.

74. While construing Section 321, it is necessary to bear in mind the wide phraseology used in it, the scheme behind it and its field of operation. True, it does not give any guideline regarding the grounds on which an application for withdrawal can be made. But in applying it, we have to bear in mind that it was enacted with a specific purpose and it would be doing violence to its language and contents by importing into the section words which are not there or by restricting its operation by

fetters in the form of conditions and provisos. Its predecessor Section 494 had been on the statute book from the inception of the Criminal Procedure Code. When the Code was amended in 1973, this section was re-numbered and the only change brought in this section is to add the words "in charge of the case" while referring to the Public Prosecutor or Assistant Public Prosecutor.

87. I referred to these sections only by way of illustration to emphasise the distinction between Section 321 and other sections of the Code dealing with orders withdrawing criminal cases or discharging or stopping proceedings. My purpose in referring to the above sections is only to show that 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.

88. There is no appeal provided by the Act against an order giving consent under Section 321. But the order is revisable under Section 397 of the Criminal Procedure Code. Section 397 gives the High Court or the Sessions Judge jurisdiction to consider the correctness, legality or propriety of any finding, sentence or order and as to the regularity of the proceedings of any inferior court. While considering the legality, propriety or the correctness of a finding or a conclusion, normally, the revising court does not dwell at length upon the facts and evidence of the case. The court in revision considers the materials only to satisfy itself about the correctness, legality and propriety of the findings, sentence or order and refrains from substituting its own conclusion on an elaborate consideration of evidence.

22. Consequently, in **Sheonandan Paswan** *supra* the Hon'ble Supreme Court held that the invocation of jurisdiction under Section 321 of 'the Cr.P.C.,' necessitates that the Public Prosecutor, upon an independent, bona fide and judicious evaluation of the germane materials, must demonstrably satisfy himself that withdrawal from prosecution would subserve the paramountcy of public justice, subject to the Court's informed and judicious consent. Upon the framing of charge, a volte-face predicated upon the very materials which occasioned the formation of a prima facie case is impermissible, save where supervening circumstances or subsequently emergent material materially impeach the substratum of the prosecution. The Court's scrutiny is confined to ascertaining the bona fides, legal propriety and procedural legitimacy of the proposed withdrawal, so as to obviate any subversion of the judicial process

or perpetration of manifest injustice, without undertaking a substantive reappraisal of the evidentiary merits.

23. In **Bansi Lal v. Chandan Lal**[9], at paragraph No.4 the Hon'ble Apex Court, rued thus:

> *"4. Section 321 of the Code of Criminal Procedure, 1973 which corresponds to Section 494 of the earlier Code of 1898 and is in identical terms empowers the Public Prosecutor to withdraw with the consent of the court from the prosecution of any person either generally or in respect of any one or more of the offences for which he is being tried. Section 494 of the Code of 1898 has been construed by the different High Courts in a number of cases. This Court in M.N. Sankarayarayanan Nair v. P.V. Balakrishnan [(1972) 1 SCC 318 : 1972 SCC (Cri) 55 : (1972) 2 SCR 599] explaining the well-established legal position as to the scope and ambit of the powers granted by Section 494 has observed that though the section"does not circumscribe the powers of the Public Prosecutor to seek permission to withdraw from the prosecution, the essential consideration which is implicit in the grant of the power is that it should be in the interest of administration of justice...."*
> *Though it is not possible to catalogue all the circumstances in which this power can be exercised, by way of illustration M.N.S. Nair case mentions a few instances where the Public Prosecutor would be apparently justified in seeking such permission, as in a case where the prosecution"will not be able to produce sufficient evidence to sustain the charge or that subsequent information before prosecuting agency would falsify the prosecution evidence or any other similar circumstances."*
> *It is added that the request to grant permission under Section 494 should not be accepted "as a necessary formality", "for the mere asking", but the court must be satisfied "on the materials placed before it" that the grant of permission would serve 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."*

24. It follows that, in **Bansi Lal** *supra* the Hon'ble Apex Court held that the Section 321 of 'the Cr.P.C.,' corresponding to Section 494 of the erstwhile Code, vests in the Public Prosecutor the discretion to seek withdrawal from prosecution, subject to the Court's consent, the paramount consideration being the advancement of the administration of justice. Such discretion may be invoked upon cogent circumstances, including the insufficiency of evidence or the emergence of subsequent material undermining the prosecution case. The Court shall not accord consent as a mere matter of formality, but must

[9] (1976) 1 SCC 421

independently satisfy itself, upon scrutiny of the material placed on record, that the proposed withdrawal is bona fide, subserves public justice and is not actuated by any oblique motive or extraneous consideration.

25. In **State of Punjab v. Union of India**[10], the Hon'ble Supreme Court at paragraph No.1, held as follows:

> *"1. It is the duty of the Court while granting permission to the Public Prosecutor to withdraw from the prosecution under Section 494 of the Code of Criminal Procedure, 1898 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. The ultimate guiding consideration while granting a permission to withdraw from the prosecution 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 withdraw. The Public Prosecutor may withdraw from the prosecution of a case not merely on the ground of paucity of evidence but also in order to further the broad ends of public justice, and such broad ends of public justice may well include appropriate social, economic and political purposes."*

26. In the circumstances, in **State of Punjab** supra the Hon'ble Supreme Court held that the Court, while exercising jurisdiction under Section 494 of 'the erstwhile Cr.P.C.,' is mandated to ensure that the Public Prosecutor's statutory discretion has not been exercised colourably or for collateral purposes calculated to subvert the ordinary course of criminal justice. The determinative criterion governing such withdrawal is its consonance with the overarching objectives of the administration of justice, rather than the mere insufficiency of prosecutorial evidence. Such discretion may legitimately encompass wider social, economic and political considerations, provided the proposed withdrawal demonstrably conduces to the larger ends of public justice.

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[10] (1986) 4 SCC 335

27. In **Ranjana Agnihotri v. Union of India**[11], the Hon'ble Apex Court at paragraph No.115 and 116, held as under:

> *"115. In view of above, the Public Prosecutor is the final authority to apply mind and take a decision whether an application for withdrawal of a criminal case is to be moved or not. For that, option is open to him to receive necessary instructions or information from the Government to make up mind on the basis of material made available. The Public Prosecutor cannot act like post box or at the dictate of the State Government. He has to act objectively as he is also an officer of the court. It is also open for the appropriate Government to issue appropriate instruction to him but he has to act objectively with regard to the withdrawal of cases. But the instruction sent by the government shall not be binding and it is the Public Prosecutor who has to take a decision independently without any political favour or party pressure or like concerns. The sole object of the Public Prosecutor is the interest of administration of justice. Power conferred on Public Prosecutor to take independent decision for the interest of administration of justice is not negotiable and cannot be bartered away in favour of those who may be above him on administrative side. He is stood to be guided by letter and spirit of Code of Criminal Procedure only and not otherwise. Neither the Public Prosecutor nor the Magistrate can surrender their discretion while exercising power at their end.*
> *116. Similarly, the Court has duty to protect the administration of criminal justice against possible abuse or misuse by the executive by resort of the provisions contained in Section 321 Cr.P.C. The court has to record a finding that the application moved by Public Prosecutor is in the interest of administration of justice and there is no abuse or misuse of power by the Public Prosecutor or the Government. In case an application is allowed, it must be recorded by the Court that the application has been moved in good faith to secure the ends of justice and not in political or vested interest. The court has final say in the matter and the decision should be free and fair with independent exercise of mind in the interest of public policy and justice. It must ensure that the application is not moved to thwart or stifle the process of law or suffers from such improprieties or illegalities as to cause manifest injustice if consent is given."*

28. Thus, in **Ranjana Agnihotri** *supra* the Hon'ble Apex Court held that the Public Prosecutor, being an officer of the Court, is entrusted with the non-delegable responsibility of determining, upon an objective appraisal of the relevant material, whether recourse to Section 321 of 'the Cr.P.C.,' is warranted, uninfluenced by governmental diktat, political exigencies or partisan considerations. The Court, in turn, is obligated to exercise its judicial prerogative independently and ascertain whether the proposed withdrawal is

[11] MANU/UP/1835/2013

bona fide, legally tenable and conducive to the ends of public justice. Consent must be withheld where the proposed action betrays an abuse of executive authority, compromises the impartial administration of criminal law, or occasions manifest injustice by frustrating the legitimate course of prosecution.

29. In **State of Bihar v. Ram Naresh Pandey**[12], the Hon'ble Supreme Court at paragraph No.8 stated as follows:

> *"8. The section is an enabling one and vests in the Public Prosecutor the discretion to apply to the court for its consent to withdraw from the prosecution of any person. The consent, if granted, has to be followed up by his discharge or acquittal, as the case may be. 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. There can be no doubt, however, that the resultant order, on the granting of the consent, being an order of "discharge" or "acquittal" would attract the applicability of correction by the High Court under Sections 435, 436 and 439 or 417 of the Criminal Procedure Code. The function of the court, therefore, in granting its consent may well be taken to be a judicial function. It follows that in granting the consent the court must exercise a judicial discretion. But it does not follow that the discretion is to be exercised only with reference to material gathered by the judicial method. Otherwise the apparently wide language of Section 494 of the Criminal Procedure Code would become considerably narrowed down in its application. 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. As the Privy Council has pointed out in Faqir Singh v. King Emperor [Faqir Singh v. King Emperor, 1938 SCC OnLine PC 46 : AIR 1938 PC 266 at p. 269] "It (Section 494 of the Criminal Procedure Code) 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". The judicial function, therefore, 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. In this context it is right to remember that the Public is, in a larger sense, also an officer of the court and that he is bound to assist the court with his fairly-considered view and the court is entitled to have the benefit of the fair exercise of his function."*

30. Hence, in **State of Bihar** *supra* the Hon'ble Supreme Court held that the Section 494 'of the erstwhile Cr.P.C.,' contemplates an executive prerogative vested in the Public Prosecutor to initiate withdrawal, with the

[12] (1957) 1 SCC 140

Court's assent operating as a judicial safeguard rather than an adjudication upon the substantive merits of the prosecution. The Court's discretion is therefore directed towards scrutinising the legitimacy of the prosecutorial initiative and ensuring that the consequential discharge or acquittal is not founded upon an arbitrary, colourable or extraneous exercise of executive authority. The Public Prosecutor, as an officer of the Court, is expected to tender an impartial and conscientiously reasoned assessment, enabling the Court to exclude any clandestine subversion of the ordinary processes of criminal justice.

31. In **Subhash Chander v. State (Chandigarh Admn.)**[13], the Honble Apex Court at paragraph Nos.5, 6, 9 and 12 ruled thus:

> *"5. Although skeletal, the conditions for such withdrawal are implicit in the provision, besides the general principles which have been evolved through precedents. Once a prosecution is launched, its relentless course cannot be halted except on sound considerations germane to public justice. All public power is a public trust, and the Public Prosecutor cannot act save in discharge of that public trust, a public trust geared to public justice. The consent of the court under Section 321 as a condition for withdrawal is imposed as a check on the exercise of that power. Consent will be given only if public justice in the larger sense is promoted rather than subverted by such withdrawal. That is the essence of the nolle prosequi jurisprudence.*
> *6. We wish to stress, since impermissible influences occasionally infiltrate into this forbidden ground, that court justice is out of bounds for masters and minions elsewhere. We do not truncate the amplitude of the public policy behind Section 494 CrPC but warn off tempting adulteration of this policy, taking the public prosecutor for granted. Maybe, the executive, for plural concerns and diverse reasons, may rightfully desire a criminal case to be scotched. The fact that broader considerations of public peace, larger considerations of public justice and even deeper considerations of promotion of long-lasting security in a locality, of order in a disorderly situation or harmony in a faction milieu, or halting a false and vexatious prosecution in a court, persuades the executive, pro bono publico, sacrifice a pending case for a wider benefit, is not ruled out although the power must be sparingly exercised and the statutory agency to be satisfied is the Public Prosecutor, not the District Magistrate or Minister. The concurrence of the court is necessary. The subsequent discovery of a hoax behind the prosecution or false basis for the criminal proceeding as is alleged in this case, may well be a relevant ground for withdrawal. For the court should not be misused to continue a case conclusively proved to be a counterfeit. This statement of the law is not exhaustive but is enough for the present purpose and, indeed, is well-grounded on precedents.*

[13] (1980) 2 SCC 155

> *9. The functionary clothed by the Code with the power to withdraw from the prosecution is the Public Prosecutor. The Public Prosecutor is not the executive, nor a flunkey of political power. Invested by the statute with a discretion to withdraw or not to withdraw, it is for him to apply an independent mind and exercise his discretion. In doing so, he acts as a limb of the judicative process, not as an extension of the executive.*
> *12. We cannot dispose of this petition without drawing attention to the very disturbing presence of the District Magistrate in the withdrawal proceedings. The jurisprudence of genuflexion is alien to our system and the law expects every repository of power to do his duty by the Constitution and the laws, regardless of commands, directives, threats and temptations. The Code is the master for the criminal process. Any authority who coerces or orders or pressures a functionary like a Public Prosecutor, in the exclusive province of his discretionary power, violates the rule of law and any Public Prosecutor who bends before such command betrays the authority of his office. Maybe, government or the District Magistrate will consider that a prosecution or class of prosecutions deserves to be withdrawn on grounds of policy or reasons of public interest relevant to law and justice in their larger connotation and request the Public Prosecutor to consider whether the case or cases may not be withdrawn. Thereupon, the Prosecutor will give due weight to the material placed, the policy behind the recommendation and the responsible position of government which, in the last analysis, has to maintain public order and promote public justice. But the decision to withdraw must be his."*

32. Accordingly, in **Subhash Chander** *supra* the Hon'ble Apex Court held that the continuance or termination of a duly instituted prosecution must be governed by considerations intrinsically connected with the vindication of public justice, the Public Prosecutor being the statutory repository of an independent and non-transferable discretion under Section 321 of 'the Cr.P.C'. Although governmental recommendations founded upon legitimate concerns of public tranquillity, social amity or the exposure of a demonstrably spurious prosecution may merit consideration, neither executive predominance nor political expediency can supplant the Prosecutor's autonomous judgment. The Court's concurrence operates as a substantive institutional safeguard against coercive interference, ensuring that withdrawal remains an exceptional, bona fide and justice-oriented exercise of statutory power.

33. In **State of Orissa v. Chandrika Mohapatra**[14], the Hon'ble Apex Court at paragraph Nos.6 and 10, observed as follows:

> *"6. 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.*
> *10. We have already discussed the principles which should govern cases of this kind where an application is made by the Public Prosecutor for grant of consent to the withdrawal of prosecution under Section 494 of the Criminal Procedure Code. We have pointed out that the paramount consideration in all those cases must be the interest of administration of justice. No hard and fast rule can be laid down nor can any categories of cases be defined in which consent should be granted or refused. It must ultimately depend on the facts and circumstances of each case in the light of what is necessary in order to promote the ends of justice, because the objective of every judicial process must be the attainment of justice. Now, in the present case, the application made by the Public Prosecutor clearly shows that the incident had arisen out of rivalry between two trade unions and since the date of the incident calm and peaceful atmosphere prevailed in the industrial undertaking. In these circumstances, the State felt that it would not be conducive to the 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. We cannot forget that ultimately every offence has a social or economic cause behind it and if the State feels that the 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. We are, therefore, of the view that in the present case the learned Sessions Judge was right in granting consent to the withdrawal of the prosecution and the High Court was in error in setting aside the order of the learned Sessions Judge."*

34. Therefore, in **State of Orissa** *supra* the Hon'ble Apex Court held that the mere assertion of inexpediency is insufficient to warrant withdrawal from prosecution; the Public Prosecutor must substantiate cogent grounds demonstrating evidentiary insufficiency, the untenability of the prosecution, or circumstances militating against the furtherance of the administration of justice. The determinative criterion remains the attainment of substantive

[14] (1976) 4 SCC 250

justice, assessed in the totality of the facts and circumstances of each case, without recourse to inflexible classifications. Withdrawal may accordingly be justified where its continuance would aggravate societal discord, imperil public tranquillity, or frustrate legitimate socio-economic objectives, provided such course demonstrably subserves the larger interests of justice.

35 A plain reading of Section 321 of 'the Cr.P.C.,' shows that no limitation is prescribed as to the stage at which an application for withdrawal of the prosecution can be filed, so long as it is before the pronouncement of judgment. It is also not the finding of the learned Trial Court that the applications were filed without following the procedure contemplated under the Government Orders or the Rules in force. Further, no reasons have been assigned as to how permitting withdrawal of the prosecution would amount to misuse of Section 19 of 'the PC Act'. The learned Trial Court has failed to assign cogent and convincing reasons for rejecting the applications.

36. A careful perusal of the applications filed under Section 321 of 'the Cr.P.C.,' discloses that the Government of Andhra Pradesh, Energy (Vigilance) Department, by Memos dated 25.01.2022 and 22.02.2022, after careful examination of the matter, decided to proceed against the Petitioners/Accused Officers departmentally instead of prosecuting them. Draft articles of charge were framed, departmental enquiries were conducted, and final orders imposing punishment were also passed against the concerned officers. The applications further disclose that the Government, being the

competent sanctioning authority under Section 19 of 'the PC Act.,' accepted the recommendations to withdraw the criminal prosecution in view of the departmental actions. There is no allegation by the complainants or any other aggrieved persons that the decisions to withdraw the prosecutions were taken in violation of the procedure prescribed under the relevant Government Orders. In such circumstances, the learned Trial Court was not justified in refusing consent solely on the grounds assigned in the impugned orders.

37. Having regard to the facts and circumstances of the case, this Court is of the considered opinion that the reasons assigned by the learned Trial Court are legally unsustainable. Accordingly, the impugned orders are set aside, and the applications filed under Section 321 of 'the Cr.P.C.,' are allowed. Consequently, permissions are accorded to the prosecutors concerned to withdraw the cases against the Petitioners/Accused Officers.

38. Accordingly, the Criminal Revision Cases are allowed. There shall be no order as to costs.

As a sequel, interlocutory applications, if any pending, shall stand closed.

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Dr. Y. LAKSHMANA RAO, J

Dt:28.07.2026
KMS