

# Withdrawal from Prosecution: SheoNandanPaswan Case

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## Introduction

The concept of withdrawal from prosecution has been enshrined under section 321 of the Code of Criminal Procedure (CrPC), which enables the Public Prosecutor or Assistant Public Prosecutor to halt the relentless course of prosecution on sound considerations germane to public considerations.<sup>3</sup> In order to withdraw the case from prosecution, the Public prosecutor is bound to take consent of the Court and is the officer of the Court<sup>4</sup> and such withdrawal shall be justified on grounds of public peace, public justice<sup>5</sup> and promotion of long lasting peace and security, halting a false and vexatious prosecution<sup>6</sup> as well as to maintain a harmonious situation. Such a withdrawal can be applied for by the Prosecutor at any time during the pendency of the trial and before the judgment of the Trial Court<sup>7</sup> but not at the appellate stage.<sup>8</sup> In the light of the nature and stage of trial, the Court shall give its consent to wither discharge or acquit the accused.

Section 321, CrPC deals with 'withdrawal from prosecution' meaning thereby, to retire or retract from prosecution by not appearing for the proceedings of the case, and not 'withdrawal of prosecution' i.e., it only concerns with the Prosecutor not appearing or conducting the proceedings.<sup>9</sup> When the Court refuses the application for withdrawal, it is upon the Prosecutor to either continue the case or withdraw from it. If he withdraws, the Court may appoint another person to continue the proceedings.<sup>10</sup>

The concept of plea bargaining can also be taken into account wherein which there is a negotiation between the prosecution and the defense that the accused pleads guilty and the Prosecutor provides him with concessions. This concept has been strongly condemned by

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<sup>4</sup> State of Bihar v. Mahesh Desai, AIR 1957 SC 389.

<sup>5</sup> State of Punjab v. Union of India, AIR 1987 SC 189.

<sup>6</sup> SubhashChander v. State (Chandigarh Admn.), (1980) 2 SCC 155.

<sup>7</sup> T.C. Thiagarajan v. State, 1982 CrLJ 1601, 1607 (Mad).

<sup>8</sup> Public Prosecutor v. MadangiVarjuno, 1976 CrLJ 46, 47 (AP); AnantaLalSinha v. JahiruddinBiswas, AIR 1927 Cal 816; State of MP v. Mooratsingh 1975 CrLJ 989 (MP).

<sup>9</sup> Public Prosecutor v. Mdangi, 1976 CrLJ 46.

<sup>10</sup> The King v. Parmanand, AIR 1949 Pat 222 (FB); M. Balakrishna Reddy v. Home Dept., 1999 CrLJ 3566 (AP).

the Supreme Court by stating that it is against the public policy as it is unconstitutional since it violates Article 21 of the Constitution, being unfair and unreasonable to induce a person to plead guilty by luring him that he will be set free.<sup>11</sup> But there can be instances where due to the case being of a dangerous nature, where such concept can be applicable and it has the following two precautions namely, the accused's voluntariness to negotiate and the victim is compensated for the same. The concept of plea bargaining leads to compounding of the case and in a criminal case, when it is compounded, the trial ceases to continue since compounding an offence is an offence. However, the offences that are lawfully compoundable can be compounded and that will not constitute an offence. The offence can be compounded by the victim only, according to section 320 of CrPC and as a consequence of the same, the accused is to be acquitted. The offence can be composed between the parties at any stage namely pre-trial, trial, post-trial stage.

### **Characteristics of Section 321, CRPC**

Section 321 neither specifies the reasons for such withdrawal by the Prosecutor<sup>12</sup> nor the fact that he is bound to consult with the client. He is bound to file such an application with the instructions of the Government since he is not an independent officer rather is appointed by the Government, hence establishing a fiduciary relationship between the two,<sup>13</sup> to appear for prosecution on its behalf. Owing to this client-counsel relationship between the Government and the Prosecutor he ought to follow the instructions of the Government but section 321 of CrPC does not provide for any such provision<sup>14</sup> rather provides that once such instruction is received by the Prosecutor, he is to apply his mind so as to withdraw the case or continue it instead of blindly following the instruction of the Government. Where the Prosecutor fails to take an informed decision, the Court may not give its consent and rather dismiss such withdrawal.<sup>15</sup>

For instance, there might arise a situation where the Government instructs the Prosecutor to withdraw from prosecution and the Prosecutor, after prudently applying his mind, finds out the political vendetta of the Government behind such withdrawal, should step back from filing such application and inform the government of such disagreement else it will be against the

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<sup>11</sup>Kasambhai Abdul Rahiman Bhai Shaik v. State of Gujarat, AIR 1980 SC 85.

<sup>12</sup>M.N. Sankaranarayana Nair v. P.V. Bala Krishnan, (1972) 1 SCC 318.

<sup>13</sup>Sheo Nandan Paswan v. State of Bihar, AIR 1983 SC 194.

<sup>14</sup>*Ibid.*

<sup>15</sup>V. Krishna Swamy v. SK Maniharan, 1997 CrLJ 654.

authority of his office.<sup>16</sup> The authorities are not supposed to pressurize the Prosecutor for the same and if they do so, he can deem this office, but such does not happen under administrative law that owing to the justice of masses such decision is taken. The Government may appoint a Special Public Prosecutor with specific instructions to withdraw the case.<sup>17</sup> The Prosecutors, in such a scenario, do not generally disagree with the Government, rather file the withdrawal application and let the Court dismiss the same so that their position is not jeopardized.

The intention of the legislature behind rendering the provision open-ended was perhaps, to let the provision to be invoked in the emergency situations, which would have not been possible to contemplate and then enunciate in the provision at the time of framing of the Act. Furthermore, it would have not been possible to make an exhaustive list of ground on which the withdrawal of prosecution can be allowed.

However, as experienced in the past, the fact that the section confers unfettered power on the executive with no grounds on which the section can be invoked and prosecution can be withdrawn, unlocks the door to possible abuse of the provision by the executive.

### **Section 321, CRPC: Interpretation**

The Code of Criminal Procedure enshrines a provision for the Public Prosecutor or the Assistant Public Prosecutor to withdraw from prosecution in respect of any person who is being tried for any offence, either generally or for any particular offence. It is only the Public Prosecutor or the Assistant Public Prosecutor who is in charge of a particular case and is actually conducting prosecution that can file an application under this section seeking permission to withdraw from the prosecution.<sup>18</sup>

The Court's consent for the withdrawal of prosecution is mandatory. Moreover, the section states that the Public Prosecutor or the Assistant Public Prosecutor has to obtain the consent of the Central Government before he moves the Court for withdrawal of the case. Such applications for withdrawal can only be made before the judgement has been delivered and it includes the judgement of the trial courts if the case is in the trial court. The section also provides the consequences of the withdrawal being made before and after the charge has been framed. If the withdrawal is made before a charge has been framed, the accused shall be discharged for such offences and if the withdrawal is made after the charge has been framed, he shall be acquitted for such offence or offences, subject to some conditions.

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<sup>16</sup>Subhash Chanderv. The State, AIR 1980 SC 423.

<sup>17</sup>Mukul Dalai v. Union of India, (1988) 3 SCC 144; V.S. Achuthanandan v. R. Balakrishna Pillai, (1994) 4 SCC 299.

<sup>18</sup>State of Punjab v. Surjit Singh and Anr., AIR 1967 SC 1214.

The section renders this power to the Court with respect to such essential consideration which is implicit in the grant of the power that it should be in the interest of administration of justice. The consideration weighing with the prosecuting authority may be either that it will not be able to produce sufficient evidence to sustain the charge or subsequent information before it will falsify the prosecution evidence or other similar circumstance. The Government must have well-founded reasons for its decision and must apply its mind before instructing the public prosecutor to withdraw from the prosecution.

### **Application of Mind by The Public Prosecutor**

It may so happen that the Government requests the Prosecutor regarding the withdrawal from prosecution and the Prosecutor, analysing the merits of the case, may apply for the court's consent and it may either discharge or acquit the accused. There should be a necessary consultation between the Government and the Public Prosecutor irrespective of whether the Prosecutor came up with the idea of withdrawal or the Government. The Prosecutor, generally not the Government, needs to assess the evidence against the accused beyond reasonable doubt. The Prosecutor may, after consulting the Government, withdraw the case from prosecution if he, while the Trial process, finds that the evidence is insufficient and that there is no need to proceed with the case any further.<sup>19</sup> Prosecutor can also apply for withdrawal if in the Trial he finds additional information that falsifies the present available evidence.<sup>20</sup> The application for withdrawal shall be filed by the Prosecutor irrespective of who initiates the idea of withdrawal and the ultimate exercise of such discretion also lies with him. Court may refuse to grant consent if such withdrawal can cause manifest injustice or affect the process of law.<sup>21</sup>

The Courts have widened the scope of the section by laying down that the State Government can give directions to the Public Prosecutor to the extent that a significant matter warrants to be withdrawn of the rationale of larger interest of society and public policy relevant to justice and they can at the behest of the Public Prosecutor withdraw the case.<sup>22</sup> Subsequently, the Public Prosecutor applies his brain and may or may not agree with the direction of the Government. In such circumstances, the application of withdrawal moved by the Public Prosecutor will only be considered valid if he establishes that he has duly applied his mind and is not solely working upon the directions of the Government.

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<sup>19</sup>State of Orissa v. Chandrika Mohapatra , AIR 1977 SC 903.

<sup>20</sup>M.N. Sankaranarayana Nair v. P.V. Bala Krishnan, (1972) 1 SCC 318.

<sup>21</sup>Abdul Karim v. State of Karnataka, 2001 SCC (Cr) 59.

<sup>22</sup>Subhash Chander v. State, 2 SCC 155 (1980).

### **Reasons for Withdrawal**

The Court, in order to give consent, needs to be satisfied that the Prosecutor has applied his mind to all the relevant circumstances as well as has acted in good faith. Such withdrawal can be done either on juridical grounds or non-juridical grounds. The need for withdrawal under juridical reasons is achieved when:

1. Evidence against the accused stands insufficient.<sup>23</sup>
2. The identification of the defendant has been manifestly gross.
3. The additional information before the Public Prosecutor has the capacity to falsify the prosecution's evidence.<sup>24</sup>

### **Withdrawal for Juridical reasons**

The reasoning which is most widely given by the Court for the withdrawal is that the case is "weak". The Court has enunciated on many occasions that when a case can be considered as "weak". Some of such being insufficient evidence for prosecution, lapse of time, subsequent information gathered by the Public prosecutor which would fiddle the evidence and where a case of vexatious and frivolous allegation has been made.

### **Withdrawal for Non-Juridical reasons**

In cases wherein a prosecution is withdrawn for reasons except those of the merits of the case. Such reasons are of type known as non-juridical reasons. Examples of valid non-juridical reasons are withdrawal of cases amounting from group clashes, communal disturbances, strikes, communal feuds etc. which may have been judicially settled, in order to thwart re-eruption on account of sub-judice cases.<sup>25</sup> Invocation of S. 321 by virtue of non-juridical reasons is mostly done in furtherance of political motives. Their application is not always justifiable.

In this context, a case arose in 1939 which established the basis of this legal principle. In this matter the Public prosecutor sought for withdrawal of prosecution against the Sub-Registrar, a government servant, stating therein the reason of it being a weak case and that there was a dearth of evidence to continue further prosecution.<sup>26</sup>

In the appeal to this case by the complainant, the High Court enunciated that the matter did not warrant withdrawal. In addition to this, there was also suspicion that the accused is a relative of Minister which had hastened the "unwarranted" and "unusual" intrusion with the administration of

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<sup>23</sup>M.N.S. Nair v. P.V. Balakrishnan, AIR 1972 SC 496.

<sup>24</sup>*Ibid.*

<sup>25</sup>Balwant Singh v. State of Bihar, 4 SCC 448 (1977).

<sup>26</sup>Devendra Kumar Roy v. Syed Yar Bakht Chaudhury, AIR 1939 Cal 220.

justice. But this course of justice by Calcutta High Court was subsequently overturned by judiciary in later cases.

A landmark case where in the new political party after coming into power sought for withdrawal of prosecution of its party members, which were initiated by previous party in power.<sup>27</sup> The Supreme Court reiterated the decision of lower court and consented to the withdrawal of those

prosecutions. The underlying principle behind such decision was that the alleged offences were political offences and since the election results were a mandate of citizens of India which was against the ruling party. Thus, the withdrawal of such prosecutions is justifiable. In this case the Court by consenting to the withdrawal of prosecution condoned the political offences and disregarded them to be tried in a court of law.

Another case in this context in which the financial report of a co-operative Bank in Bihar projected discrepancies,<sup>28</sup> it was alleged that since the Chairman of the Bank was a close friend of the Chief Minister thence no action was taken in respect of such irregularities. But subsequently when the party in power was changed a criminal charges were levied against the Minister. After a course of time again the previous Government came back into power and

consequently the withdrawal of the prosecution was requested by the Government. This request of withdrawal was based on four grounds.

Firstly, lack of evidence which diminishes the prospect of prosecution; secondly, this prosecution is a result of personal and political vendetta; thirdly, on the grounds of public and State policy and lastly, antagonistic effect that the continuation of the proceedings will bring on State interest in light of varied situation. The Court reiterated the decision of the lower Court to withdraw the prosecution on the ground that the Public Prosecutor has not acted blindly on inessential considerations but he has applied his judicial mind.

This Court came to this conclusion on the basis that the Court gives its consent under S. 321 when it is satisfied that the Prosecutor has acted in his independent capacity while deciding to withdraw the prosecution. Nevertheless, the Court did not go into the merits of the case and did not weigh the evidence before consenting to withdrawal. This decision by the court can be questioned on the ground that how a Public Prosecutor, which has been appointed specifically for dealing with such case, could have applied his mind without any

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<sup>27</sup>Rajender Kumar Jain v. State, 3 SCC 435 (1980).

<sup>28</sup>Sheonandan Paswan v. State of Bihar, 1 SCC 438 (1983).

extraneous pressure.

The factor required by the court before giving it consent to withdraw the case is to check whether the Prosecutor has acted in his independent capacity and not in any extraneous or political pressures. This pre-requisite is a bit problematic since it is difficult to check that whether the Prosecutor has applied his mind or the degree of coercion by the Government. The perspective of the Court while dealing with S.321 seems to be inclined more towards the technicalities of the section instead of taking notice of the fact that the Government in garb of declaring a prosecution to be weak might be abusing the section to withdraw cases.

In my opinion, the minority in this case correctly pointed out that “discretion is not to be exercised by the Court mechanically and the consent applied for has not to be granted as a matter of formality or for the mere asking... the paramount consideration must be the requirement of justice.”<sup>29</sup> Now this question comes into anyone’s mind that what “broader end of public justice, peace and public order”<sup>30</sup> is achieved by the withdrawal of the prosecution regarding the alleged commission of corruption crimes by the Chief Minister. However, such withdrawal of prosecutions involving politicians for political reason, when they are in power only subjects to vindication of peace and public justice.<sup>31</sup>

### **Stage For Withdrawal From Prosecution**

Withdrawal from prosecution can be asked at any time before the judgment is declared in the trial court. The prosecutor has no right to file a petition for withdrawal from prosecution at the appellate stage of a case under Section 321. On the contrary, an application for withdrawal from prosecution can be moved even during the pendency of the committal proceedings in the Court of a Magistrate in a case in which the offence is exclusively triable by a Court of Session, and the Magistrate is competent to give consent to such withdrawal.

According to Section 354, the judgment must specify the offence of which and under which section of the law under which the accused is convicted and the punishment to which he is sentenced, and the judgment, according to section 353, is pronounced by delivering or reading out the whole of it or by reading out its operative part.

### **Role of Public Prosecutor and Complainant**

An application of withdrawal from prosecution, under section 321 CrPC, can be filed by the Public Prosecutor in charge of the case and who actually conducts the prosecution to seek the permission of the Court for the same. The complainant of the case has no say in the

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<sup>29</sup>Sheonandan Paswan v. State of Bihar, 1 SCC 288 (1987).

<sup>30</sup>R.K Jain v. State, 3 SCC 435 (1980).

<sup>31</sup>*Ibid.*

withdrawal<sup>32</sup> unless the complaint is a private one as in such a case; the Public Prosecutor is not entitled to apply for withdrawal.<sup>33</sup> In the case or withdrawal from some of the charges, prosecution for the remaining charges shall continue and so is the case for several accused i.e., when some of them are discharged or acquitted, proceedings against the others shall continue.

The Public Prosecutor has the duty to inform the court about any case for which he has legitimate reasons for withdrawing the prosecution and the court has the power to grant the permission appraising itself of such reasons which prompted the PP to withdraw from the prosecution. It is the duty of both the court as well as the PP to protect the administration of criminal justice system against any abuse or misuse in cases where resort is taken to Section 321 of CrPC. The Public Prosecutor has been given this power by the Government and so he cannot surrender or delegate this power to anyone else.

### **Consequences Of Withdrawal**

The provision enshrined in the Code of Criminal Procedure gives the consequences of the withdrawal from prosecution. It states that if the withdrawal from the prosecution is made before the charge has been framed, the accused shall be discharged in respect of the concerned offence or offences; and if the withdrawal is made after the charge has been framed, or when under the Code no charge is required, the accused shall be acquitted in respect of the concurrent offence or offences. In the first situation, the consequence is discharge of the particular offence or of all offences. The term discharge has been defined under Section 227 which means that, if, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

In the second instance, the consequence shall be acquittal. This term means that after proper framing of charge when the court realizes that there are not enough evidences to prove the accused guilty, it acquits the accused declaring him to be innocent. The prosecution counsel cannot prove that the accused has even committed the crime or even if he has done the act then he has done the offence with a guilty mind. And hence, the court grants the permission to close the case and hold the accused, innocent. This is after the police has done the investigation and gathered the evidences against the accused. And, the court has also taken cognizance of the

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<sup>32</sup>V.S. Achuthanandan v. R. Balakrishna Pillai, (1994) 4 SCC 299; Saramma Peter v. State of Kerala, 1991 CrLJ 3211 (Ker); Thathapadi Venkata Laxmi v. State of AP, 1991 CrLJ 749.

<sup>33</sup>V.S. Achuthanandan v. R. Balakrishna Pillai, (1994) 4 SCC 299; Surjeeth Rajesh Kumar Sudhansu State of Bihar, 1987 CrLJ 1979.

matter against the accused.

### **Remedy Against Order Passed Under Section 321**

If any party is not satisfied with the decision of the court regarding section 321 which says withdrawal from prosecution, there is no appellate body provided for the aggrieved party. The decision of the first court is final and binding on the parties. The only remedy that can be invoked by the aggrieved party is the revision jurisdiction of the Sessions Court or of the High Court given under Section 397.

Section 397 states that the High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself for himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings or execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record. It has also been mentioned that the revision jurisdiction shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding. However, the order given by the court under Section 321 is not an interlocutory order and thus the revision petition specified under Section 397 can be filed for a decision under section 321 of CrPC.

### **Sheo Nandan Paswan case**

#### **Statement of Facts**

The Patna Urban Cooperative Bank was registered in May 1970 with Nawal Kishore Sinha. Dr. Jagannath Misra, a Member of the Legislative Council, was closely associated with Nawal Kishore Sinha and helped him and the Cooperative Bank in many ways with respect to the affairs of the Bank and mobilisation of the resources for the Bank. There were some irregularities in the affairs of the Cooperative Bank. Shri Abdul Ghafoor who was then the chief minister, ordered the prosecution of the officers and staff of the Bank including its Honorary Secretary Shri K.P. Gupta, Manager, M.A. Haidary and the loan clerk. However, this was not done. On 11.4.1975 Dr. Jagannath Misra became the Chief Minister. On May 16, he passed an order that only stern action should be taken for realization of loans since on the perusal of the file it appeared there was no allegation of defalcation against the Chairman and members of the Board. This date was allegedly changed to May 14, 1975 by a fresh

order in which, directions for restoration of normalcy and holding of Annual General Meeting "of the bank was made. On 15.4.1976 the Reserve Bank cancelled the banking licence issued to the Bank and a liquidator was appointed. On 4.8.76, after the Estimates Committee's report and the debate in the Assembly, Dr. Jagannath Misra directed prosecution against those involved in the defalcation. Thus, 23 criminal cases were filed against the office bearers and loanees except Nawal Kishore Sinha was excluded from being arraigned as an accused. In June 1977 the Government headed by Dr. Jagannath Misra was replaced by the Government headed by Sri Karpoori Thakur. The Patna Secretariat Non-gazetted Employees' Association submitted the memorandums to the now Chief Minister on 9.7.1977 and requested him to enquire into allegations against Dr. Jagannath Misra. After a detailed procedure and obtaining requisite sanction of the Governor, a criminal case was instituted by the Vigilance Department against Dr. Jagannath Misra and others.

The charge sheet was filed by the State of Bihar against the respondents on 19<sup>th</sup> February, 1979 for offences under sections 420/466/ 471/109/120-B of Indian Penal Code and under the Prevention of Corruption Act, 1947. The charge against Dr. Jagannath Misra was that he as either a Minister or the Chief Minister of Bihar abused his position as a public servant in conspiring with the other accused, sought to interfere with the criminal prosecution and surcharge proceedings against Nawal Kishore Sinha and others with the intention to gain financial gain for himself and the accused which would be detrimental for the bank. The Chief Judicial Magistrate took cognizance of the case on 29.7.1979. There was a change of ministry in Bihar in June 1980 and Dr. Jagannath Misra became the chief minister again. A policy decision was taken on 10.6.1980, that criminal cases launched out of political vendetta and cases relating to political agitation will be withdrawn. On 24.2.1981 the Government appointed Shri L.P. Sinha as a Special Public Prosecutor. The next day, the secretary to the Government of Bihar wrote a letter to the District Magistrate informing him of the policy decision taken by the Government, to withdraw from prosecution. He was requested to take steps for the withdrawal of the case. On 17<sup>th</sup> June, 1981, Shri Sinha made an application under s.321 of the Cr.P.C. to the Special Judge seeking permission to withdraw from the prosecution on four grounds; (a) Lack of prospect of successful prosecution in the light of the evidence, (b) Implication of the persons as a result of political and personal vendetta; (c) Inexpediency of the prosecution for the reasons of the State and public policy and (d) Adverse effects that the continuance of the prosecution will bring on public interest in the light of the changed situation. The

learned Special Judge gave consent sought, by his order dated 20th June, 1981. The appellant, thereupon, filed a criminal revision application against the order permitting withdrawal of the prosecution.

In this case the Supreme Court is called upon only to consider the ambit and scope of s.321 Cr.P.C. and not the truth or otherwise of the allegations against the respondent No. 2. The appellant is admittedly a political rival of respondent No.2.

**Judgment on Issues Pertaining Withdrawal from Prosecution**

1. Ingredients of S. 321 and Grant of Permission to Withdraw from Prosecution does not Amount to Discharge of the accused

- Per Khalid and Natarajan JJ:

Section 321 needed 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.

In this case, the entire criterion is met with. In the light of the earlier judgement in the same case, the competency of the present public prosecutor who has filed for the withdrawal in the absence of cancellation of appointment of the previous prosecutor cannot be assailed.

The Act provides for no appeal against an order which gave consent under s.321. But the order can be reversed under s.397 of the CrPC. The court in revision will consider the material only to satisfy itself about the legality, correctness and propriety of findings, sentence or order and stops itself from substituting its conclusion on an elaborate consideration of evidence.

The Supreme Court has a policy not to go on board enquiring into the facts and evidence of cases like this or even an order against discharge. The Supreme Court will not be converted into a court of facts and evidence. Any deviance from this will not be advisable and is outside the scope of s.321 CrPC.

When a magistrate mentions in his order that he has considered the materials, it would not be proper for the Supreme Court to reject the statement so made. The court has to see if the application is made in good faith, in the interest of public policy and justice and not to hinder 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.

- Venkataramiah J.

If the case has been withdrawn by the Public Prosecutor with the consent of the Court for a good reason, then the Supreme Court should be hesitant to interfere with the order of withdrawal. Had the Special Judge rejected the application for withdrawal and the High Court had affirmed that Order, under Article 136, Supreme Court may not interfere with that order.

In this case Special Judge had permitted the withdrawal of the prosecution, which was affirmed by the High Court and also by the majority judgment pronounced by Supreme Court earlier. The Supreme Court on review should not interfere with the permission regarding the withdrawal of the case unless there are any compelling and strong reasons.

- Bhagwati C.J. and Oza J. (Minority view)

As the effect of withdrawal of the prosecution the accused will be discharged of the offences for which he was being prosecuted but in this case it was not an order of discharge. When the High Court sets aside the order of the Magistrate allowing the withdrawal of prosecution, it does not mean that the order of discharge has been set aside. What the High Court means is that the withdrawal of prosecution was improper or wrong. The prosecution should go on against the accused and only if the charges are groundless or there is a lack of evidence, the accused may be discharged.

## 2. Grounds For Seeking Court's Consent For The Withdrawal of Prosecution

The s.321 does not give any guideline stating the grounds on which withdrawal from prosecution could be made. So the judges relied on precedents to ascertain the guidelines.

The application for withdrawal of prosecution was made by the Public Prosecutor on four grounds. It was not nowhere mentioned that there was malafide intention or lack of good faith or motivation of improper consideration that motivated the Public Prosecutor. Neither there was allegation against the Special Judge but he had gone through the case diary and relevant documents before coming to a conclusion that when the case was filed it was on ground of personal vendetta for defamation. The Special Judge had performed the duty in accordance with the section. The statement of the Public Prosecutor had not been challenged to be based on unwholesome motive. Thus, he acted strictly according to the section. This shows that he had applied his mind to the case in spite of the wide scope and wide language used in s.321.

The withdrawal of prosecution cannot be based on the fact that there was no application of mind by the Public Prosecutor or lack of relevant reasons.

- Venkataramiah J.

He agreed with the legal position which was expounded in *Ram Naresh Pandey*<sup>34</sup> and *Ranjender Kumar Jain*<sup>35</sup> cases.

- Bhagwati, C.J. and Oza. J. (Minority view)

A Public Prosecutor seeks for withdrawal of prosecution primarily on the principle of furtherance of public justice. The Public Prosecutor cannot apply for withdrawal on the grounds that the government is unwilling to produce evidence and does not want to proceed with the prosecution against the accused or that it is not considered expedient by the Government. To withdraw the prosecution it has to be proven that there is insufficient evidence to sustain the charge.

This can only be applied if it qualifies these two grounds-

1. Prosecution can be withdrawn at any stage including after the framing of charges. But after applying its mind to the documents presented under s.173 and the police report and charges have been framed, application for withdrawal of the prosecution on the ground that the same material is not sufficient to sustain the prosecution. There are cases when after charges have been framed, material comes up which challenges the veracity of the prosecution's case, then certainly the Public Prosecutor can apply for withdrawal.
2. Where in a warrant case instituted on police report, the charge sheet has been filed but charges have not been framed, Public Prosecutor should not be allowed to withdraw on the grounds of lack of evidence. The matter should be left to the court which will decide what is appropriate in carrying out public justice.

The ultimate objective is the eradication of social and economic cause of the crime and if it is better served by the withdrawal of prosecution then the state must be allowed to do so. There must be broader consideration for public peace, public justice and long lasting security of a society which should persuade a State from sacrificing the prosecution of a case for the greater benefit. This cannot be made objective by laying down rules and shall depend on the facts and circumstances of the case.

3. Discretion of the Court in Granting Consent for Withdrawal From Prosecution and How it is to be Exercised

- Khalid and Natarajan, JJ

The court performs a supervisory role and not an adjudicatory function when it comes to.

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<sup>34</sup>State of Bihar v. Ram Naresh Pandey, 1957 SCR 279.

<sup>35</sup>Ranjender Kumar Jain v. State, (1980) 3 SCC 435.

The court need not assess the evidence and decide if it would end up in conviction or acquittal. Under s.321, the acquittal or discharge is not the same as the normal final orders in criminal cases. The conclusion, here, will not be supported by discussion of the evidence in the case of acquittal or groundlessness in the case of discharge or the absence of a prima facie case. The court has to see if the application has been made in good faith, in the interest of public justice and not to hinder the process of law. After taking this into account, the court must see if the application has any illegalities or improprieties which would lead to injustice if the consent is given. The order shall be upheld if on reading the order giving consent, a higher court is satisfied that the order was given after considering all the materials available.

- Venkataramiah J.

He agreed with the position of s. 321 as explained in Rajendra Kumar Jain's case.

- Bhagwati, C.J. and Oza, J.

The court performs a judicial function when it decides whether to grant consent to withdraw from prosecution or not. It must exercise its judicial discretion in reference to the materials provided to it whether the grounds have been properly established and it is in furtherance of public justice. The ultimate test to decide if the withdrawal should be allowed or not will be if it is in the interest of public justice. The definition of public justice cannot be strictly defined in a strait jacket formula

The court however, must not merely see if the Public Prosecutor has applied an independent mind. The same grounds are to be applied while determining the legitimate grounds on which the application was made as to if the withdrawal should be allowed or not.

4. Whether The Public Prosecutor Justified In Applying For Withdrawal, Justification Of Magistrate In Granting Withdrawal Of prosecution, Facts That Warrant Case Instituted On Police Return Against The Accused And That Decision To Withdraw From Prosecution Was Taken By The Government Headed By The Accused

- Khalid and Natarajan JJ.

The Magistrate gave his consent after considering various details. It would be improper if the Supreme Court does not accept the statement made of considering the materials by the Magistrate. This will mean acting against the mandate of s.321, to find fault with the Magistrate. This is not done unless the order discloses that the Magistrate has failed to consider the application in good faith, in pursuance of public justice and not to hinder the process of law.

- Venkataramiah J.

The judge draws similarity of the present case with that of the Rajendra Kumar Jain case. He

says that it will be difficult to say if the Public Prosecutor has applied his mind or conducted himself in an improper way. In the present case, if the Public Prosecutor says that there was no prospect of securing a conviction of the accused, it cannot be called an unreasonable one. It is difficult to construe s.321 in the light of the principles of administrative law.

- Bhagawati, C.J. and Oza, J.

The judges gave two reasons as to why the withdrawal of prosecution should not be permitted.

One, the Chief Judicial Magistrate could have considered under s.239 if the material that was placed before him sufficient to make a prima facie case against the accused. This because if the CJM came to the conclusion on the basis of the material provided to him that charge against the accused had no ground, he is expected to state the reasons in writing. There is no reason why the prosecution should be allowed to withdraw under s.321 when the same could be achieved under s.239. And two, the decision to withdraw from prosecution was taken by the Cabinet meeting presided by the accused himself. It is so possible that the Special Public Prosecutor did not obey the cabinet and applied his mind to whether the prosecution should be allowed to withdraw or not. It would mean to undermine the confidence of the people who are in the administration of justice if the decision of withdrawal is against the accused himself. According to this the decision of the Special Public Prosecutor is appointed by the state government headed by the accused who then applies for withdrawal of prosecution. The judge state that there should be actual delivery of justice not merely appears to be done.

5. Political Vendetta In Opposing Grant Of Consent Of Withdrawal under S.321 And Whether An Independent Ground For Not Interfering With The Consent To Withdraw

- Bhagawati, C.J. and Oza, J.

The judges state that just because the prosecution against the Chief Minister was initiated after the ministry went out of power by the succeeding government, it cannot mean in itself that it was done due to political vendetta or malafide. There might be material justifying the initiation of prosecution against the present Chief Minister and by the succeeding Government which was the reason for initiating the prosecution. There is nothing inherently wrong in doing this and cannot be vitiated.

Even if political vendetta is proven, a justifiable criminal prosecution will not be vitiated.

The same principle was used in this case to the withdrawal of prosecution.

- Khalid and Natarajan, JJ

The appellant was known to be a rival of the accused. It was at the instance of an interested person that the Supreme Court was asked to direct for re-trial of the case and set aside the consent given by the Special Judge. Under such circumstances, it would not be in the public interest or interest of justice to accept the appeal and direct for a re-trial.

### **Analysis of the Case**

#### **1. Complainant Has No Locusstandi**

The provision for withdrawal does not mention whether the complainant can oppose the application of withdrawal from prosecution. In *SheonandanPashwan v. State of Bihar*, it appears that the petitioner-appellant had applied before the trial court under section 302 for permission to conduct the prosecution when the Public Prosecutor sought permission to withdraw from the prosecution.<sup>36</sup> However the application was rejected and the Public Prosecutor was allowed to withdraw from the prosecution. The petitioner then filed a revision petition against this decision before the Patna High Court which was dismissed.

In many leading cases, this matter has been raised but the court has failed to decide definitively on this question of law. The Andhra Pradesh High Court, in one of the cases, has held that if the State withdraws the prosecution, the third party shall have the right to prosecute who has suffered as a result of the offence.

As it has already been mentioned that there is no appellate body for the aggrieved party against a decision under Section 321 but the only remedy lies under section 397 as the revision petition. The revision court can take action either suo motu or on the application of any person. In one of the cases, the decision was given by the Supreme Court and the order of permitting withdrawal was challenged by the complainant. Then the challenge was accepted, heard and decided on its merits de hors the person's *jus standi* who raised the question.

The High Courts of Kerala, Nagpur, and Bombay were inclined to accept the locus standi of a private person or complainant in these matters, while the High Courts of Patna, Calcutta, and Delhi have expressed a view to the contrary. When the Public Prosecutor decides to withdraw from the prosecution, the interests of the accused and of the prosecution virtually merge with each other and the adversary system of trial so essential for reaching the truth and attaining justice ceases to operate.

Therefore, the private complainant is allowed to oppose the withdrawal order during the trial stage as well as if necessary, in the revision stage also. Therefore, for the administration

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<sup>36</sup>*SheoNandanPaswan v. State of Bihar*, 1987 CrLJ 793.

of criminal justice system, any person other than the complainant himself can oppose the proceedings under Section 321 but it is on the discretion of the courts allow them to do so. In the case of V.S. Achutanandan v. R. Balakrishna Pillai,<sup>37</sup> the decision of the court approved the locus standi of the opposition leader for opposing the proposal for withdrawal from prosecution of a Minister, on the ground that none has opposed his locus standi. This decision was taken as a trend setter in this field of locus standi of private complainant or any other person for opposing the order of withdrawal from prosecution. It was also suggested by jurists that even if there are no opposition from any complainant regarding this, the court must seek the assistance or opinion from the Bar by appointing an advocate as amicus curiae for this case.

2. Public Prosecutor As Well As The Court Should Apply Its Mind

The public prosecutors or assistant public prosecutors who are in charge of prosecution of a particular case can file an application for withdrawal from prosecution. The original complainant doesn't have any say in making the decision either to withdraw from the prosecution or not. But when the prosecution is being conducted by the complainant on a private complaint, the Public Prosecutor is not allowed to apply for withdrawal from the prosecution.

In a leading case, where an associate public prosecutor, who was not in-charge of the case, moved for its withdrawal under instructions from the government, in the court of the SDM who accepted the plea and permitted withdrawal, but the Sessions Judge set aside the withdrawal,

the High Court refused to interfere with the order of the Sessions Judge saying that the grounds indicated were not germane and not factually supportable and the Associate Public Prosecutor had no jurisdiction to make the motion and there was absolute non-application of mind by the learned Magistrate.<sup>38</sup>

The High Court set aside order for withdrawal and held that neither the court nor the Public Prosecutor applied their minds to the circumstances which can justify the withdrawal, whereas Magistrate had allowed withdrawal from the prosecution of a police inspector on the ground that there was a departmental enquiry pending against him. When the withdrawal from prosecution has been moved by the public prosecutor in good faith and in bona fide way, the insistence of the investigating officer to withdraw the withdrawal order is not warranted. The

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<sup>37</sup>(1994) 4 SCC 299.

<sup>38</sup>State of Orissa v. Bijayanjan Singh Bariha, 1993 Cr LJ 437 (Ori).

decision of withdrawal from prosecution, once granted cannot be rescinded by the Government.

In the case of Sheonandan Paswan, the Special Judge had performed the duty in accordance with the section. The statement of the Public Prosecutor had not been challenged to be based on unwholesome motive. Thus, he acted strictly according to the section. This shows that he had applied his mind to the case in spite of the wide scope and wide language used in s.321. However, in the present case, the complainant had applied for prosecution under section 302 CrPC, which was further denied by the court and was faulty on their part as, had they followed the inquisitive proceedings, the case could have been argued by the third party. The withdrawal from prosecution was also based on personal and political vendetta which the court failed to examine. Also, as remarked by Bhagwati, J., after applying its mind to the documents presented under s.173 and the police report and charges have been framed, application for withdrawal of the prosecution on the ground that the same material is not sufficient to sustain the prosecution.

### **Additional Cases**

#### **Abdul Karim and Others v. State of Karnataka**

##### Facts

Veerappan and his gang members hatched a conspiracy to kill Superintendent of Police, Mysore District, Shri Harikrishna and Sub-Inspector of Police of MM Hills Shri Shakeel Ahmed and other Police personnel who had been to Veerappan with a view to terrorize the Police force and to put fear of death into the minds of Policemen who were performing duty in attempting to arrest the wanted persons. Various charges relating to murder, ambush, attempt

to overawe the Government of Karnataka, killing of elephants, smuggling of Sandalwood etc. from the forest, possession of arms and ammunition, opening of fire on task force personnel, have been framed against accused who are said to be the associates of Veerappan. Cases filed against them are under the provisions of Terrorist and Disruptive Activities Act (TADA) and other penal provisions, i.e., Indian Penal Code, Arms Act and Explosive Substances Act. Rajkumar is a very popular film actor of Karnataka. In case any harm is caused to Rajkumar, there may be backlash on Tamils in Karnataka and it may lead to problems between the two linguistic communities in the States. The people may indulge in acts of violence.

On 30th July, 2000, Veerappan abducted Rajkumar from his farm house along with three others. As of today, Rajkumar and one Nagesh are still in Veerappan's custody. Soon after the abduction of Rajkumar and others, the two State Governments decided to accept the

demands of Veerappan to release those in respect of whom TADA charges and detention orders under the National Security Act have been withdrawn. The decision was taken in the meeting held on 4/5th August, 2000 between the Chief Ministers of the two States. Applications under Section 321 Cr.P.C. seeking consent of court to withdraw TADA charges were filed to facilitate ultimately the release of accused persons from judicial custody so as to meet Veerappan's demand. The arrangement was that once TADA charges are withdrawn, the accused in judicial custody will move bail applications in cases of offences under IPC and other penal enactments. The Public Prosecutor will concede and will not oppose the grant of bail. The court will grant the bail and, thus, accused will come out from judicial custody and, thus, this demand of Veerappan would be met. Abdul Karim, father of Shakeel Ahmed, opposed the application on various grounds, inter alia, stating in the objection petition that if the cases against the hardcore criminals are withdrawn or if they are released on bail that may expose the families of the victims to terror unleashed by the TADA detenus, who may unleash terror and jeopardize public order and cause detriment to the general public interest.

#### Judgment

It has been held by the Apex Court in the case of *Abdul Karim and others vs. State of Karnataka*,<sup>39</sup> that an application under Section 321 Cr.P.C. could not be allowed only on the ground that the State Government had taken a decision for withdrawing the prosecution and such an order could only be passed after examining the facts and circumstances of the case. What 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 the facts of the case, has to see whether the application suffers from such improprieties or illegalities as would cause manifest injustice, if consent was given.

#### **Balwant Singh and Ors.v. State Of Bihar**

##### Facts

The public prosecutor, in charge of a criminal case where charges had already been framed and pending before a Magistrate in the State of Bihar, was directed by the magistrate to withdraw the case at the instance of the State Criminal Intelligence Department on the ground that a second investigation made by the Police in the said matter was truer than the first which proved to be false. The Public Prosecutor acted on the direction and withdrew the case. Unable to get the relief from the High Court, the petitioners moved this Court for

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<sup>39</sup>(2000) 8 SCC 710.

grant of special leave to appeal.

Judgment

In its landmark 1977 ruling of *Balwant Singh and Ors v. State of Bihar*,<sup>40</sup> the court said a government can bring to the notice of the public prosecutor materials and suggest to him whether the prosecution should be withdrawn or not but "(it) cannot command where (it) can only commend".

**Rajender Kumar v. State Through Special Police Establishment**

Facts

Section 321 of the Code of Criminal Procedure, 1973 which corresponds to section 494 of the 1898 code provides for the withdrawal from prosecution by the Public Prosecutor or Assistant Public Prosecutor in charge of a case with the consent of the Court at any time before the judgment is pronounced. In Criminal Appeal No. 287/79, the case instituted against George Mathew Fernandes & others on 24-9-76 was allowed to be withdrawn on March 26, 1977 on an application under section 321 of the Criminal Procedure Code, 1973 made by N. S. Mathur Special Public Prosecutor. The learned Chief Metropolitan Magistrate expressed his opinion that "it was expedient to accord consent to withdraw from the prosecution". A revision petition under section 397 of the Criminal Procedure Code, 1973 challenging the said order granting permission to withdraw filed by the appellant an advocate in the High Court failed. The High Court also held that the appellant had no locus standi. Special Leave Petition (Crl.) No. 3115/79 was filed by one Manohar Lal directly under Article 136 of the Constitution against the order of the Chief Judicial Magistrate, Bhiwani, permitting the public prosecutor to withdraw from the prosecution in case No. 186-1 filed by the State against Chaudhury Bansilal Ex-Defence Minister, his son Surinder Singh, Ex. M.L.A., R. S. Verma, Ex. Deputy Commissioner, Bhiwani and several other officials and non-officials for a host of offences.

Judgment

In the case of *Rajender Kumar v. State through Special Police Establishment*, the Supreme Court has held that "It shall be the duty of the Public Prosecutor to inform the grounds for withdrawal to the Court and it shall be the duty of the Court to appraise 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

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<sup>40</sup>1977 AIR 2265.

justice against possible abuse or misuse by the Executive by resort to the provision of Section 321, Cr.P.C. 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.

**Mohd. Mumtaz v. Nandini Satpathy and Ors**

**Facts**

Section, 321 Criminal Procedure Code, 1973 empowers a Public Prosecutor in charge of a case to withdraw with the consent of the court from the prosecution of any person in respect of any one or more of the offences for which he is tried, at any time before the judgment is pronounced. Respondent No.1 Ex-Chief Minister of Orissa, was alleged to have misappropriated a huge sum, said to have been collected by District Congress Committees from various companies for publication of their advertisements in party's souvenirs before the 1971 General Elections. A case was registered by the Vigilance Department against her and a charge-sheet submitted. The Addl. Chief Judicial Magistrate framed charges under s.406, 467, 471 and 120 of the IPC. After the 1980 General Election, the State Government took a policy decision to withdraw cases against political leaders who were subjected to victimisation. The Special Public Prosecutor on being satisfied that the charge of criminal breach of trust would fail against respondent No.1 filed a petition under s.321 CrPC and sought the permission of the court in public interest for withdrawal of the case, when the case was posted for consideration of charge.

After making an objective assessment of the merits of the application and being satisfied that the withdrawal of the prosecution would in no way affect any public interest or improve any public confidence the Addl. Chief Judicial Magistrate granted consent to withdraw from the prosecution. The appellant's revision petition having been dismissed by the High Court he appealed by special leave.

**Judgment**

Once a charge has been framed against the accused on the basis that there was ground for presuming that he had committed the offence charged against him, the Public Prosecutor cannot make an application for withdrawal from the prosecution and the Magistrate cannot give his consent to such withdrawal on the ground that there was insufficient or no evidence to sustain the prosecution. There, is no material in the case to show that the Special Public Prosecutor was influenced by any improper motives for filing the application for

withdrawal of the prosecution or that he had acted against his will at the behest of anyone else. The Additional Chief Judicial Magistrate had bestowed judicial consideration over the matter and had thereafter passed a reasoned order.<sup>41</sup> Not only he but also the High Court had found after a careful scrutiny of relevant factors and circumstances, that the application for withdrawal of the prosecution made by the Special Public Prosecutor fully satisfied the tests laid down by the Supreme Court inasmuch as the Public Prosecutor had not exercised his executive function improperly and also had not attempted to interfere with the normal course of justice for illegitimate reasons or purposes.

**Subhash Chandra v. Chandigarh Administration**

Facts

The petitioner alleged that his house had been burgled and that many valuables were lost. The police recovered the property. Eventually, charges were also framed by the trial court against

two other persons who were said to be collaborators. During the pendency of the criminal case, the Asstt. Public Prosecutor applied for withdrawal from prosecution under section 321, Cr.P.C. on the ground that on fresh investigation by a senior officer the alleged search and seizure were discovered to be a frame-up by the concerned police officer in order to pressurize the accused to withdraw a certain civil litigation. The court required a fuller application, the Assistant Public Prosecutor made a fresh and more detailed petition for withdrawal which was eventually granted by the trial court, despite the petitioner's remonstrance that the withdrawal was prompted by political influence wielded by the jeweller leading to instructions from high quarters to the Assistant Public Prosecutor to withdraw from the case concerning that accused. It was alleged that the Assistant Public Prosecutor did not apply an independent mind in carrying out the said instructions.

Judgment

In the case of *Subhash Chandra v. Chandigarh Administration*,<sup>42</sup> it was held that the Public Prosecutor who alone is entitled to pray for withdrawal, is to act not as a part of executive but as a judicial limb and in praying for withdrawal he is to exercise his independent discretion even if it incurs the displeasure of his master affecting continuance of his office.

**V.S. Achuthanandan v. R. Balakrishnapillai**

Facts

The facts of the case are, there was one Idamalayar Dam as a part of Idamalayar project

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<sup>41</sup>Mohd. Mumtaz v. Nandini Satpathy And Ors 1987 SCR (1) 680.

<sup>42</sup>(1980) 2 SCC 155.

sanctioned by planning commission. A huge expenditure happened in its construction upto March 1985. But in the trial run only on 15 July 1985 there were a number of leaks in the tunnel showing the lower quality of construction work. This was raised as a matter of concern through the press and state legislative assembly. As a result of this extensive repair work at considerable cost had to be undertaken to remedy the defects. The matter was investigated and a report was submitted on the same for the judicial probe in the matter. Justice J Sukinaran was appointed for the commission of inquiry to conduct the probe. The report was submitted in June 1988. The report found accused number 1 R. Balakrishna Pillai, accused number 2 G. Ganesh Pillai and accused number 6 G. Gopal Krishna Pillai liable for positive use of abuse of power. The report also disclosed the commission of certain offences Punishable under Indian Penal Code and under Section 5 of Prevention of Corruption Act. The recommendations of the commission was accepted and formed a special team headed by superintendent of police. A final report was submitted on 14-12-1990 against the accused person as a result of which trial was started. During the pendency of trial, an application of withdrawal of prosecution was filed only against accused number 6 under section 321 of CrPC.

### Judgment

The special judge in this case<sup>43</sup> relying on the judgment of Sheo Nandna Paswan the withdrawal from prosecution for accused number 6 was declined on the ground that the special public prosecutor did not invoke section 321 with bona fide decision reached on proper application of mind to the material relied by the prosecution to support the charge against accused number 6.

### Conclusion

At the outset of this project, the authors tried to closely examine the provisions for withdrawal from prosecution under the Code of Criminal Procedure. During which, the different scenarios during which withdrawal from prosecution can take place were discussed in detail. It was seen that the complainant had no say in withdrawal from prosecution. The matter was solely upon the discretion of the 'Public Prosecutor' alone.

No other person had the jurisdiction to do so. It was also seen that the public prosecutor could not delegate this function to another person. As per the relevant case law, it was also seen that the government could not force the Public Prosecutor to consider this proposition

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<sup>43</sup>V.S. Achuthanandan v. R. Balakrishna Pillai, (1994) 4 SCC 299.

in a case. It was solely up to the discretion of the public prosecutor. It is quite important to note that withdrawal can be done any time before the judgement of the case is given in the Trial Court. There is no appellate body which can provide relief in case the aggrieved party is not satisfied with the decision of the Court to permit withdrawal from prosecution. Only S.397 of the CrPC talks about the revisional power of the Sessions Court or the High Court in case it is not satisfied that the proper procedure has not been followed, or some injustice has been meted out. Also, the ambiguity between the terms 'withdrawal of prosecution' and 'withdrawal from prosecution' exists in the judicial system of our country.

Sabharwal, J. had cautioned that even though it was the executive that usually decided whether circumstances required the invoking of S. 321 of the CrPC in his view, a "democratically elected" executive must be wise enough to ensure that it did not invite the "contempt of the law" in doing this. By leaving this section open-ended, there were some definite advantages and disadvantages. But, it is important to make a note that, possible abuse of the provision with political and ulterior motives does mean warrant that the Court will restrict the scope of the section so as to determine the exact circumstances for which this S. 321 should be invoked.

Therefore, the responsibility for checking the abuse of S.321 of the CrPC in which this section has been reduced to a puppet in the hands of the crafty and manipulative political personalities, has become the responsibility of the judiciary. The judiciary must provide its well-considered and thoughtful consent, not merely a mechanical consent, in order to effect the withdrawal of prosecution from such cases where they arise.

In such a scenario, the consent of the judiciary should not be based only on if and whether there is sufficient material that can convince the Court that the Public Prosecutor may be satisfied that the existence of such circumstances can warrant withdrawal of prosecution. The Court should play a much more pro-active when it investigates the circumstances, on its own, and hence, determine whether those circumstances can warrant such withdrawal from prosecution. "The Consent of the Court", as has been required by S.321 of the CrPC should be interpreted as meaning a judicatory consent, not merely a supervisory consent. The potential abuse of the S. 321 of the CrPC can be checked only if it can be thus regulated by the Indian judiciary. The solution that has been mentioned above appears to be viable as the potential use or abuse of S.321 of the CrPC is based entirely on the context during which it comes up.

Words such as "in public interest and in the interests of justice" should be inserted in S.321 of the CrPC just after the words "the Public Prosecutor or Assistant Public Prosecutor in charge of a case may..." With this amendment, and along with a much more active role played by the

judiciary, perhaps someday a situation might arise that will not aid the abuse of this section as has happened very frequently tilldate.