

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3471/2012 and C.M. Nos. 7320-21/2012**

VIPUL GUPTA

..... Petitioner
Through: Mr. Sudhir Nandrajog, Senior
Advocate, with Mr. Vijay Aggarwal,
Mr. Gurpreet Singh & Mr. Karan
Heera, Advocates.

versus

STATE AND ORS

..... Respondents
Through: Mr. Najmi Waziri, Standing Counsel
along with Ms. Neha Kapoor,
Advocate for the respondents No.
1, 3, 4 & 6.
Mr. Ruchir Mishra & Mr. Mukesh
Kumar Tiwari, Advocates for the
respondent No. 2/UOI.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

%

ORDER
14.06.2012

For detailed order, see order passed in W.P.(C.) No.3470/2012.


VIPIN SANGHI, J

JUNE 14, 2012

Signature Not Verified

Signing Date: 19.09.2024 17:09:19
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been compared and the digital data is as per
the physical file and no page is missing.

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 30 .05.2012

% Judgment delivered on: /4 .06.2012

+ W.P.(C) 3470/2012 and C.M. Nos. 7318-19/2012

VIPUL GUPTA

..... Petitioner

Through: Mr. Arvind K. Nigam Senior Advocate, with Mr. Vijay Aggarwal, Mr. Gurpreet Singh & Mr. Rayjith Mark, Advocates.

versus

STATE AND ORS

... Respondents

Through: Mr. Najmi Waziri, Standing Counsel along with Ms. Neha Kapoor, Advocate for the respondents No. 1, 3, 4 & 6.

Mr. Ruchir Mishra & Mr. Mukesh Kumar Tiwari, Advocates for the respondent No. 2/UOI.

+ W.P.(C) 3471/2012 and C.M. Nos. 7320-21/2012

VIPUL GUPTA

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Through: Mr. Sudhir Nandrajog, Senior Advocate, with Mr. Vijay Aggarwal, Mr. Gurpreet Singh & Mr. Karan Heera, Advocates.

versus

STATE AND ORS

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Through: Mr. Najmi Waziri, Standing Counsel along with Ms. Neha Kapoor, Advocate for the respondents No. 1, 3, 4 & 6.

Mr. Ruchir Mishra & Mr. Mukesh Kumar Tiwari, Advocates for the respondent No. 2/UOI.

4
+ W.P.(C) 3472/2012 and C.M. Nos. 7322-23/2012

PRADEEP DHINGRA

..... Petitioner

Through: Mr. Rakesh Tiku, Senior Advocate,
with Mr. Vijay Aggarwal,
Mr. Gurpreet Singh & Mr. Rayjith
Mark, Advocates.

versus

STATE AND ORS.

..... Respondents

Through: Mr. Najmi Waziri, Standing Counsel
along with Ms. Neha Kapoor,
Advocate for the respondents No.
1, 3, 4 & 6.
Mr. Ruchir Mishra & Mr. Mukesh
Kumar Tiwari, Advocates for the
respondent No. 2/UOI.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. The aforesaid writ petitions have been preferred by the petitioners, assailing the communication dated 13.12.2011 issued by the Director of Prosecution, Delhi, to the Principal Secretary (Home) bearing No. 4383/DOP/2011 Dated 13.12.2011, whereby the Director of Prosecution sought instructions whether the concerned APP has to press the application filed before the court of the Learned ACMM, Tis Hazari Courts, Delhi Under Section 321 Cr.P.C. for withdrawal from prosecution in case FIR Nos. 90/2000, 99/2002 and 148/2002 registered at P.S. Connaught Place and Defence Colony. The petitioners also assail the order passed by the Hon'ble Lieutenant

5

Governor on 15.12.2011 agreeing with the proposal not to press the applications for withdrawal of the aforesaid cases under Section 321 Cr.P.C. before the competent court, so that the trial may be allowed to proceed on merits. The petitioners also seek orders declaring that the revocation of the previous decision to withdraw prosecution in the aforesaid cases registered against the petitioners is unconstitutional on the ground that sanction has not been taken from all the departments.

2. As per the case of the prosecution, the petitioners, who are stated to be the Directors of M/s Sunair Hotels Limited, approached M/s VLS Finance Limited around December, 1994 with a proposal to finance a hotel project likely to be set up in Gol Market Area, Connaught Place, New Delhi. The petitioners represented that they would invest Rs.21 crores towards equity shares capital in the company, namely, M/s Sunair Hotels Limited, in case VLS Finance Ltd invests Rs.7 crores towards 25% equity share capital in M/s Sunair Hotels Ltd. It appears that VLS Finance Ltd invested the said amount of Rs.7 crores. VLS Finance Ltd. made complaints alleging the commission of offences under various sections of the IPC by the petitioners, on the ground that the petitioners had not made their contribution of Rs.21 crores in the equity share capital of M/s Sunair Hotels Pvt. Ltd., and had manipulated their accounts to show the making of such share capital investment. On the basis of the complaints made by the complainant M/s VLS Finance Ltd, the aforesaid FIRs came to be registered and investigated. The details of the FIRs are as follows:

6

Sl. No.	FIR No/Date	Police Station	Accused Persons- Sent for Trial (as per charge-sheet)	Under Sections (as per charge-sheet)
1.	90/2000 14.02.2000	Connaught Place	1. Satya Pal Gupta 2. Kaveen Gupta 3. Vipul Gupta 4. M/s. Sunair Hotels Ltd. through its director Satya Pal Gupta	420/406/ 409/468/471 477-A/120-B IPC
2.	99/2002 19.02.2002	Connaught Place	1. S.P. Gupta 2. Kaveen Gupta 3. Vipul Gupta 4. V.K. Bindal 5. Sanjiv Kr Bindal 6. Pradeep Kr Dhingra 7. Birender Kumar 8. Asha Ram Kakar	120B/406/40 9/420/424/4 67/468/471/ 477A IPC
3.	148/2002 28.02.2002	Defence Colony	1. S.P. Gupta 2. S.H. Siddiqui 3. Giriraj Singh 4. Pradeep Kumar Dhingra	384/406/409 /417/422/46 5/468/471/5 00/120-B IPC

3. The charge-sheets also stand filed in these cases against the accused persons (petitioners herein) in the concerned court of the Learned Metropolitan Magistrate.

4. It appears that the petitioners assailed the aforesaid FIRs before this Court by filing Criminal M.C. Nos. 2142/2007 and 911/2003 (in respect of FIR No. 99/2002 and FIR No. 90/2000 respectively, wherein Sh. Vipul Gupta, the petitioner in W.P.(C) No.3470/2012 and W.P. (C) No. 3471/2012 is named as the accused), and W.P. (Crl.) No. 498/2005 (in respect of FIR No. 148/2002 wherein Sh. Pradeep Dhingra, the petitioner in W.P. (C) No. 3472/2012 is named as the accused). The aforesaid petitions were disposed of by similar orders by this court on 4th March, 2010. The petitioners withdrew the said petitions with

7

liberty to raise all the issues before the Trial Court at the appropriate stage i.e. at the stage of hearing of arguments on charge. That stage has not yet arrived.

5. It appears that the petitioners kept representing to the respondents for withdrawal of prosecution against them on various grounds. The petitioners have narrated in their petition the various internal departmental correspondences which took place on the said plea made by them. The petitioners state that a Screening Committee was constituted to consider their cases, along with other cases, comprising of; i) Sh. Arvind Ray, Principal Secretary (Home), ii) Sh. S.P. Garg, Principal Secretary, iii) Sh. B.S. Joon, Director of Prosecution, iv) Sh. Sandeep Goal, Joint C.P. (Crime) and v) Sh. B.M. Jain, Dy. Secretary (Home). The petitioners state that on 03.06.2011 the Screening Committee considered the cases against the petitioners in the aforesaid FIRs. The Minutes of the Meeting of 3rd June, 2011 placed on record show that the observations of the Ministry of Home Affairs placed before the Screening Committee, inter alia, read as follows:-

"It was decided in HMA to consult the Deptt. Of Legal Affairs, Ministry of Law & Justice, who after carefully examining various issues involved in these cases, opined that as the Courts are generally not interfering during the course of investigation, it would not be appropriate to take steps Under Sections 173(8) Cr. P.C. as requested by Sh. S.P. Gupta in his representations. Moreover, from the status report submitted by the Delhi Police It is observed that the charge sheets/supplementary charge sheets have already been filed by the Delhi Police in the Courts and the three cases are at various stages. The Deptt. Of Legal Affairs, Ministry of Law & Justice has, however, opined that the power UNDER SECTION 321 Cr.P.C.

8

vested in Government can be exercised in such cases in the interest of proper administration of Justice and the paramount consideration in such cases is the administration of justice.

The matter has been considered in detail carefully in MHA. As per the advice tendered by the Department of Legal Affairs, Ministry of Law & Justice keeping in view the facts of these cases, the Home Department of Government of NCT of Delhi should urgently scrutinize the above cited case FIR No. 90/2000, FIR No. 99/2002, FIR No. 148/2002 registered by the Delhi Police for taking action UNDER SECTION 321 of Cr.P.C. for withdrawal of prosecution immediately. This has the approval of Union Home Minister." (emphasis supplied)

6. The recommendations made by the Screening Committee were to the effect that the relevant record of the cases not being available, it was premature to decide the issue of withdrawal of prosecution in the absence of the full facts of the case. Consequently, its decision was deferred by the said Committee.
7. The petitioners further state that another meeting of the Screening Committee was held on 13.09.2011. In this meeting the Committee recommended that action be taken under Section 321 Cr.P.C. for withdrawal of prosecution in respect of the aforesaid three FIRs immediately. The petitioners have placed on record the copy of the minutes of the said meeting of the Screening Committee held on 13.09.2011. The recommendation made in respect of each of the aforesaid FIRs is identical, with the minor change of the number of the FIR. In respect of FIR No.90/2000, the same reads as follows:-

"The Committee observed that the withdrawal of case FIR No. 90/2000 from prosecution was considered by the

9

Committee in its previous meeting held on 3.6.2011 and the matter was deferred for want of the relevant record of the case. However the details/records received from Police Department and Director of Prosecution were viewed by the Committee and it was observed that Ministry of Home Affairs has already examined the case in consultation with the Department of Legal Affairs, Law and Justice who with the approval of Union Home Minister, has directed the Home Department to urgently scrutinize the above case for taking action under Section 321 Cr.P.C. for withdrawal of Prosecution immediately.

In view of the above the Committee decided to recommend the case for withdrawal from Prosecution."

8. The petitioners further state that on 18.11.2011 the Hon'ble Lieutenant Governor granted his approval to the recommendations of the Screening Committee for withdrawal from prosecution in respect of the aforesaid FIRs. Accordingly, on 23.11.2011 the Government of NCT of Delhi Home (General) Department issued a communication to the Director of Prosecution, Govt. of NCT of Delhi communicating the said decision. In this communication, the Government of NCT of Delhi, inter alia, stated as follows:-

"In view of the above, I am directed to say that in exercise of powers conferred under section 321 of the Code of Criminal Procedure, 1973 (Act No.2 of 1974) read with the Government of India, Ministry of Home Affairs Notification No. U-11011/2/74-UTL(I) dated 20.3.1974 regarding the withdrawal of prosecution proceedings, the Lt. Governor of Delhi, being satisfied that it is in public interest to do so, has decided, after keeping the provisions contained in proviso to Section 321 of the Code of Criminal Procedure, 1973 in view, that the Public Prosecutor in the above case may be permitted to move the appropriate courts of law for granting their consent to the withdrawal of the prosecution in above case.

It is, therefore, requested that the APP concerned may please be asked to move the application in the court of competent jurisdiction for withdrawal of

10

the above mentioned case and intimate the position to this Government." (Emphasis supplied)

9. Based on the aforesaid, the Director of Prosecution, Govt. of NCT of Delhi moved applications in each of the three cases before the Learned Metropolitan Magistrate under Section 321 Cr.P.C. to seek withdrawal from prosecution. Notice was issued on these applications.

10. The grievance of the petitioners is that on 13.12.2011 Sh. B.S. Joon, Director of Prosecution, who was one of the members of the Screening Committee, sent a letter to the Principal Secretary (Home), inter alia, stating that :

"After perusal of the charge sheets of the aforesaid cases, it has been revealed that there is sufficient evidence on record against the accused persons. Keeping in view the evidence on record, there is every likelihood, that the concerned Court may not allow the application of the State moved u/s 321 Cr.P.C. which is a pre-requisite condition, for withdrawal from the prosecution of any case."

11. He also requested that necessary instructions may be issued i.e. whether the concerned APP has to press the aforesaid applications under Section 321 Cr.P.C., or not. The petitioners submit that on the basis of the said letter dated 13.12.2011, a noting dated 14.12.2011 was made by the S.S. (Home) Sh. Arvind Ray, to the effect that the present are fit cases for revoking the recommendation of withdrawal from prosecution. Sh. Arvind Ray further sought the orders of the Hon'ble Lt. Governor on the said proposal. The petitioners state that on 15.12.2011 the Hon'ble Lt. Governor noted that he has considered the communication of the Director of Prosecution dated 13.12.2011, and

11

the note of the Principal Secretary (Home) dated 14.12.2011, and that he agrees with the proposal that the earlier recommendation of withdrawal from prosecution of the cases in question may not be pressed before the competent court, and the trial may be allowed to proceed on merits.

12. The petitioners submit that on the basis of the aforesaid notation and approval, the Joint Secretary (Home), Govt. of NCT of Delhi, Home (General) Department, shot out a communication dated 15.12.2011 to the Director of Prosecution informing him of the latest decision and stating that the applications for withdrawal from prosecution in the three cases be not pressed before the competent court, so that the trial of the said cases are allowed to proceed on merit.

13. The submission of learned Senior Counsel Mr. Arvind Nigam, who appears for the petitioner in W.P.(C) No.3470/2012, (which covers the submissions made in all the three cases), is that the subsequent decision taken by the respondents on the basis of the communication dated 13.12.2011 issued by Sh. B.S. Joon, Director of Prosecution, Delhi, is illegal and incompetent. He submits that the earlier recommendation made by the Screening Committee in its meeting held on 13.12.2011, was made after due consideration of all the relevant materials and aspects by the committee of five senior and responsible officers. Sh. B.S. Joon, Director of Prosecution was a member of the said Committee. Sh. B.S. Joon did not voice his dissent when the earlier recommendation was made. The unanimous

12

recommendation of the Screening Committee was also approved by the Hon'ble L.G on 17.11.2011. On that basis applications were also moved in the concerned court under Section 321 Cr.P.C.

14. It is submitted that the subsequent decision taken by the L.G. is based on the communication dated 13.12.2011 of Sh. B.S. Joon, Director of Prosecution, and it is not explained as to what were the new facts or circumstances, which came to the notice of Sh. B.S. Joon, to initiate the process of reconsideration of the earlier recommendation. He submits that the Screening Committee did not even meet before recommending reconsideration of the earlier recommendation made in the Screening Committee meeting on 13.09.2011. The said communication was sent only to the Principal Secretary (Home) who, without recording any reasons, agreed with the recommendation to revoke the earlier recommendation dated 13.09.2011. According to the petitioners, the Screening Committee should have been reconvened before recommending to the Hon'ble Lt. Governor that the earlier recommendations be reviewed. Consequently, the remaining members of the Screening Committee were not taken into confidence, and their views were not taken on the issue whether the earlier recommendation of 13.09.2011 should be reconsidered for any reason.

15. Mr. Nigam submits that the procedure adopted by the respondents for reviewing the earlier recommendation of the Screening Committee, and the earlier decision of the Hon'ble Lt. Governor, is arbitrary and illegal.

13

16. Mr. Nigam submits that the learned Additional Public Prosecutor, while discharging his functions under Section 321 of the Cr.P.C. acts independently, and not on the instructions of the State/Director of Prosecution. It was for the Additional Public Prosecutor to assess the merit of the case and to decide whether, or not, to proceed to move an application for withdrawal from prosecution in a given case. According to Mr. Nigam, the Additional Public Prosecutor in the present cases made a conscious decision to move for withdrawal from prosecution. However, the subsequent instruction issued to the Additional Public Prosecutor, not to press the application for withdrawal was illegal, as the Public Prosecutor, on this occasion, did not act independently but on the dictates of the Director of Prosecution. In this regard he places reliance on the decision of the Supreme Court in *Sheonandan Paswan V. State of Bihar and Others*, AIR 1983 SC 194. This decision, in turn, referred to the Supreme Court Judgment in *Rajender Kumar Jain v. State*, AIR 1980 SC 1510, wherein the following observations were made:-

- "Thus from the precedents of this Court; we gather,*
- (1) Under the scheme of the Code prosecution of an offender for a serious offence is primarily the responsibility of the Executive.*
 - (2) The withdrawal from the prosecution is an executive function of the Public Prosecutor.*
 - (3) The discretion to withdraw from the prosecution is that of the Public Prosecution and none else, and so, he cannot surrender that discretion to someone else.*
 - (4) The Government may suggest to the Public Prosecutor that he may withdraw from the prosecution but none can compel him to do so.*

14

(5) *The Public Prosecutor may withdraw from the prosecution not merely on the ground of paucity of evidence but on other relevant grounds as well in order to further the broad ends of public justice, public order and peace. The broad ends of public justice will certainly include appropriate social, economic and, we add, political purposes sans Tammany Hall enterprise.*

(6) *The Public Prosecutor is an officer of the Court and responsible to the Court.*

(7) *The Court performs a supervisory function in granting its consent to the withdrawal.*

(8) *The Court's duty is not to reappreciate the grounds which led the Public Prosecutor to request withdrawal from the prosecution but to consider whether the Public Prosecutor applied his mind as a free agent, uninfluenced by irrelevant and extraneous considerations. The Court has a special duty in this regard as it is the ultimate repository of legislative confidence in granting or withholding its consent to withdrawal from the prosecution."*
(emphasis supplied)

17. Mr. Nigam submits that this court, while exercising writ jurisdiction, is not concerned with the decision on merits, but with the decision making process which has been adopted to arrive at a particular decision. It is submitted that in this case the said process is fundamentally flawed, as explained hereinabove.

18. Having heard learned Senior Counsels for the petitioners and perused the records of the cases, I am not inclined to entertain these writ petitions, or to grant any relief to the petitioners in the exercise of the discretionary jurisdiction of this court under Article 226 of the Constitution of India.

19. At the outset, I may observe that this Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India is

15

not obliged, in every case involving irregularity or illegality of procedure, to interfere, if it appears to the Court that the said irregularity or illegality has not resulted in failure of justice, and it appears to the Court that the petitioner has not suffered substantial injustice due to the complained irregularity or illegality. The Supreme Court in **D. N. Banerji V. P.H. Mukherjee and Others** AIR 1953 SC 58, observed that unless there was grave miscarriage of justice or flagrant violation of law calling for intervention, it is not for the High Court under Article 226 and 227 of the Constitution of India to interfere. The Supreme Court in **Sangram Singh v. Election Tribunal Kotah and Another** AIR 1955 SC 425, while dealing with the scope of jurisdiction under Article 226 of the Constitution of India, observed as follows:-

"That, however is not to say that the jurisdiction will be exercised whenever there is an error of law. The High Courts do not, and should not, act as Courts of appeal under Article 226. Their powers are purely discretionary and though no limits can be placed upon that discretion it must be exercised along recognized lines and not arbitrarily; and one of the limitations imposed by the Courts on themselves is that they will not exercise jurisdiction in this class of case unless substantial injustice has ensued, or is likely to ensue. They will not allow themselves to be turned into Courts of appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense, for, though no legislature can impose limitations on these constitutional powers it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be. Therefore, writ petitions should not be lightly entertained in this class of case."

16

20. This is the settled position of law, and there is no need to multiply earlier precedents. In the present cases, the petitioners had first approached this court by filing petitions under Sections 482 Cr.P.C and Article 226 of the Constitution of India to seek the quashing of the FIRs registered against them. However, they gave up the said challenge at the time of hearing, and withdrew that petitions on 4.3.2010, while reserving their right to raise all the issues at the time of hearing of the arguments on charge. Pertinently, the charge sheets stand filed by the police before the Learned M.M. dealing with the cases, but the hearing on charge is yet to take place. The petitioners are free to raise all their submissions, at the stage of hearing on charge.

21. A perusal of the impugned communication dated 13.12.2011 shows that, apparently, the charge sheet was not expressly considered by the members of the screening committee when they decided to make their recommendation for withdrawal from prosecution under section 321 Cr PC. The Director of Prosecution in his said communication dated 13.08.2011 states that after perusal of the charge sheets in these cases ***"It has been revealed that there is sufficient evidence on record against the accused persons"*** (emphasis supplied). Therefore, it appears the revelation that there is sufficient evidence on record against the accused persons came only on a perusal of the charge sheets. When this communication was issued to the Principal Secretary (Home), he did not join issues with the

17

Director of Prosecution. He did not state that the charge sheets in these cases had been considered, or that there had been application of mind to the charge sheets when the earlier recommendation was made by the screening committee on 13.09.2011. On the contrary, the Principal Secretary (Home) agreed with the said proposal made by the Director of Prosecution in the impugned communication dated 13.12.2011.

22. The aforesaid position with regard to non consideration of the charge sheets by the screening committee on the earlier occasion, when the recommendation for withdrawal from prosecution was made in the meeting held on 13.09.2011, gains support from the fact that the committee apparently proceeded on the basis that the Ministry of Home Affairs had already examined the case in consultation with the Department of Legal Affairs, Law and Justice with the approval of the Union Home Minister. Consequently, the committee made the recommendation for withdrawal from prosecution in these cases.

23. A reading of the minutes of the meeting of the screening committee dated 13.09.2011 shows that the committee apparently did not apply its own mind, or take up a thorough scrutiny of, inter alia, the charge-sheets filed in these cases. It heavily relied upon the examination of these cases by the Ministry of Home Affairs and Department of Legal Affairs, Law and Justice with the approval of the Union Home Minister. Pertinently, the observations of the Ministry of Home Affairs (reproduced in para 5 above) do not demonstrate any

18

specific consideration of the charge-sheet by either the Department of Legal Affairs, Ministry of Law and Justice or by the Ministry of Home Affairs. In fact, the MHA required the Home Department of the GNCTD to scrutinize the cases for withdrawal from prosecution under Section 321 Cr.P.C. This exercise was not undertaken by the Screening Committee in its meeting held on 13.09.2011. There is not a whisper in the minutes of the meeting of the Screening Committee of 13.09.2011 to say that they have examined the charge-sheets in these cases and, on a perusal of the same, the Committee is of the opinion that these are fit cases for withdrawal from prosecution.

24. Though there may be some irregularity in the procedure adopted for reconsideration of the earlier recommendation of the screening committee made on 13.09.2011, followed by the decision of the Hon'ble Lt. Governor dated 17.11.2011, the same has no significance, inter alia, for the reason that the ultimate authority to take a decision on the issue whether, or not, the state should move the proposal for withdrawal from prosecution vested in the Hon'ble Lt. Governor, and he has reviewed his decision on 15.12.2011 based on the communication dated 13.12.2011 and the note of the Principal Secretary (Home) dated 14.12.2011. The screening committee is not shown to be a statutory creation. The screening committee was formed only to aid and assist the Hon'ble Lt. Governor. He was not bound by any recommendation of the screening committee. Therefore, the failure to reconvene the screening committee to reconsider the

19

proposal mooted by Shri B.S. Joon cannot be said to be illegal. Mr. B.S. Joon, Director of Prosecution, was also not precluded from moving the proposal that he moved on 13.12.2011 after studying the charge-sheets in these cases, merely because he was part of the screening committee which had earlier recommended withdrawal from prosecution on 13.09.2011.

25. The aforesaid irregularity of procedure in any event has caused no prejudice to the petitioners. Independent of the aforesaid remedies available to the petitioners, their right to be heard at the time of framing of the charge and to raise challenge to an order on charge, as permitted by law, is also preserved. I am, therefore, of the view that the so-called irregularity or illegality, in any event, has not led to failure of justice. It cannot be said that substantial injustice has been caused to the petitioners on account of the review of the earlier decision taken by the Hon'ble Lt. Governor.

26. The contention of the petitioners that the earlier decisions to move the applications under Section 321 Cr. P.C., in these cases, were taken independently by the learned Public Prosecutor though on the suggestion of the Director of Prosecution, whereas the decisions not to press the applications for withdrawal of prosecution was imposed or thrust upon the Additional Public Prosecutor, has no merit.

70

27. I have already narrated hereinabove, the communication issued on 23.1.2011 by the Government of NCT of Delhi Home (General), Department of the Govt. of NCT to the Director of Prosecution, which clearly shows that the Govt. of NCT of Delhi did not seek the approval of the Learned P.P. or his view on the proposal whether, or not, to move an application for withdrawal from prosecution under Section 321 Cr.P.C. It was a very clear, categorical and emphatic instruction issued to the APP concerned to move applications in the court for withdrawal of the cases aforesaid, and to intimate the position to the Government.

28. Reliance placed on the decision in **Sheonandan Paswan (Supra)** does not advance the petitioners' case. In this case the Supreme Court observed:

"Section 321 of the Code enables the Public Prosecutor or Assistant Public Prosecutor in charge of a case to withdraw from the prosecution with the consent of the court. The appellant submits, in our opinion correctly, that before an application is made under Section 321 of the Code, the Public Prosecutor has to apply his mind to the facts of the case independently without being subject to any outside influence; and secondly, that the court before which the case is pending cannot give its consent to withdraw without itself applying its mind to the facts of the case. But it cannot be said that a Public Prosecutors action will be illegal if he receives any communication or instruction from the Government... He is an appointee of the Government, Central or State (see Sections 24 and 25, Cr.P.C.), appointed for conducting in court any prosecution or other proceedings on behalf of the Government concerned. So there is the relationship of counsel and client between the Public Prosecutor and the Government. A Public Prosecutor cannot act without instructions of the Government; a Public Prosecutor

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cannot conduct a case absolutely on his own, or contrary to the instruction of his client, namely, the Government... Section 321 of the Code does not lay any bar on the Public Prosecutor to receive any instruction from the Government before he files an application under that section. If the Public Prosecutor receives such instructions, he cannot be said to act under extraneous influence. On the contrary, the Public Prosecutor cannot file an application for withdrawal of a case on his own without instruction from the Government."

29. Either the instruction given to the learned APP on both occasions would have to be treated as mere proposals, or on both occasions would have to be treated as definite instructions from a client to the counsel. The Supreme Court in **Sheonandan Paswan (Supra)** has stated the legal position with regard to the scope of responsibility of the Public Prosecutor under Section 321 Cr.P.C. The facts of the present case, however, show that definite instructions were issued to the APP for withdrawal from prosecution, and it was not left by the respondents to the Learned APP to decide whether, or not, he should withdraw from prosecution.

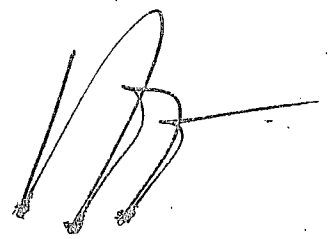
30. There is no basis for the petitioners to contend that the decision of the learned APP to file an application under section 321 Cr.P.C was taken independently by him, whereas the subsequent decision after pursuing application under section 321 Cr PC was under the dictates of the respondent. It could also be argued that the earlier decision to move applications under Section 321 Cr.P.C was a binding instruction to the APP, whereas, the subsequent instruction given to him was to act according to his own judgment/conscience and decide whether or not to press the applications under section 321 Cr.P.C.

22

31. It is not disputed by the petitioners that, in the meantime, the learned M.M. has permitted the withdrawal of the application under Section 321 Cr.P.C. vide order dated 07.01.2012. It is not disputed by the petitioners that they opposed the withdrawal of the said applications under Section 321 Cr. P.C. and that they were heard by the Learned M.M. on the said applications. It is also not in dispute that the petitioners have already preferred the remedy available to them in respect of the orders passed by the Ld. M.M., permitting the withdrawal of the applications under Section 321 Cr.P.C. Therefore, the petitioners have not only had the occasion to raise all the issues raised before this court, before the Ld. M.M., but still have the right to pursue the matter further and to raise all the issues available to them in appropriate proceedings.

32. For all the aforesaid reasons, I find no merit in these petitions and I am not inclined to exercise the discretionary jurisdiction vested in this Court under Article 226 of the Constitution of India in the facts and circumstances of these cases. The petitions are, accordingly, dismissed.

JUNE 4, 2012
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VIPIN SANGHI, J