

UKHC010106802020



2026:UHC:7239

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc. Application No. 645 of 2020

Maharaj Singh and Others

.....Petitioners

Versus

State of Uttarakhand and Another

.....Respondents

Present:-

Mr. Abhishek Verma, Advocate for the petitioners.

Mr. J.S. Virk, A.A.G. with Mr. Pratiroop Pandey, A.G.A. (through video conferencing) for the State.

Hon'ble Ravindra Maithani, J. (Oral)

The challenge in this petition is made to the following:-

- (i) Order dated 04.10.2019, passed in Criminal Case No.2789 of 2014, State v. Adesh Chauhan and others, ("the case") by the court of Additional Chief Judicial Magistrate/Civil Judge (Senior Division), Kashipur, District Udham Singh Nagar. By it, an application under Section 321 of the Code of Criminal Procedure, 1973 ("the Code") has been rejected.
- (ii) Order dated 12.10.2020, passed in Criminal Revision No.252 of 2019, State v. Adesh Chauhan and Others, ("the Revision") by the court of District and Sessions Judge, Udham Singh Nagar. By it, the Revision against the order dated 04.10.2019, passed in the case, has been dismissed.

2. Heard learned counsel for the parties and perused the record.

3. An FIR was lodged against the petitioners on 15.07.2012, by the J.C. Pathak, Incharge Inspector, Police Station Kotwali Jaspur, District Udham Singh Nagar, which was registered as FIR No.139 of 2012, under Sections 147, 332, 353, 153A, 295A, 268 IPC and Section 7 of the Criminal Law Amendment Act, 1932. After investigation in this FIR, charge sheet was submitted against the petitioners and others, in which, on 09.10.2014, cognizance was taken, and proceedings of the case were instituted.

4. Thereafter, what happened is as follows:-

(i) The Government, by its letter dated 02.09.2019, sought withdrawal from the prosecution case. Accordingly, the District Magistrate, Udham Singh Nagar, by its Letter No.7483 dated 16.09.2019, directed the Joint Director, Prosecution, to proceed according to the Government Order dated 02.09.2019.

(ii) Based on the communication dated 16.09.2019, of the District Magistrate, Udham Singh Nagar, the Assistant Prosecution Officer, on 20.09.2019, filed an application under Section 321 of the Code seeking permission of the court to withdraw from the prosecution, and in this letter, the Assistant Prosecution Officer had only referred to the letter dated 02.09.2019 of the Government as well as the communication dated

16.09.2019 of the District Magistrate, Udham Singh Nagar.

(iii) On 04.10.2019, the application filed by the Assistant Prosecution Officer, under Section 321 of the Code, was rejected in the case. In fact, the court in its order dated 04.10.2019, made detailed discussion of the law and the concept of Section 321 of the Code.

(iv) This order dated 04.10.2019, passed in the case, was challenged by the State Government in the Revision. It also stood dismissed. Hence, the petition.

5. Learned counsel for the petitioners submits that in the interest of justice, the decision was taken to withdraw from the prosecution, and, accordingly, the Assistant Prosecution Officer filed application under Section 321 of the Code seeking permission of the court for withdrawing from the prosecution; the Assistant Prosecution Officer had perused the letter dated 02.09.2019 as well as the communication dated 16.09.2019 of the District Magistrate, Udham Singh Nagar. Therefore, permission ought to have been granted, and by rejecting the application under Section 321 of the Code, an illegality has been committed.

6. On the other hand, learned State Counsel submits that in view of the settled law, prosecutor may withdraw from the prosecution after making independent assessment of the situation. The prosecutor is required to make an independent opinion before he seeks permission for withdrawing from the prosecution. He submits

that in the instant case, the Assistant Prosecution Officer, when filed application for withdrawal on 20.09.2019, did not apply his mind. Therefore, the application under Section 321 of the Code has rightly been rejected, and no interference is warranted.

7. Before any discussion is made, it would be apt to reproduce Section 321 of the Code. It reads as follows:-

“321. Withdrawal from prosecution.—The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and, upon such withdrawal,—

(a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;

(b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences:

Provided that where such offence—

(i) was against any law relating to a matter to which the executive power of the Union extends, or

(ii) was investigated by the Delhi Special Police Establishment under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or

(iii) involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or

(iv) was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty,

and the Prosecutor in charge of the case has not been appointed by the Central Government, he shall not, unless he has been permitted by the Central Government to do so, move the Court for its consent to withdraw from the prosecution and the Court shall, before according consent, direct the Prosecutor to produce before it the permission granted by the Central Government to withdraw from the prosecution.”

8. A bare reading of the above provision makes it abundantly clear that the authority to withdraw from the prosecution lies with the Public Prosecutor or Assistant Public Prosecutor, Incharge of the case.

9. How the Public Prosecutor or Assistant Public Prosecutor would apply his mind and move an application under Section 321 of the Code, on this aspect, the Hon'ble Supreme Court, on multiple occasions, has interpreted this provision.

10. In the case of Bairam Muralidhar v. State of Andhra Pradesh, (2014) 10 SCC 380, the Hon'ble Supreme Court, on this aspect, observed as follows:-

“18. The central question is whether the Public Prosecutor has really applied his mind to all the relevant materials on record and satisfied himself that the withdrawal from the prosecution would subserve the cause of public interest or not. Be it stated, it is the obligation of the Public Prosecutor to state what material he has considered. It has to be set out in brief. The court as has been held in Abdul Karim v. State of Karnataka, (2000) 8 SCC 710, is required to give an informed consent. It is obligatory on the part of the court to satisfy itself that from the material it can reasonably be held that the withdrawal of the prosecution would serve the public interest. It is not within the domain of the court to weigh the material. However, it is necessary on the part of the court to see whether the grant of consent would thwart or stifle the course of law or cause manifest injustice. A court while giving consent under Section 321 of the Code is required to exercise its judicial discretion, and judicial discretion, as settled in law, is not to be exercised in a mechanical manner. The court cannot give such consent on a mere asking. It is expected of the court to consider the material on record to see that the application had been filed in good faith and it is in the interest of public interest and justice. Another aspect the court is obliged to see is whether such withdrawal would advance the cause of justice. It requires exercise of careful and concerned discretion because certain crimes are against the State and the society as a collective demands justice to be done. That maintains the law and order situation in the society. The Public Prosecutor cannot act like the post office on behalf of the State Government. He is required to act in good faith, peruse the materials on record and form an independent opinion that the withdrawal of the case would really subserve the public interest at large. An order of the Government on the Public Prosecutor in this regard is not binding. He cannot remain oblivious to his lawful obligations under the Code. He is required to constantly remember his duty to the court as well as his duty to the collective.”

11. In the case of Sheonandan Paswan v. State of Bihar and Others, (1987) 1 SCC 288, also the Hon'ble Supreme Court has interpreted the provisions of Section 321 of the Code, and held that, in fact, the application, which the prosecutor files should disclose the

fact that the prosecutor had gone through the case diary and the relevant materials connected with the case and that he came to the conclusion that in the circumstances prevailing at the time of institution of the case and investigation thereof, the case was instituted on the ground of political vendetta. In Paragraph Nos. 69 and 70, the Hon'ble Supreme Court observed as hereunder:-

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

70. I find that all the three requisites are satisfied here. The question is whether the functions by the Public Prosecutor and the court were properly performed. At no stage was a case put forward by anyone that the application made by the Public Prosecutor was either mala fide or that it was not in good faith. There is no allegation of bias against the Special Judge. The application filed by the Public Prosecutor discloses the fact that he had gone through the case diary and the relevant materials connected with the case and that he came to the conclusion that in the circumstances prevailing at the time of institution of the case and investigation thereof, the case was instituted on the ground of political vendetta and only to defame the fair image of Jagannath Mishra. This statement of the Public Prosecutor has not been challenged as borne out of any unwholesome motive. It has not been made out or suggested that the Public Prosecutor was motivated by improper considerations. The only contention raised is that the reasons are not sufficient or relevant.”

12. In the case of Abdul Karim v. State of Karnataka, (2000) 8 SCC 710, a detailed discussion has been made with regard to the applicability of Section 321 of the Code. In Para No.18 of the judgment, the Hon'ble Supreme Court observed as follows:-

“18. The law as it stands today in relation to applications under Section 321 is laid down by the majority judgment delivered by Khalid, J. in the Constitution Bench decision of this Court in Sheonandan Paswan v. State of Bihar, (1987) 1 SCC 288 : 1987 SCC (Cri) 82. It is held therein that when an application under Section 321 is made, it is not necessary for the court to assess the evidence to discover whether the case would end in conviction or acquittal. 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. When the Public Prosecutor makes an application for withdrawal after taking into consideration all the material before him, the court must exercise its judicial discretion by considering such material and, on such consideration, must either give consent or decline consent. The section should not be construed to mean that the court has to give a detailed reasoned order when it gives consent. If, on a reading of the order giving consent, a higher court is satisfied that such consent was given on an overall consideration of the material available, the order giving consent has necessarily to be upheld. Section 321 contemplates consent by the court in a supervisory and not an adjudicatory manner. What the court must ensure is that the application for withdrawal has been properly made, after independent consideration by the Public Prosecutor and in furtherance of public interest. Section 321 enables the Public Prosecutor to withdraw from the prosecution of any accused. The discretion exercisable under Section 321 is fettered only by a consent from the court on a consideration of the material before it. What is necessary to satisfy the section is to see that the Public Prosecutor has acted in good faith and the exercise of discretion by him is proper.”

13. In the case of *S.K. Shukla and Others v. State of U.P. and Others*, (2006) 1 SCC 314 also, the Hon’ble Supreme Court has reminded the Public Prosecutor in the matter of withdrawal from the prosecution, the responsibility, which he bears, and observed that, in fact, greater responsibility has been placed on the shoulder of the Public Prosecutor in this matter. The Hon’ble Supreme Court observed that, **“the Public Prosecutor has to shoulder a greater responsibility for withdrawal of the cases under Section 321 CrPC.”** And further held that, **“The Public Prosecutor cannot act like a postbox or act on the dictates of the State Government. He has to act objectively as he is also an officer of the court.”**

14. In view of the settled law, it is abundantly clear that before moving an application under Section 321 of the Code, the Public Prosecutor as to apply his mind to all the relevant materials on record, and satisfy himself that the withdrawal from the prosecution would subserve the cause of public interest, as held in the case of *Bairam Muralidhar (supra)*, **“it is the obligation of the Public Prosecutor to state what material he has considered.”** In fact, in

the same case, the Hon'ble Supreme Court further observed, **"It is expected of the court to consider the material on record to see that the application had been filed in good faith and it is in the interest of public interest and justice."**

15. These observations of the Hon'ble Supreme Court has already been quoted hereinabove, but at the cost of repetition, this Court further reiterates that in the case of Bairam Muralidhar (*supra*), the Hon'ble Supreme Court observed, **"The Public Prosecutor cannot act like the post office on behalf of the State Government. He is required to act in good faith, peruse the materials on record and form an independent opinion that the withdrawal of the case would really subserve the public interest at large. An order of the Government on the Public Prosecutor in this regard is not binding. "**

16. In the case of Abdul Karim (*supra*) also, similar principles have been laid down by the Hon'ble Supreme Court.

17. In the instant case, in fact, the Assistant Prosecution Officer has not applied his mind at all. He moved an application under Section 321 of the Code, merely based on the letter of the State Government dated 02.09.2019 as well as the communication dated 16.09.2019 by the District Magistrate, Udham Singh Nagar. Therefore, there has been no reason for the courts below to permit withdrawal from such prosecution. Accordingly, this Court is of the view that both the courts below have rightly dismissed the application filed by the

Assistant Prosecution Officer under Section 321 of the Code, and there is no merit in this petition. Accordingly, it deserves to be dismissed.

18. The petition is dismissed.

19. This is a very old criminal case pertaining to an incident of the Year 2012. Therefore, this Court requests the trial court to proceed with the trial as expeditiously as possible without entertaining unnecessary adjournments.

(Ravindra Maithani, J)
14.08.2026

Ravi Bisht