

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

Crl.Rev.Pet.No. 990 of 2013 ()

CRL. MP 188/2011 of ENQUIRY COMMISSIONER AND SPL.JUDGE,THRISSUR

REVISION PETITIONER/ACCUSED NO.5 :

**JIJI THOMSON,
FORMERLY MANAGING DIRECTOR,
KERALA STATE CIVIL SUPPLIES CORPORATION,
THIRUVANANTHAPURAM, RESIDING AT ANNA MIRIA, N C C ROAD,
AMBALAMUKKU, PEROORKADA P.O, THIRUVANANTHAPURAM.**

**BY ADVS.SRI.K.RAMAKUMAR (SR.)
SRI.S.M.PRASANTH
SRI.M.MANOJKUMAR (CHELAKKADAN)
SRI.SAJU.J.PAYYAPPILLY
SMT ASHA BABU
SRI.SHAILENDRA SINGH
SMT AMMU CHARLES**

RESPONDENT/RESPONDENT :

**STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KREALA, ERNAKULAM - 682 031.**

**BY PUBLIC PROSECUTOR SRI.C.S. MANILAL
BY ADVOCATE GENERAL SRI. K.P. DANDAPANI**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 25-11-2014, ALONG WITH CRL.MC. 1013/2013 AND CONNECTED
CASES, THE COURT ON 08-01-2015 PASSED THE FOLLOWING:**

bp

'C.R.'

P.UBAID, J.

**Crl.R.P Nos.990/2013, 139/2014,
198/2014, 199/2014, 372/2014
&
Crl.M.C No.1013/2013**

Dated this the 8th day of January, 2015

O R D E R

“Palmolein” is still live in the socio-political field in Kerala and has been under judicial process for about two decades. What lead to the so called Palmolein case, which is still under prosecution process, is a decision taken by the Government in power in October 1991 to import some quantity of Palmolein from Singapore to meet the urgent requirements of the people in the State of Kerala in connection with some festival. The irregularities, illegalities and improprieties involved in the said government decision and the consequent import of Palmolein were detected by the Comptroller and Auditor General in 1996, and a vigilance probe was ordered in March 1997. Thus commenced in 1997, undergone various contentious pre-trial proceedings at different levels in different courts; from

the trial level to the apex level, the Palmolein prosecution strived to reach the natural culmination by a fair and impartial trial process, but the prosecution process is still midway. At different stages of the prosecution one or the other party, or the interveners who intruded in the prosecution process as representatives of the people took up the matter before this Court or the Hon'ble Supreme Court, and such interventions even lead to some reported decisions concerning many legal aspects involved in the said prosecution. Whenever any measure is taken or any decision or order is made by the court, one or the other would challenge it upto the apex level, and thus the prosecution has still been pending. Nobody can, in fact be blamed for the delay, and the accused cannot be heard to contend that in view of such delay for about two decades the whole prosecution will have to be closed by way of withdrawal or otherwise. The accused had also contributed to the said delay. This aspect is incidentally mentioned because delay is also one of the grounds urged by the prosecution in this proceeding.

2. The accused involved in the Palmolein case are the bureaucrats at the secretary level, the ministers in power at that time, and also the intermediaries and importers who helped and managed import of Palmolein as decided by the government. Late Sri.K.Karunakaran, the Chief Minister of Kerala in power in 1991, with the junction of then minister for Civil Supplies, Sri.T.H Mustafa and some Government Secretaries took a decision to import 30000 metric tonnes of Palmolein from Singapore, to meet the requirements of the people of Kerala in connection with some festival. This decision lead to the present prosecution.

3. The prosecution case is that the then Chief Minister, late Sri.K.Karunakaran got this decision approved by cabinet, without discussing and disclosing the real facts concerning the said import, and thus imported that much quantity of Palmolein through the exporter, Power and Energy Ltd., Singapore, with the assistance of Mala Export Corporation, Chennai, without inviting global tenders and totally in violation of the Store Purchase Rules, with the object of making unlawful benefits, and thus causing heavy loss to the state exchequer. The then Chief Secretary to the

Government of Kerala, and also the Secretary to the Civil Supplies Department happened to be prosecuted along with the ministers and others, as the bureaucratic heads who involved in the process of import without complying with the provisions of the Store Purchase Rules and without inviting global tenders. On detection of the irregularities and the unholy involvement of the ministers and secretaries in 1996 by the Comptroller and Auditor General, the Public Accounts Committee of the Kerala State Legislative assembly conducted an enquiry into the alleged irregularities and illegalities. On enquiry, the Public Accounts Committee found out something vicious in the alleged deal made in haste without inviting global tenders and without complying with the provisions of the Store Purchase Rules, and this fact was reported to the Government. On getting the said report, the Government ordered a vigilance probe into the matter. Accordingly, a crime as V.C.1/1997/SCT was registered in March 1997 by the Vigilance under Section 120B of IPC and also under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act. After effective investigation, the Vigilance submitted final report in the case

on 1-11-1997 in the Special Sessions Court, Thiruvananthapuram. The final report was returned by the learned trial judge due to some defects including non-production of prosecution sanction. The final report was later resubmitted in court on 23-03-2001. The 1st accused Sri.K.Karunakaran, the Chief Minister in power when the crime was registered, died pending the proceedings, and thus the charge against him abated. The 2nd accused is the then Minister for Food and Civil Supplies, the 3rd accused in the final report is the then Chief Secretary to the Government, the 4th accused is the then Additional Chief Secretary to Government, the 5th accused is the then Managing Director of Civil Supplies Corporation, the 6th accused in the final report is a partner of Mala Export Corporation, the 7th accused is a Director of Power and Energy Limited, Singapore who facilitated import of Palmolein from Singapore, and the 8th accused is the then Secretary, Food and Civil Supplies Department.

4. The prosecution allegations are that the then Chief Minister, late Sri.K.Karunakaran hatched a criminal conspiracy with the Civil Supplies Minister Sri.T.H.Musthafa,

the Mala Export Corporation, Chennai and the directors of Power and Energy Pvt. Ltd., in October 1991 for the import of huge quantity of Palmolein under the guise of public need and requirement in connection with some festival, they, in continuation of the said process conspired with the then Chief Secretary Sri.Padmakumar, the Secretaries in charge of the Civil Supplies Department and the Civil Supplies Corporation, to bring about an action plan for such illicit import with the sanction of the Government of India, when the Government of India would not have normally granted such sanction, they accordingly came to terms with “Power and Energy Ltd.,” through “Mala Export Corporation, Chennai,” fixed the deal at a high rate, unaffordable by the Government at that time, thus decided to import Palmolein at such high rate without inviting global tenders for competitive rates of price and totally in violation of the Store Purchase Rules prevalent at that time, and by the said import at high rate the Chief Minister and others made unlawful benefits, the exporting agency also derived unlawful benefit from the illicit import, and thus the government exchequer lost crores of rupees in the said

vicious deal made in the name of people of Kerala, when the people had no such urgent requirement for Palmolein.

5. As stated above, the prosecution process went on, without sanction from the Government of India, as regards the Government Secretaries. However, the Government of Kerala granted necessary sanction as regards them under Section 197 of the Code of Criminal Procedure, for prosecution under Section 120B IPC. When the prosecution process thus went on, one or the other party keeping the issue aflame on one ground or the other by challenging every action or order, the Government of Kerala, with the object of putting an end to the prosecution process, took a decision to withdraw from prosecution. The legality and rationale of the said decision which lead to the filing of an application by the learned Public Prosecutor in charge of the case for permission to withdraw from prosecution, is under challenge in these proceedings. Sri.V.S Achuthanandan, the leader of opposition in the State Legislative Assembly, and Sri.V.S Sunil Kumar, a member of the legislative assembly intervened in the process as persons representing the public at large and objected the

government's application for withdrawal from prosecution. When the learned Public Prosecutor in charge of the case brought application for permission for withdrawal on some grounds including absence of necessary sanction and also the unnecessary delay in the trial process for about two decades, the interveners Sri.V.S.Achuthananthan and Sri.V.S.Sunil Kumar objected the move for withdrawal on the ground that such a withdrawal will not in any manner serve public interest, and such withdrawal will in fact defeat the larger interest of the society which has always been alert, inquisitive and anxious to know about the nature and extent of the corruption involved in the said dishonest and vicious deal that caused heavy loss of crores of rupees to the state exchequer.

6. The final report in the case was originally filed in the Special Session Court for Vigilance cases at Thiruvananthapuram. When something unpleasant and unhappy happened during the process or when somebody made some unnecessary move to deface the system, this Court transferred the case to the Special Session Court at Thrissur, where it is now pending as C.C No.108/2011.

7. Pending the proceeding, the 5th accused made an application as Crl.M.P No.188/2011 for discharge on various grounds including the infirmity in prosecution without necessary sanction as against him under Section 19 of the Prevention of Corruption Act. After hearing both sides the learned trial judge dismissed the said application by order dated 7.5.2013 on the ground that absence of sanction under Section 19 of the Prevention of Corruption Act will not vitiate the whole prosecution when there is a definite charge against him under Section 120B of IPC, and the Government of Kerala has granted necessary sanction under Section 197 of the Code of Criminal Procedure. The learned trial judge also found that the legality and propriety of the sanction under Section 197 of the Code of Criminal Procedure cannot be decided at the preliminary stage, when the court proceeds to frame charge. Aggrieved by the said order, the 5th accused filed Crl.R.P No.990/2013. Before filing the said revision, Crl.M.C 1013/2013 was brought by the 5th accused under Section 482 of the Code of Criminal Procedure for quashing the prosecution as against him on the grounds urged by him in the application for discharge.

8. As already observed, the present Government in power in Kerala decided to put an end to the prosecution process in Palmolein case, purporting it to be in public interest, and accordingly directed the learned Public Prosecutor to file necessary application in court. G.O(Rt) No.145/2013/Vigilance dated 13.9.2013 was accordingly issued by the Government of Kerala. This government decision was infact a revival of the earlier decision taken by the government in 2005 as per G.O(Rt) No.105/2005/Vigilance dated 28.3.2005, which was later cancelled by the successor government in 2006 by Government order G.O(Rt) No.143/2006/Vigilance dated 25.7.2006. It is really unpleasant and unhealthy that withdrawal from prosecution has now become a matter of legal fight between the pro-right and pro-left groups in Kerala. In 2005 the government then in power decided to withdraw from prosecution, but necessary application could not be filed in court at the right time due to some legal and technical reasons. That decision was cancelled by the successor, pro-left government in 2006 on the finding that such withdrawal from prosecution will not serve any public

interest, and it will rather defeat public interest. When the pro-right government again came in power in 2011 the proposal for withdrawal, cancelled by the other government was seriously urged, and accordingly the government now in power decided to revive the earlier decision for withdrawal from prosecution, and accordingly issued G.O(Rt) No.145/2013/Vigilance dated 13.9.2013. Accordingly, the learned Public Prosecutor in charge of the case filed Crl.M.P No.508/2013 in the court below under Section 321 of the Code of Criminal Procedure, requesting the trial court to permit him to withdraw from prosecution. Finding that such withdrawal will defeat public interest Sri.V.S. Achuthananthan, the leader of opposition and Sri.V.S Sunil Kumar, MLA filed statement of objection in the trial court. As the statements of objections were filed in the form of request not to allow withdrawal from prosecution, those statements were received and numbered in the court below as petitions. Accordingly, the statement of objection filed by Sri.V.S Sunil Kumar, MLA was filed as Crl.M.P No.509/2013 and the statement of objection filed by Sri.V.S Achuthananthan, the leader of opposition, was filed as

Crl.M.P No.510/2013.

9. The learned Public Prosecutor in charge of the case has stated so many grounds in Crl.M.P No.508/2013, justifying his request for permission for withdrawal. The important among the grounds are:

a) The whole prosecution as against the accused Nos.5 and 8 will be an exercise in vain when there is no sanction as against them under Section 19 of the Prevention of Corruption Act. Even the sanction granted by the Government under Section 197 of the Code of Criminal Procedure for prosecution as against them under Section 120B of IPC is illegal and improper, and such sanction was granted by the Government without application of mind.

b) The decision taken by the Government of Kerala in 2005 as per G.O(RT) No.105/2005/Vigilance dated 28.3.2005 was wrongly cancelled by the successor government in 2006 as per G.O (RT) No.143/2006/Vigilance dated 25.7.2006 without assigning any ground or reason

for such cancellation, and the decision now taken by the present government as per G.O(RT) No.145/2013/Vigilance dated 13.9.2013 to withdraw from prosecution on revival of the first decision taken by the Government, will have to be accepted.

c) Even assuming that the alleged import of Palmolein was made without inviting global tenders and in violation of the Store Purchase Rules, no loss was in fact caused to the state exchequer, and thus the deal did not involve any act of corruption.

d) The report of further investigation made by the Vigilance, as ordered by the trial court pending the proceedings, will justify the actions on the part of the accused in the process of import of Palmolein, without inviting global tender, and the said report of further investigation will have to be accepted by the court.

e) This prosecution cannot be allowed to be an unending process, and it will have to be put an

end to, when innocent persons are being unnecessarily harassed, they have been facing unnecessary prosecution for about two decades, and they will have to undergo the ordeal of prosecution for years quite unnecessarily, when the state exchequer had not incurred any loss. The Central Vigilance Commission, on enquiry has found that there is absolutely no material to implicate the accused Nos.5 and 8 in the alleged deal, and that these two Government Secretaries acted as responsible officers, only in terms of what the cabinet decided.

f) Three important witnesses, cited by the prosecution as CW1, CW3 and CW12 to prove the alleged vicious transaction of the Kerala State Civil Supplies Corporation and the vicious and dishonest involvement of the 5th accused, died pending the proceedings. When such important witnesses are no more, the prosecution cannot in any manner prove the case against the 5th accused.

g) The investigating officer has not been

able to collect any material or evidence to prove that any of the accused had derived any unlawful benefit or that the State exchequer has incurred any loss due to the alleged import of Palmolein without inviting global tenders and in violation of the Store Purchase Rules.

h) The prosecution does not have any definite and satisfactory material to prove the case, especially when three important witnesses are no more, and when there is such paucity of evidence, the prosecution will definitely end in acquittal. In view of such a definite possibility of acquittal, the proceeding could be dropped at the earliest so that precious time of the judiciary can be saved and further loss of public money for such unnecessary prosecution can be avoided.

10. By way of Crl.M.P No.509/2013 and Crl.M.P No.510/2013 Sri. V.S Sunil Kumar, and Sri.V.S Achuthananthan, objected the move for withdrawal from prosecution made by the government on various grounds. The important among the objections are

a) The learned Public Prosecutor who made application under Section 321 of the Code of Criminal Procedure is really incompetent to file such an application, because he is not the prosecutor in charge of the case.

b) This is not a case of total paucity of evidence, and if at all some witnesses are no more, the prosecution case can well be proved by other means, when documents and registers will speak about the role and involvement of the 5th accused.

c) The report of further investigation made by the Vigilance, by which the accused are given a clean chit by the Vigilance, quite contrary to what the Vigilance earlier found, will have to be ignored by the court, and the court will have to decide during trial what report is acceptable.

d) This is a clear case where definite and satisfactory materials are there to prove the unlawful benefits derived by the accused in the vicious deal of illegal import at high rate of

purchase without inviting global tenders and without complying with the provisions of the Store Purchase Rules, and such unlawful benefits made by the accused resulted in heavy loss to the state exchequer.

e) Withdrawal from prosecution will not serve any public interest in any manner, and in fact it will defeat the interest of the public who have always been alert and anxious to know the nature and extend of the corruption involved in the alleged vicious deal of import of Palmolein, and such right of the public cannot be defeated on the ground that the accused have been facing prosecution for about 20 years.

11. After hearing both sides including the interveners Sri.V.S.Sunil Kumar and Sri.V.S Achuthanandan, the learned trial judge dismissed Crl.M.P No.508/2013 as per common order dated 13.1.2014 in Crl.M.P Nos.508/2013, 509/2013 and 510/2013. The common order passed by the court below on 10.1.2014 shows that practically it is only an order dismissing Crl.M.P No.508/2013. There is no definite order

allowing Crl.M.P Nos.509/2013 and 510/2013 because those two are in fact objections made by the interveners, though received in court as petitions, in view of the request made by them not to allow withdrawal from prosecution. Aggrieved by the order dismissing Crl.M.P No.508/2013, the Government of Kerala brought Crl.R.P No.139/2013. Though there is no definite order allowing Crl.M.P Nos.509/2013 and 510/2013, the government brought revision petitions against orders on those requests also. In fact the government could have made Sri.V.S Achuthananthan and Sri.V.S Sunil Kumar respondents in Crl.R.P No.139/2014 when they are in fact parties to the common order. However, the Government of Kerala brought Crl.R.P No.198/2014 against the order in Crl.M.P No.509/2013, and Crl.R.P No.199/2013 against the order in Crl.M.P No.510/2013. Crl.R.P No.372/2013 is the revision brought by the 2nd accused against the order in Crl.M.P No.508/2013.

12. The interveners Sri.V.S Achuthananthan and Sri.V.S.Sunil Kumar made vigorous contest before this Court, maintaining their definite stand that withdrawal from prosecution will serve only political interest, and it will not

serve any public interest in any manner. They also maintained a definite stand that withdrawal from prosecution will practically deny the right of the society to know what really happened in the alleged vicious transaction, whether it involves any element of corruption by way of unlawful benefits, and whether the state exchequer has lost anything in the said deal.

13. On a consideration of the various aspects urged by the prosecution as grounds justifying withdrawal from prosecution, the learned trial judge found that the learned Public Prosecutor, who made the application for withdrawal is not in fact competent as the Public Prosecutor in charge of the case as meant under Section 321 of the Code of Criminal Procedure, that the various grounds urged by the prosecution cannot be considered at this preliminary stage, those things will have to be considered at the trial stage, and that withdrawal from prosecution will not serve any public interest. As regards the request for discharge, the learned trial judge found that prima facie materials are there to prove the involvement of accused No.5 in the alleged vicious import of Palmolein as the Secretary in charge, and

that when such materials are there the case will have to go to trial for a just and final decision. As regards the question of sanction raised by the Government, the learned trial judge found that there is sanction under Section 197 of the Code of Criminal Procedure for prosecution under Section 120B IPC, though there is no such sanction under Section 19 of the Prevention of Corruption Act, and the legality of the sanction given by the Government under Section 197 of the Code of Criminal Procedure cannot be adjudged by the trial court in a proceeding under Section 321 of the Code of Criminal Procedure. The Government having granted sanction for prosecution cannot turn round and say that it is improper and illegal. However, when there is a sanction granted by the competent authority, the legality and propriety of the sanction, as to whether it was made in compliance of the procedure established by law, or whether it was made without application of mind to the facts of the case and the legal aspects involved, can be decided only during trial. Finding that withdrawal from prosecution will serve only political interest and it will not serve any public interests, the learned trial judge disallowed the request for

withdrawal from prosecution.

14. The Government of Kerala alleges that the learned trial judge has exceeded the limits and has assumed the role of an appellate judge in the matter of withdrawal, when the Government has taken a just and legal decision to withdraw from prosecution on proper, valid and legal grounds. The government also alleges that the learned trial judge was influenced by extraneous considerations, and the learned trial judge has not seriously considered the various important aspects and grounds urged by the prosecution for withdrawal.

15. Before going to the factual and legal aspects, concerning the grounds for withdrawal and the rationale of the decision taken by the learned Public Prosecutor for withdrawal in terms of the government order, let me decide the preliminary issue raised by the other side, that the Public Prosecutor who made application for withdrawal is not competent to bring such an application. The interveners have raised such a contention on the ground that the Public Prosecutor who has been actually conducting prosecution in the court below is one Sri.Biju Manohar,

Additional Legal Adviser to the Vigilance, and that the Vigilance Legal Adviser Sri.Augustine figured in the process only for the purpose of making an application for withdrawal. They strenuously contend that just because Sri.Augustine is the Principal Legal Adviser to the Vigilance Department he cannot not make such an application under Section 321 of the Code of Criminal Procedure because he was never in charge of the case and he had not at any time conducted the case.

16. As regards the competence of the Public Prosecutor to make application for withdrawal, both sides referred to **State of Punjab v. Surjit Singh [1967 SC 1214]**, wherein the Hon'ble Supreme Court held that only the Public Prosecutor in charge of a case can make application for withdrawal from prosecution. The Hon'ble Supreme Court held thus:

“In our opinion, the Pubic Prosecutor who can file an application under Section 494 of the Code must be the Public Prosecutor who is already in charge of the particular case in which that application is filed (para 30).....

“ The reasonable interpretation to be placed

upon Section 494, in our opinion, is that it is only the Public Prosecutor who is in charge of a particular case, and is actually conducting the prosecution that can file an application under that Section, seeking permission to withdraw from the prosecution. If a Public Prosecutor is not in charge of a particular case and is not conducting the prosecution, he will not be entitled to ask for withdrawal from prosecution, under Section 494 of the Code". (para 31).

17. The above precedent as regards the competence of the Public prosecutor was made by the Hon'ble Supreme Court when Section 494 of the old Code of Criminal Procedure did not contain a particular provision as is now found in the 1973 Code of Criminal Procedure. Only the Public Prosecutor in charge of a case can make application for withdrawal under Section 321,Cr.P.C. Even before such provision was made specifically in the 1973 Code, the Hon'ble Supreme Court made such a precedent in 1967 as regards the corresponding Section 494 of the old Code, with the object of preventing the possibility of some Public Prosecutor or the other having no charge of the case

making dishonest and mischievous application for withdrawal from prosecution. The precedent made by the Hon'ble Supreme Court was seriously considered by the parliament later, when the 1973 Code was enacted, and a specific provision was made in Section 321 of the present Code, that application for withdrawal can be made only by the Public Prosecutor who is in charge of the case.

18. Here, the question is whether the Public Prosecutor Sri.Augustine (Legal Adviser to the Vigilance and Anti Corruption Bureau) was in fact the Public Prosecutor in charge of the case. The contention raised by the respondents is that prosecution in this case was in fact conducted by the Additional Legal Adviser Sri.Biju Manohar and so only Sri.Biju Manohar could have made application under Section 321 of the Cr.P.C. In **Aboobacker v. State of Kerala [2003 (1) KLT 42]**, this Court held that the Public Prosecutor who is not in charge of the case is not competent to file a request for withdrawal from prosecution under Section 321 of Cr.P.C. Of course, it is true that Section 321 of Cr.P.C contains a specific provision as a pre-requisite that the Public Prosecutor who made application for

withdrawal must be the Public Prosecutor who is in charge of the case. The learned Advocate General, drew the attention of this Court to the decision of the Hon'ble Supreme Court in **Sheonandan Paswan v. State of Bihar (AIR 1987 SC 877]** decided in 1987. That was a case where prosecution against a Chief Minister was sought to be withdrawn under Section 321 of Cr.P.C. When the said Chief Minister of Bihar regained power in 1980, his council of Ministers took a decision in February, 1981 to withdraw two prosecutions against the said Chief Minister, and accordingly a new panel of lawyers was also appointed by the Government to make such an application. The Public Prosecutor who till then conducted the case was removed, and a panel of lawyers headed by Sri. Lallan Prasad Sinha was appointed by the Government for the purpose of making application for withdrawal. Accordingly, Sri. Lallan Prasad Sinha made application under Section 321 of Cr.P.C. The issue including competence of the learned Public Prosecutor to make application came up for consideration before the Hon'ble Supreme Court in **Sheonandan Paswan v. State of Bihar [(AIR 1987 SC**

877]. In the said case, the Hon'ble Supreme Court accepted the appointment of Sri. Lallan Prasad Sinha and found in favour of the State that Sri.Lallan Prasad Sinha appointed by the Government was competent to file application under Section 321 of Cr.P.C as the Public Prosecutor in charge of the case. Thus, what is significant in view of the decision of the Hon'ble Supreme Court in **Sheonandan case No.2** is that the Public Prosecutor who made application for withdrawal need not always be the person who had the case bundle with him, or the person who had represented the State before the Court till the application for withdrawal was made. The consideration must be whether the person who made application as Public Prosecutor was in fact in charge of the case. Whether the Public Prosecutor who made application was in fact in charge of the case will have to be looked into and decided by the court in the particular facts and circumstances of the case. In this case, the learned trial Judge found against the State on the ground that it was Sri.Biju Manohar, who represented the State in Court on all posting dates till the Legal Adviser Sri.Augustine made application for withdrawal. Just because Sri.Biju Manohar

had the case bundle with him or in his possession he cannot claim to be the person in charge of the case. Annexure – IX direction produced in the court below will show that he was directed to represent the Vigilance in the court below on a particular day as a stop-gap arrangement. Of course, this continued until the Legal Adviser made application for withdrawal, but there is nothing to show that Sri.Biju Manohar was in fact specifically authorised to take charge of the case and to conduct prosecution in the case. Just because he represented the Vigilance in the trial court, he cannot claim that he was in charge of the case. He came to the picture on a stop gap arrangement made by the Vigilance Department when the then Public Prosecutor resigned. For some reason or the other, the Vigilance Department could not make permanent alternative arrangement to put somebody in charge of the case, and so Sri.Biju Manohar happened to represent the Vigilance Department in Court on subsequent posting dates also.

19. Chapter XIV of the Vigilance and Anti Corruption Bureau Manual issued by the Government of Kerala as per G.O (Rt) No.4/2002/Vig. Dated 3.1.2002 provides that the

Vigilance & Anti Corruption Bureau shall have a Legal Adviser and other additional Legal Advisers. Clause 203, as regards the functions of the Legal Adviser, provides that the Legal Adviser exercises general supervision and administrative control over the work of the Additional Legal Advisers, and that he shall prosecute all cases in which charge-sheets have been filed by the Special Investigation Unit, Thiruvananthapuram and Special Cell, Thiruvananthapuram. Here is a case where charge-sheet was submitted by the Special Investigation Unit, Thiruvananthapuram. If so, the Legal Adviser Sri.Augustine who made application in this case for withdrawal will be the competent person to conduct prosecution as Legal Adviser to the Vigilance and Anti Corruption Bureau. He will have general supervision and administrative control over the cases of the Vigilance including the work of the Additional Legal Advisers. As the Legal Adviser, he will have dominion and control over all the files, and he will have access to all the files. Just because he did not come before the court to make representation, or just because some other Additional Legal Advisers represented the Vigilance in court on some

posting dates, the competence and right of the Legal Adviser as the person in charge of the case and having access to all the case files, or having dominion over the prosecutions of the Vigilance Department, cannot be doubted or denied. As stated earlier, in **Sheonandan case No.2**, the application for withdrawal made by the Special Public Prosecutor appointed by the Government for the purpose of making application for withdrawal was accepted by the Hon'ble Supreme Court because he made application as the person who well studied the case and understood the factual and legal aspects involved in the case. In the present case also, the said decision of the Hon'ble Supreme Court will help the vigilance. By applying the principles laid down by the Hon'ble Supreme Court in the said case, the application made by Sri.Augustine, Legal Adviser to the Vigilance and Anti Corruption Bureau, will have to be accepted, and Sri.Augustine will have to be considered as the Public Prosecutor in charge of the case. As the Legal Adviser to the Vigilance Department, he had access to all the case files, he had control and dominion over all the case files of the vigilance, and he is even authorised to conduct

prosecution in the cases charge-sheeted by the Special Investigation Unit, Thiruvananthapuram. As the Legal Adviser and Public Prosecutor, who is authorised to conduct prosecution also under the Manual, he will have to be considered and accepted as the Public Prosecutor in charge of the case. As stated earlier, the question is not whether the particular person who made application had the case bundle in his possession, or had made representations in court on some posting dates. The Public Prosecutor who studied the case well and who understood the legal and factual issues involved in the case well, will have to be accepted and considered as the Public Prosecutor in charge of the case. Thus, I find that Sri.Augustine, the learned Public Prosecutor who made application for withdrawal in this case will have to be accepted and considered as the Public Prosecutor in charge of the case, as meant under Section 321 of Cr.P.C. Accordingly, the finding of the court below on the point, that Sri.Augustine cannot be accepted as the Public Prosecutor in charge of the case, will stand reversed.

20. Of course, it is true that much argument was not

made by either side regarding the locus standi of the respondents (Interveners) who objected the application for withdrawal. The learned Advocate General submitted that such an issue regarding the locus standi of the Interveners was not seriously raised in the trial court. The Interveners who objected withdrawal in this case are two representatives of the people. Whether such persons can initiate prosecution or object withdrawal from prosecution is an issue already decided by this Court and the Hon'ble Supreme Court. A civilised civic population in an organised democratic polity will welcome and accept honest, healthy and devoted politics, and that must be the nature and quality of a democratic polity. But unfortunately, we are in an era of dishonest, maligned, unhealthy and communalised politics. In such a situation, when prosecution is brought on political grounds, or when withdrawal from prosecution is objected on political grounds, under the guise of public interest, the court must be cautious and anxious. It must be the concern of the Court to ensure that such prosecution, or objection to withdrawal from prosecution, is not one brought under the guise of public interest, for political ends, and that

such objection is not tainted with political dishonesty or mala fides. Here, in this case, Sri.V.S.Achuthanandan, the opposition leader, and Sri.V.S Sunil Kumar, M.L.A, opposed withdrawal from prosecution in public interest. They are the representatives of the people. It is their concern that this is a case involving charges of corruption, that the accused persons made unlawful profits and benefits out of a vicious deal in the name of Government of Kerala, and the State Exchequer sustained a corresponding loss.

21. On a perusal of the case records, I find that there are materials prima facie to substantiate the allegations made by the prosecution regarding the vicious nature of alleged import of palmolein made in haste when there was no such absolute necessity or requirement in Kerala. There is reason to believe that somebody was in fact benefitted by the said vicious deal. It is a matter to be looked into and decided on trial, whether those persons include the accused also, and whether the State exchequer had sustained corresponding loss. In such a factual situation, the opposition made by the Interveners cannot be doubted or discarded by the court, saying that it is a

mere political objection.

22. In **Sheonandan Paswan v. State of Bihar** (case No.2 [AIR 1987 SC 877], the Hon'ble Supreme Court held that in cases involving offences of corruption, criminal breach of trust etc, any member of the society can oppose application for withdrawal from prosecution when such offences are offences of serious nature against society.

23. In **Nandakumar v. State** [2008 (2) KLT 913], a learned Single Judge of this Court held that any member of the society has the *locus standi* to resist a request for consent to withdraw, since withdrawal should be allowed only in furtherance of the cause of public justice.

24. The settled position as regards *locus standi* in cases involving public interest or public concern, or cases involving charges of corruption, is that any member of the society or any responsible member of the public, or any representative of the people can resist an application brought by the Government to withdraw from prosecution. So that aspect need not be further discussed, especially when such issue is not seriously raised by the State in these proceedings.

25. Now let us come to the different grounds urged by the learned Public Prosecutor for withdrawal from prosecution, before going to the legal aspects concerning withdrawal from prosecution under Section 321 of Cr.P.C.

26. One ground urged by the State in this case is that there is no prosecution sanction against the accused Nos.5 and 8 under Section 19 of the Prevention of Corruption Act. Even the sanction granted by the Government under Section 197 of Cr.P.C for prosecuting them under Section 120B I.P.C is not legal and proper. Of course as regards the offence under Section 120B I.P.C even sanction under Section 197 Cr.P.C is not required because making conspiracy for political or other other purposes is not at all the function of any employee or public servant. Such conspiracy at whatever level, for political or criminal or other ends cannot find any nexus with the official function of the public servant who faces charge of criminal conspiracy. **State of Kerala v. V.Padmanabhan Nair [1999 (5) SCC 690]** is on the point. Anyway, here is a case where there is a sanction under Section 197 of Cr.P.C, though sanction is not there under Section 19 of the Prevention of Corruption

Act as regards the corruption charges under the Prevention of Corruption Act. This is not a case where there is no sanction at all. When there is a sanction granted by the competent authority, the legality and propriety of the sanction cannot be looked into and decided at the preliminary stage of framing charge, or when an application is made to quash the prosecution under Section 482 of Cr.P.C or even when application is made by the State to withdraw from prosecution. In a case where there is no sanction at all, the said fact can be agitated, and this can well be considered by the Court even at the preliminary state of taking cognizance itself. But when there is a sanction issued by the competent authority, the court will have to proceed for trial, and the legality or propriety of the sanction as to whether it was granted by the authority with proper application of mind, or in compliance of the procedure prescribed by the law, can be looked into and decided by the court only during trial. In **Dineshkumar v. Airport Authority of India [2011 (4) KLT 865 SC]**, the Hon'ble Supreme Court held that there is a distinction between absence of sanction and alleged invalidity on

account of non-application of mind in granting sanction. As regards total absence of sanction, the Hon'ble Supreme court held that such an issue can be agitated at the threshold itself, but the latter question whether sanction is bad in law, or invalid, is a question which has to be raised during trial. As observed earlier, the charge practically against accused Nos.5 and 8, is only under Section 120B I.P.C and the criminal conspiracy alleged as against them cannot find any nexus with their official function as Secretaries to the Government. Anyway, in this case, there is a sanction granted by the competent authority under Section 197 Cr.P.C, and this is not a case where there is total absence of sanction. Whether the sanction in this case is proper or legal, or whether it was granted on proper application of mind, or whether it was granted in compliance of the procedure established by law are all matters to be decided during trial. The said contention that the sanction is not valid, cannot be looked into by the court at this stage where the issue is only withdrawal from prosecution. The accused can raise the said legal question when the case itself goes to trial. Thus, I find that on the ground of invalid

sanction, the State cannot be allowed to withdraw from prosecution.

27. Another ground urged by the State is that the decision taken by the Government of Kerala in 2005 to withdraw from prosecution was wrongly cancelled by the successor Government in 2006. Of course, it is true that such actions will create unpleasant consequences in administration. But at the same time, it is not illegal also. Political standards and Governmental propriety demand that a decision taken by the Government will have to be honoured by the successor Government. Anyway, withdrawal is a matter to be permitted by the court. It is of no consequence that the decision taken by the Government in 2005 was cancelled by the successor Government in 2006 or that the 2005 decision was revived in 2013. Whether one decides or the other cancels the matter is always the subject matter of decision by the court, and so this particular ground urged by the State need not be further discussed.

28. Another ground urged by the state is that, even assuming that the alleged import of palmolein was made

without inviting global tenders or in violation of the Store Purchase Rules, no loss was caused to the State exchequer. This ground, or this contention cannot be now considered. As stated earlier, I find some material in the case records to indicate something vicious in the alleged deal. Admittedly it was made without inviting global tenders, and the price was fixed by the Government allegedly at a higher rate. That being so, it is a matter for decision on trial whether the State exchequer had sustained any loss due to such act of the accused. In these proceedings brought under Section 321 of Cr.P.C, such factual aspects cannot be discussed, gone into, or adjudicated.

29. Another very important ground on which the State seeks permission for withdrawal is that on further investigation made by the Vigilance as ordered by the trial court, the Vigilance has come to a finding in favour of the Government, that there was no violation of Store Purchase Rules. In fact, such further investigation was ordered by the court when a complaint came regarding the role of the prosecution witness No.23 who is the present Chief Minister of Kerala. On further investigation, the vigilance found that

the present Chief Minister had no role in the alleged deal or import of palmolein, and the Investigating Officer ventured to justify the alleged deal, and thus gave a clean chit to the accused with a report that import of palmolein without inviting global tenders for competitive price was not in fact against the Store Purchase Rules, and that the deal was not irregular. Thus, the report of further investigation is quite contrary to the final report submitted by the police under Section 173 (2) of Cr.P.C.

30. When there is a definite final report filed under Section 173 (2) of Cr.P.C, and when there is a contrary or inconsistent additional final report of further investigation made under Section 173 (8) of Cr.P.C, the trial court will have to decide whether the additional report is acceptable, or whether the second report contrary to the initial final report will have any value or acceptability. The legal position as regards the value and acceptability of such a contrary or inconsistent additional final report of further investigation was settled by this Court long back in 1988. **In State v. Gopakumar [1988 (1) KLT 924]**, this Court held that additional report of further investigation made

under Section 173 (8) Cr.P.C must be solely regarding such evidence which was not collected, or which was not available earlier when the final report under Section 173 (2) of Cr.P.C was submitted. The question of acceptance or rejection of the additional final report of further investigation, which is contrary to or inconsistent with the initial report is within the exclusive right and jurisdiction of the trial court, and under the guise of further investigation, the Investigating Officer cannot undo what is already done for effective prosecution. This Court explained that report of further investigation only means “ a report in addition to the original one. It may have the effect of adding to or subtracting from the original report. But a condition precedent to the exercise of that right as provided under Section 173 (8) itself is the obtaining of further evidence over and above what was collected or known earlier.” Discussing the legal aspects concerning the validity and acceptability of the report of further investigation, this Court further held thus:-

“After having formed an opinion on the materials and placed the accused for trial before

the court, the Investigating Agency cannot have a second thought on the same materials and submit a further report arriving at a different conclusion.” (para-8 middle)

Thus, it stands well explained by this Court in **State v.Gopakumar [1988 (1) KLT 924]** that having once formed an opinion on the materials collected at the first round of investigation and after having submitted a positive final report for prosecuting the accused on those materials, the Investigating Officer cannot make a second thought and submit a further report on the basis of the same materials, contrary to what was earlier submitted under Section 173 (2) of Cr.P.C. When such a report comes before the court, it must be within the jurisdiction of the trial court to consider the two reports, examine and evaluate the contrary findings made by the Investigating Officer in the subsequent report, and decide whether the said subsequent report contrary to the earlier report can be accepted, or whether any legal value can be attached to it. Such decision will depend upon the acceptability of the evidence given by the Investigating Officer regarding the materials and circumstances on which

he came to such a contrary finding. Thus, just because there is a report of further investigation in this case in favour of the accused, the prosecution as such cannot be quashed, and the prosecution cannot be allowed to be withdrawn also. Whether the second report of investigation is acceptable, or whether the benefit of this report can be given to the accused, will be decided by the trial court when the case goes to trial. Thus, I find that permission for withdrawal cannot be granted on the ground that the Vigilance could manage a supplemental final report quite contrary to the final report submitted under Section 173 (2) of Cr.P.C.

31. Another important ground urged by the State is that three important witnesses cited by the prosecution are now no more. They are CW1, CW3 and CW12, cited to prove the alleged vicious role of accused Nos.5 in his capacity as the Secretary-in-charge of the Kerala State Civil Supplies Corporation . Just because some witnesses died pending the proceedings, the court cannot grant permission to withdraw from prosecution. Only in cases where death of any particular witness will leave a lacuna, which cannot be in any manner filled up, thus causing total paucity of evidence, the

court can grant permission for withdrawal. But, here there is no such situation. If at all CW1, CW3 and CW 12 are no more, the materials or circumstances sought to be proved through them, can be proved by the prosecution even otherwise, by way of available documents, or even the oral evidence of the witnesses, who can give evidence regarding the contents of those documents, however, with the permission of the court. When the trial court finds a situation that examination of other witnesses not cited by the prosecution will have to be permitted to prove material aspects, and if such necessity arises on the death of any material witness, the trial court can very well grant such permission. A case cannot die on the death of a witness. A case will die or abate on the death of the accused, but there cannot be such a situation abating a prosecution on the death of a witness. In such a situation the prosecution will have to take necessary alternative steps for proving the prosecution case. Allowing a case to die or abate on the death of a witness, will be against the principles of criminal law and criminal jurisprudence. On the ground that three witnesses died pending the proceedings, the prosecution

cannot be allowed to be withdrawn.

32. Yet another ground urged by the State to withdraw from prosecution is that there is total paucity of evidence in this case, and that if at all the case proceeds for trial, it will ultimately end in acquittal. Of course, in so many decisions, the Hon'ble Supreme Court has held that total paucity of evidence can, in certain circumstances, be accepted as a ground for withdrawal from prosecution. But here is no such case of total paucity of evidence. Here is a case where there is some material to substantiate the prosecution allegations regarding the vicious factors surrounding the alleged deal of import of palmolein from Singapore at a high rate, without inviting global or competitive tenders for ensuring the quality and reasonable price of palmolein. Who among the many accused had such vicious role, or who among the many accused was in fact benefited by such deal, or whether the State exchequer had lost anything in the said deal, or whether such deal was made, and got approved by the Council of Ministers for purely personal ends are all matters to be decided on trial. When some materials are there to indicate the alleged vicious role of the accused in

the import of palmolein, the prosecution cannot be quashed, or the accused cannot be given the benefit of discharge, or withdrawal from prosecution cannot be allowed by the court.

33. Having discussed the various grounds set up by the state for seeking permission for withdrawal from prosecution, let me examine the legal position settled by this Court and the Hon'ble Supreme Court regarding the circumstances in which such withdrawal can be permitted. On the factual and legal aspects governing the matter, the points for decision are (a) whether withdrawal from prosecution can be allowed in this case in public interest, (b) whether the plea for discharge made by the 5th accused can be accepted, and (c) whether the prosecution as such is liable to be quashed.

34. In **Rajender Kumar Jain v. State [(1980) 3 SCC 435]**, the Hon'ble Supreme Court held that withdrawal from prosecution on political reasons can be permitted, if it is otherwise proper. The ultimate discretion in the matter of withdrawal must be that of the Public Prosecutor, though Government may give its suggestions, advice or guidance,

and the courts jurisdiction under Section 321 Cr.P.C is supervisory in nature, to evaluate and see whether the Public Prosecutor has applied his independent mind in the broader interest of public justice. This principle was followed in so many decisions by the Hon'ble Supreme Court.

35. Prosecution is a State function, performed by the State in the interest of public peace, public health, public safety and social harmony. Every prosecution, thus, will have positive results in society, though it may sometimes adversely affect persons or institutions individually. But withdrawal from prosecution will have negative results. It is true that power to prosecute includes power or discretion to withdraw from prosecution also. When withdrawal from prosecution will have negative results in society, or will convey wrong or negative message to society, withdrawal from prosecution cannot be justified on the ground that withdrawal is also part of state function. When prosecution by the State is its function for public interest, or for public safety, public health and public tranquility, withdrawal from prosecution also must have such effects in society. If withdrawal from prosecution cannot ensure and bring about

such results in society, withdrawal from prosecution cannot be permitted by the Court. This is the gist of what the Hon'ble Supreme Court and the various High Courts in the country laid down by various precedents.

36. In **Subhash Chander v. The State (Chandigarh Admn) & Others** [AIR 1980 SC 423], the Hon'ble Supreme Court held thus:

“The fact that broader considerations of public peace, larger considerations of public justice and even deeper considerations of promotion of long-lasting security in a locality, of order in a disorderly situation or harmony in a factions milieu, or halting a false and vexatious prosecution in a Court, persuades the Executive, pro bono publico, sacrifice a pending case for a wider benefit, is not ruled out although the power must be sparingly exercised, and the statutory agency to be satisfied is the Public Prosecutor”.

37. Though the Public Prosecutor in charge of the case is the authority to decide for withdrawal from prosecution, his decision is always subject to the courts' supervisory role under Section 321 of Cr.P.C. In **Rajender Kumar Jain's case**, the Hon'ble Supreme Court

summarised the position concerning the power of withdrawal and the circumstances of withdrawal under Section 321 Cr.P.C, that withdrawal from prosecution is an executive function of the Public Prosecutor, but is subject to the supervisory role and function of the court in granting its consent to withdrawal, that the Public Prosecutor cannot surrender his discretion in the matter of withdrawal to someone else, though the Government may suggest to the Public Prosecutor that he may withdraw from prosecution, but none can compel him to do so, that the Public Prosecutor may withdraw from 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 public peace, and the broader ends of public justice will certainly include appropriate social, economic and political purposes, that the Court while exercising the supervisory powers, is not to re-appreciate the grounds which led the Public Prosecutor to request withdrawal from prosecution, but to consider whether the Public Prosecutor has applied his mind as a free agent uninfluenced by irrelevant and extraneous considerations,

and that the Court has a special duty in this regard as the ultimate repository of legislative confidence in granting or withholding its consent to withdrawal from the prosecution.

In **Balwant Singh & Others V. State of Bihar [1977 SC 2265]**, the Hon'ble Supreme Court held that "the sole consideration of the Public Prosecutor when he decides to withdraw from prosecution is the larger factor of the administration of justice-not political favours, nor party pressures, nor like concerns. The interests of public justice being the paramount consideration they may transcend and overflow the legal justice of the particular litigation..... The statutory responsibility of the Public Prosecutor in the matter of withdrawal is non-negotiable, and cannot be bartered away in favour of those who may be above him on the administrative side." The Hon'ble Supreme Court held that when application comes for permission to withdraw from prosecution, the court has to be vigilant not to succumb to the executive suggestion made in the form of application for withdrawal.

38. In **Sheonandan Paswan v. State of Bihar (AIR 1987 SC 877]**, a larger Bench of the Hon'ble

Supreme Court consisting of five Judges decided the nature and extent of the powers of the Public Prosecutor in the matter of withdrawal from prosecution, and also the nature and scope of the powers of the court in granting permission or withholding permission. In the said case, the Hon'ble Supreme Court even held that withdrawal from prosecution cannot be permitted after the framing of charge on the ground of insufficient evidence or paucity of evidence. As regards *locus standi* of those who object withdrawal, the Hon'ble Supreme Court held that when a case involves serious offence of corruption, criminal breach of trust etc, any member of the society can oppose the application for withdrawal from prosecution. In that case, the Hon'ble Supreme Court held that once the charge-sheet is filed and the prosecution is initiated, it is not left to the sweet will of the State or the Public Prosecutor to withdraw from prosecution and the court will have a very important role when the court is entrusted with control over the prosecution.

39. The Supreme Court further held that whatever be the grounds urged by the prosecution for withdrawal, the

basic principle underlying all the grounds must be that withdrawal can be sought only for furthering the cause of public justice. All that the court has to see is whether the application made by the Public Prosecutor is in good faith, in the interest of public justice and not to thwart or stifle the process of law. The Hon'ble Supreme Court held, that under Section 321 of Cr.P.C, it is not necessary for the court to assess the evidence to discover whether the case would end in conviction or in acquittal. “ To contend that the court will have to assess the evidence and find out whether the case would end in acquittal or conviction, would be to re-write Section 321 Cr.P.C and would be to concede to the court a power which the scheme of 321 does not contemplate”. In this case, the learned Advocate General submitted that sufficient evidence is not there to prosecute the accused, and that the ultimate result of a trial will be acquittal. This cannot be accepted as a ground for withdrawal in view of the clear position of law settled by the Hon'ble Supreme Court, that evidence cannot be assessed and possibility of acquittal ultimately cannot influence the court in taking a decision in the matter of withdrawal,

except when there is total paucity of evidence, and the prosecution cannot in any manner improve the case in such a situation of total lack of evidence and incriminating circumstances. In **Abdul Karim v. State of Karnataka and others** [AIR 2001 SC 116], the Supreme Court held thus:

“19. The law, therefore, is that though the Government may have ordered, directed or asked a Public Prosecutor to withdraw from a prosecution, it is for the Public Prosecutor to apply his mind to all the relevant material and, in good faith, to be satisfied thereon that the public interest will be served by his withdrawal from the prosecution. In turn, the Court has to be satisfied, after considering all that material, that the Public Prosecutor has applied his mind independently thereto, that the Public Prosecutor, acting in good faith, is of the opinion that his withdrawal from the prosecution is in the public interest, and that such withdrawal will not stifle or thwart the process of law or cause manifest injustice.

20. It must follow that the application under Section 321 must aver that the Public Prosecutor is, in good faith, satisfied, on consideration of all relevant material, that his

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

40. In **Vinod v. State of Kerala & Another [2013 (2) KHC 895]** a learned Single Judge of this Court held that in the matter of withdrawal from prosecution, the main question to be considered is whether the Public Prosecutor who made application for withdrawal has applied his mind independently in good faith, uninfluenced by irrelevant and extraneous considerations and the decision of the Public Prosecutor to withdraw from prosecution must serve some public interest. The learned Single Judge also held that the mere assertion made by the Public Prosecutor in his application that he had independently applied his mind in good faith is not sufficient, and that the court will have to verify the veracity and credibility of the said averment made by the Public Prosecutor and make a definite finding that he has in fact done so, and that his decision to withdraw from prosecution will definitely serve some public interest.

41. In this case, the application made by the Legal Adviser Sri.Augustine does not satisfactorily explain what public interest will be served, or how withdrawal from this prosecution will serve any public interest. As already

observed, the objective of prosecution at state hands is to secure public safety, public health, social tranquility, public morality and public order by enforcement of rule of law. When the State takes decision to withdraw from prosecution and the learned Public Prosecutor makes application to that effect, the State or the learned Public Prosecutor must convince the court exercising supervisory jurisdiction over the prerogative of the Public Prosecutor, that such withdrawal will also secure some public interest in the form of social good or public tranquility or social harmony or public order. Here, I fail to find what public good or public interest is sought to be served or achieved by the learned Public Prosecutor by withdrawing from the palmolein prosecution. No doubt, the accused will be benefited by such withdrawal, and the long standing prosecution which may take some more years for natural termination can be put an end to. But that cannot be the objective of withdrawal from prosecution. An examination of the history of this case shows that initiation of prosecution on the basis of the findings made by the Comptroller and Auditor General and also the Public Accounts Committee of the

Kerala Legislative Assembly was not in fact a politically motivated one though it subsequently, over the years, gained socio-political importance, being a case involving allegations of public corruption causing wrongful loss to the State Exchequer by way of wrongful gain and profits made by Ministers and Bureaucrats. When withdrawal from such prosecution is objected by the representatives of the people, or even any common man as a member of the public, such objection cannot be branded as politically motivated objection. Just because some representatives of the people under political banners intervened in public interest and objected withdrawal from prosecution, the case cannot be given political colour.

42. The learned Public Prosecutor has stated so many grounds in his application for withdrawal. I have discussed all these important grounds and found that on such grounds the State cannot be allowed to withdraw from prosecution. When withdrawal from prosecution is attempted and permission to that effect is sought from the court, the State or the Public Prosecutor is duty bound to explain what public interest is going to be served or achieved by such

withdrawal. Here, it is not known how withdrawal from prosecution will serve any public interest, or how will the society at large be benefited by such withdrawal, or whether such withdrawal will have the effect of securing and maintaining public good, social benefit or social harmony, or even political harmony.

43. The Government Order on the basis of which the learned Public Prosecutor decided to withdraw from prosecution also does not explain what public interest is going to be served by such withdrawal. On an examination of the entire case records, and also the various grounds urged by the learned Public Prosecutor, I find that withdrawal from prosecution in this case will only serve the personal interests of the accused, that the long standing prosecution can be put an end to, and the accused persons would be let free from further trauma of prosecution wherein they will have to face serious allegations of corruption. This can not at all be the object of withdrawal from prosecution.

44. As already observed, I find on an examination of the entire case records, that the prosecution has prima facie

materials to proceed for trial on the allegation that the alleged vicious deal made by the accused had caused some loss to the State exchequer by way of some unlawful benefits or profits gained by the accused, or some of them. In such a situation, the pre-trial termination by way of discharge, or the extreme step of closing the whole proceeding by way of orders under Section 482 of Cr.P.C cannot be thought of or resorted to.

45. On the facts of the case available in detail from the prosecution records, and on the basis of the judicial precedents discussed above, I make the following findings.

(a) The interveners Sri.V.S.Achuthanandan and Sri.V.S.Sunil Kumar, who are two of the respondents herein, have the right and locus standi to object withdrawal from prosecution as representatives of the people.

(b) The Legal Adviser (Public Prosecutor) Sri.Augustine who made application for withdrawal in this case is competent to make such application under Section 321 of Cr.P.C, and accordingly the findings of the court below on the point will stand reversed.

(c) However, on merits, it is found that withdrawal from prosecution in this case will not serve any public interest, and no public good is going to be achieved by such withdrawal. Such withdrawal may only help the accused personally or otherwise.

(d) The learned Legal Adviser (Public Prosecutor) who made application for withdrawal has well studied the facts of the case, and applied his mind, but not in good faith. The application made by him will not satisfy the court that his decision to withdraw from prosecution will in any manner help the society or serve any public interest. On the other hand, such withdrawal may have the effect of thwarting or stifling the process of law and the serious prosecution involving allegations of corruption by Ministers and the Bureaucrats.

(e) This is a case where the Public has also some concern in view of the allegations of corruption by Politicians and Bureaucrats; The right of the public to know about the nature and extent of such corruption, and whether such vicious deal made by the accused have in fact

caused any loss to the State exchequer or whether anybody stands gained by such deal under the pretext of public requirement, cannot be denied by such withdrawal from prosecution, which will have the effect of stifling the judicial process.

(f) Application for discharge, made by the the 5th accused was rightly dismissed by the court below because such a pre-trial closure of the prosecution cannot be thought of in this case when the prosecution has some materials to go ahead with the allegations of corruption made by the accused.

(g) The legal and factual aspects raised by the State and the accused for getting permission for withdrawal are in fact the grounds to be urged and considered on trial by the trial court, and those questions can be decided only when the case goes to trial. Such questions of law or facts cannot be now considered at this stage when the request is to withdraw from prosecution. The only consideration in larger public interest in the matter of withdrawal from prosecution must be, how such withdrawal will serve any public interest, and not whether the

prosecution suffers from any legal or factual infirmity, the benefit of which will ultimately go to the accused at the time of final disposal.

(h) In the particular facts of the case where withdrawal from prosecution will have the effect of stifling or thwarting the legal process, and where there is absolutely nothing to indicate that the present prosecution is an abuse of legal process, the request made by the 5th accused to quash the prosecution under Section 482 of Cr.P.C also cannot be allowed.

(i) The learned Public Prosecutor has miserably failed to convince the court exercising supervisory jurisdiction, that he has sufficient grounds to withdraw from prosecution in public interest, or that his decision to withdraw from prosecution will in any manner serve any public interest.

(j) In view of the above findings, all these proceedings are liable to be dismissed. I find that decision in the matter of withdrawal, and also discharge, was properly and rightly taken by the court below. That the finding of the trial court

regarding competence of the Public Prosecutor is reversed by this Court, will not go to the benefit of the State and the accused. On the material aspects this Court's finding is that withdrawal cannot be allowed in this case in public interest, in exercise of the supervisory jurisdiction of the court. I do not find any illegality or irregularity or impropriety in the findings of the trial court or in the orders made by the trial court on withdrawal or on discharge. I do not find any reason or necessity for interference in the orders passed by the court below. The State will have to proceed with the prosecution, and the accused will have to face the prosecution in view of the serious allegations of corruption.

In the result, Crl.R.P.Nos.990/2013, 139/2014, 198/2014, 199/2014, 372/2014 and Crl.M.C No.1013/2013 are dismissed.

**P.UBAID,
JUDGE**

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