

CWP No.19728 of 2010

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.19728 of 2010
Date of decision: 14.12.2015

Nirpal Singh

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?
- 2) To be referred to the Reporters or not ?
- 3) Whether the judgment should be reported in the Digest ?

Present: - Mr. Atul Lakhanpal, Sr. Advocate, with
Mr. R.S. Chahal, Advocate, for the petitioner.
Mr. S.S. Chandumajra, Addl. A.G., Punjab.
Mr. Khushdeep S. Mann, Advocate, for
Mr. G.S. Attariwala, Advocate, for the complainant.

PARAMJEET SINGH, J.

The instant writ petition under Articles 226/227 of the Constitution of India has been filed for issuance of a writ in the nature of *certiorari* to quash the order dated 11.02.2010 (Annexure P-10) passed by Government of Punjab, Department of Home Affairs and Justice (Judicial-I Branch) whereby order dated 29.09.2009 (Annexure P-8) vide which decision to withdraw the prosecution under Section 321 of the Code of Criminal Procedure (for short 'Cr.P.C.') was issued, has been withdrawn.

The brief relevant facts for disposal of this petition are to the effect that Gurcharan Kaur wife of Sukhdev Singh was the owner of four

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plots measuring 191 square yards each which she had sold to Ranjeeta Syngle and her husband Deepak Syngle vide four sale deeds No.7153 dated 09.12.1994, 4972 dated 13.09.1994, 7755 dated 20.12.1994 and 5028 dated 15.09.1994. Ranjeeta Syngle and Deepak Syngle further sold these plots to Ajit Singh Chadha, Rajinderpal Singh and Kuldeep Kaur. Rajinderpal Singh and Kuldeep Kaur further sold the plots purchased by them to Bhupinder Singh and others. Prior to the sale of property to Rajinderpal Singh and Kuldeep Kaur, Ranjeeta Syngle and Deepak Syngle had already entered into an agreement to sell dated 31.03.1999 with Om Parkash Goel son of Des Raj Goel and had taken ₹14,50,000/- as earnest money. Om Parkash had filed a civil suit for specific performance in which stay was granted by the civil court on 26.07.2000. This fact was concealed by Ranjeeta Syngle from vendees from whom the petitioner had purchased the plots. Om Parkash Goel also lodged an FIR No. 219 dated 13.06.2002 under Sections 420, 467, 471 and 120-B IPC at Police Station Kotwali, Patiala.

I am not required to give further details of the litigation between various persons i.e. purchasers and vendors etc. as it will be suffice to mention that Ranjeeta Syngle filed a criminal complaint along with an application under section 156(3) of the Cr.P.C. against petitioner and others and the said complaint was referred to Station House Officer, as a result of which FIR No.370 dated 28.12.2005 under Sections 457, 380, 452, 336, 506, 354, 148, 149 IPC and Sections 25/27/54/59 of Arms Act was registered at Police Station Civil Lines, Patiala, against

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Bhupinder Singh, Nirmal Singh, Ajit Singh Chadha and Nirpal Singh.

The petitioner moved an application to the Deputy Inspector General of Police, Patiala Range, Patiala, on the basis of which an enquiry was conducted through Superintendent of Police (Headquarters), SAS Nagar Mohali. Statements of various persons were recorded and ultimately Superintendent of Police came to a conclusion that allegations levelled in the FIR No. 370 dated 28.12.2005 registered at Police Station Civil Lines Patiala are not proved.

It would be pertinent to mention here that prior to this enquiry report, challan had already been presented and direction was issued to make supplementary report of investigation as part of the challan. In the meantime, Government issued letter dated 29.09.2009 (Annexure P-8) to withdraw the prosecution against the petitioner. However, letter dated 29.09.2009 (Annexure P-8) has been withdrawn vide letter dated 11.02.2010 (Annexure P-10). Hence, this writ petition.

In pursuance to notice of motion respondents appeared and filed their respective written statements. Respondent No. 1 and 3 in their written statement have stated that complainant Ranjeeta Syngle had filed a Criminal Miscellaneous No. 20747 of 2008 in this Court. This Court vide order dated 05.12.2008 had permitted respondent No.1 – State of Punjab to withdraw the letter dated 29.09.2009 as mentioned in letter dated 11.02.2010 (Annexure P-10). Since this Court has allowed to withdraw the impugned letter, State was bound to comply with the order of this Court.

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I have heard the learned counsel for the parties and perused the record .

Learned counsel for the petitioner vehemently contended that once the letter has been issued to withdraw the prosecution by the District Magistrate, same cannot be withdrawn as it will amount to review of the earlier order. Letter dated 11.02.2010 (Annexure P-10) has been wrongly issued to withdraw the letter dated 29.09.2009 (Annexure P-8) and the same is not sustainable in the eyes of law.

Per contra counsel for the complainant and State vehemently contended that State cannot direct the Public Prosecutor to withdraw the case registered under the provisions of IPC, it is the public prosecutor, who, after applying his mind can move an application for withdrawal of the case. The public prosecutor is required to apply his mind independently and not depend upon the direction of others. In the present case even proper procedure was not followed for withdrawal of the prosecution. It is within the competence of the authority who had issued a letter to withdraw the same in view of the provisions of Section 19 of the Punjab General Clauses Act.

I have given my anxious and thoughtful consideration to the contentions raised by the learned counsel for the parties.

In pursuance of letter dated 31.08.2009 (Annexure P-7) issued by the District Magistrate, Patiala, to Department of Home Affairs and Justice (Judicial Branch), Government of Punjab, Department of Home Affairs and Justice issued letter dated 29.09.2009 (Annexure P-8) for

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withdrawal from the prosecution. Thereafter, District Magistrate, Patiala, forwarded letter dated 14.10.2009 (Annexure P-9) to District Attorney, Patiala, to move appropriate application for withdrawal of the case. In the meantime, impugned letter dated 11.02.2010 (Annexure P-10) was issued by the Government to the District Magistrate, Patiala, whereby letter dated 29.09.2009 (Annexure P-8) was withdrawn and it was directed that District Attorney be directed to withdraw the application from the Court.

Before proceeding to consider the contentions of learned counsel for the parties, it would be appropriate to reproduce Section 321 of the Cr.P.C., which reads as under:-

“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 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."

Under Section 321 Cr.P.C., Public Prosecutor is vested with a general executive power to withdraw from prosecution subject to court's consent. It can only be done if the prosecutor takes a fair and independent step to withdraw from the case and also gives reasons for the same. The prosecutor must satisfy the court with regard to the reasons and circumstances justifying the withdrawal from prosecution.

The Public Prosecutor can move an application for withdrawal from the prosecution as advised by the Government and the District Magistrate as well as on his own accord if he feels satisfied that withdrawal from prosecution is in public interest, to maintain law and order and social harmony. This is the exclusive power of the Public Prosecutor. In Section 321 Cr.P.C. grounds are not mentioned on which

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Public Prosecutor may make application or the consideration on which the court is to give consent to withdraw from a case. The power to withdraw from prosecution is always an exception, it must be exercised in the interest of administration of justice. Reasons for withdrawal must satisfy the judicial conscious of the court and mere Government's order directing withdrawal without valid grounds is not enough to move an application by the Public Prosecutor and is also not enough to pass order of withdrawal by the court.

The Hon'ble Apex Court, in catena of judgments, has considered the circumstances under which Public Prosecutor can withdraw from the prosecution. Extracts from some of the relevant judgments are as under:-

In ***Balwant Singh v. State of Bihar***, (1977)4 SCC 448, Hon'ble Apex Court observed as under:-

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

In ***Abdul Karim v. State of Karnataka***, (2000)8 SCC 710 relying on the earlier decision of the Constitution Bench in ***Sheonandan***

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Paswan v. State of Bihar, (1987)1 SCC 288, the Hon'ble Apex Court made the following observations regarding withdrawal from the case under Section 321 Cr.P.C.: -

"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."

In ***Rahul Aggarwal v. Rakesh Jain and another***, AIR 2005 SC

910, the Hon'ble Apex Court held as under:-

"10. From these decisions as well as other decisions on the same question, the law is very clear that the withdrawal of prosecution can be allowed only in the interest of justice. Even if the Government directs the Public Prosecutor to withdraw the prosecution and an application is filed to that effect, the court must consider all relevant circumstances and find out whether the withdrawal of prosecution would advance the cause of justice. If the case is likely to end in an acquittal and the continuance of the case is only causing severe harassment to the accused, the court may permit withdrawal of the prosecution. If the withdrawal of prosecution is likely to bury the dispute and bring about harmony between the parties and it would be in the best interest of justice, the court may allow the withdrawal of prosecution. The discretion under [Section 321](#), Code of Criminal Procedure is to be carefully exercised by the court having due regard to all the relevant facts and shall not be exercised to stifle the prosecution which is being done at the instance of the aggrieved parties or the State for redressing their grievance. Every crime is an offence against the society and if the accused committed an offence, society demands that he should be punished. Punishing the person who perpetrated the crime is an essential requirement for the maintenance of law and order and peace in the society. Therefore, the withdrawal of the prosecution shall be permitted only when valid reasons are made out for the same."

In the light of settled principles of law regarding withdrawal from criminal case, the function of the Public Prosecutor to withdraw from criminal cases relates to a public purpose. The Public Prosecutor is an officer of the court and his duty is to represent the public interest. The

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responsibility entrusted on him for so acting is only in the interest of administration of justice. The fairness, efficiency and accountability are important objects of the prosecution system. These objects can be achieved by independent exercise of power by the Public Prosecutor. The Public Prosecutor is required to proceed in the criminal cases free from other inappropriate influences.

In the instant case, in the application no such reasons and circumstances have been mentioned which may be in the interest of public to withdraw case, nor have been brought to the notice of this Court which may warrant withdrawal. The case was initiated at the instance of Ranjeeta complainant who had filed a complaint in the Court of Judicial Magistrate and thereafter it was sent to SHO under section 156 (3) of the Cr.P.C. Unilateral withdrawal is meaningless.

In the instant case, the application moved by the Public Prosecutor for withdrawal is not based on the independent appreciation of the facts and evidence collected by the investigation agency. The application for withdrawal from criminal case moved by the Public Prosecutor does not appear to be free from outside influence such as letter of the Government and the District Magistrate. Blackstone writes, *"Justice is not derived from the king as his free gift but he is the steward of public to dispense it to whom it is due."* In this case, application was not filed by the Public Prosecutor keeping in view the highest ethical and professional standard of his/her office being officer of the Court. Public Prosecutor has obligations of varying degree to the court, the public,

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victims, accused and witnesses. There were no cogent grounds to give consent to withdraw from criminal case, and as such consent should not have been given to the prosecution to withdraw from the prosecution. An erroneous decision not to prosecute, tends to undermine the confidence of the public in criminal justice system. The State Government after considering these factors appears to have directed withdrawal of letter dated 29.09.2009 (Annexure P-8) and consequently directed to withdraw the application moved to withdraw the prosecution.

In view the above, I do not find any illegality and ground to interfere in the letter 11.02.2010 (Annexure P-10). However, if the Public Prosecutor, in view of the law discussed above, feels satisfied that it will be in the interest of public to withdraw the prosecution, he will be at liberty to move application for withdrawal of the prosecution.

Accordingly, petition is disposed of.

(Paramjeet Singh)
Judge

December 14, 2015
R.S.