

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 24 of 2008

1. Chandra Kumar Katzhare, aged about 41 years, by occupation Advocate, S/o Dr. P.L. Katzhare, R/o Tahsilpara, Bhanupratappur, Distt.-Uttar Bastar, Kanker, C.G.

---- Petitioner

Versus

1. The State Of Chhattisgarh, through District Magistrate, U.B. Kanker
2. Rambaran Mishra S/o Durgaprasad Mishra, aged about 61 years, R/o Bhanupratappur, Distt.-Uttar Bastar, Kanker, C.G.

---- Respondent

For Petitioner	Shri Parag Kotecha, Advocate
For Respondent/State	Shri P.K. Bhaduri, Govt. Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

25/01/2016

1. Assail in this revision application is to the order passed by the Sessions Judge, Kanker, District North Baster, whereby while allowing the revision application preferred by the State, the Sessions Judge has allowed the application preferred by the prosecution under Section 321 of the Code of Criminal Procedure (for short 'the Cr.P.C.') permitting withdrawal from prosecution

wherein the respondent No.2 was tried in the Court of the Chief Judicial Magistrate, Kanker (for short 'the CJM'), in criminal case No.812/2007 for offence under Sections 323, 294 & 506 Part II of the Indian Penal Code (for short 'the IPC').

2. For an incident, which had taken place on 6-10-2001 the applicant lodged a report against the respondent No.2 for committing offence under Sections 323, 294 & 506 Part II of the IPC. On filing of charge sheet, charges under the said provisions were framed by the CJM, Kanker and in the trial 5 witnesses have already been examined.
3. At this stage, the State Government constituted a committee at the district level to examine such petty matters, which do not involve commission of heinous offence, for its withdrawal from prosecution under Section 321 of the Cr.P.C. In the above process, the present case was also scrutinized and thereafter, the Public Prosecutor (for short 'the PP') moved an application under Section 321 of the Cr.P.C. clearly mentioning that the case is trivial in nature, therefore, in the interest of justice, the prosecution may be permitted to withdraw from the prosecution.
4. CJM, Kanker, refused to permit withdrawal from prosecution by mentioning that 5 witnesses have already been examined; the prosecution has not explained as to how the matter is trivial in

nature, therefore, considering the facts situation of the case permission of withdrawal from the prosecution cannot be allowed. Sessions Judge, Kanker, passed a detailed and elaborate order reiterating the principles governing disposal of application under Section 321 of the Cr.P.C.

5. Having perused the First Information Report (FIR); the order passed by the CJM; and the impugned order, it would appear that the offences registered against the respondent No.2 for which charges were framed were of simple nature. The petitioner did not move before the trial Magistrate at any point of time for alteration of charges on submission that on the basis of material collected during investigation any grievous offence is made out against the respondent No.2.
6. Be that as it may, when the PP was satisfied that the present case is also of such nature involving trivial offence, such satisfaction of the PP is not subject to judicial review unless it suffers from inherent defect in the manner in which the application was moved and the satisfaction was reached. Had it been a case that the respondent No.2 had allegedly committed offence like dacoity, murder, rape or any offence involving woman, it would have been different. When the withdrawal of the prosecution is allowed for the offence under Sections 323, 294 & 506 Part II, the trial

Magistrate should have considered the nature of charges rather than expecting from the prosecution to explain as to how they are trivial in nature.

7. In view of the law laid down by the Supreme Court in **Sheo Nandan Paswan v. State of Bihar and Others**¹, the Sessions Court has not committed any illegality in allowing the application preferred by the prosecution under Section 321 of the Cr.P.C. for withdrawal from prosecution.
8. In the result, the present criminal revision, being devoid of merit, is liable to be and is hereby dismissed. Sd/-

Judge

Prashant Kumar Mishra

Gowri

¹ AIR 1987 SC 877