

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.951 of 2015**

1. Ramesh Kumar Sharma S/o Late J. L. Sharma Aged About 59 Years R/o Tilak Nagar P.O.- Head Office, P.S. Kotwali District - Bilaspur Chhattisgarh
2. Vinay Mohan Tiwari S/o Late R. G. Tiwari Aged About 61 Years R/o Irrigation Colony, Shanti Nagar, P.O. & P.S. Civil Lines, Raipur Chhattisgarh

---- Applicants

Versus

1. State Of Chhattisgarh Through The Additional Secretary, Department Of Law & Legislative Affairs, Mahanadi Bhawan, Naya Raipur, Chhattisgarh
2. District Magistrate (Raipur) Collectorate Premises, District - Raipur Chhattisgarh
3. Special Police Establishment Anti Corruption Bureau, Through Its Inspector, Lokayukt Office, Raipur, Distt. Raipur, Chhattisgarh

---- Respondents

And**Criminal Revision No. 1003 Of 2015**

State Of Chhattisgarh Through The Chief General Manager,
District Trade & Industries Centre, Raipur - District - Raipur
Chhattisgarh

---- Applicant

Vs

1. Shri Akoji Gore S/o Late Hanumant Gore Aged About 64 Years R/o 415, Golden Apartment, Shankar Nagar, Raipur, District - Raipur Chhattisgarh
2. Shri Ramesh Kumar Sharma S/o Late J.L. Sharma Aged About 59 Years R/o Near Shiv - Hanuman Mandir, Chatapara, Bilaspur, District - Bilaspur Chhattisgarh
3. Shri Vinay Mohan Tiwari S/o Late Ramgopal Tiwari Aged About 61 Years R/o H-85, Irrigation Colony, Shanti Nagar, Raipur Chhattisgarh

---- Respondents

And**Criminal Revision No. 976 Of 2015**

Akoji Gaure S/o Late Hanwat Gaure Aged About 64 Years R/o 415, Golden Apartment, Shankar Nagar, Khamardih, P.S. Mova, Raipur, Chhattisgarh.

---- Applicant

Vs

1. State Of Chhattisgarh Through Secretary, Law And Legislative Affair, Mahanadi Bhavan, Capital Complex, Naya Raipur, Chhattisgarh.
2. District Magistrate (Raipur) Distt. Raipur, Chhattisgarh.
3. Special Police Establishment Anti Corruption Bureau Raipur, Distt. Raipur, Chhattisgarh.

---- Respondents

Dr. NK Shukla, Sr. Advocate with Shri Kshitij Sharma, counsel for the applicants in CRR No.951 of 15.
 Shri SC Khakharia, Dy. Advocate General for the State/counsel for applicant in CRR No.1003/2015 and counsel for the respondents in CRR No.951/15 and CRR No.976/15.
 Shri Sachin Tamrakar, counsel for applicant in CRR No.976/15.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

16.02.2016.

Criminal Revision No.951/2015 filed on behalf of Ramesh Kumar Sharma and Vinay Mohan Tiwari, Criminal Revision No. 1003 of 2015 filed on behalf of State of Chhattisgarh and Criminal Revision No. 976 of 2015 filed on behalf of Akoji Gaure against the common order dated 13.8.2015 passed by Special Judge (Prevention of Corruption Act, 1988)/First Additional Sessions Judge, Raipur in Special Sessions Case No.14/98 (State Vs. Akoji Gaure & Ors.) are being disposed of by this common order.

2. It is submitted on behalf of the revisioner/State of Chhattisgarh in Criminal Revision No.1003/2015 that the revision filed on behalf of the revisioner/State be treated as reply to the Criminal Revision No.951/15 and 976/15 and as the respondent/State in both the above criminal revision does not want to file separate reply.

3. All the above three criminal revisions arise out of order dated 13.8.2015 passed by Special Judge under the Prevention of Corruption Act, 1988 / First Additional Sessions Judge, Raipur in Special Case No.14/98, whereby and whereunder the Court below dismissed the application under Section 321 of the Code of Criminal Procedure, 1973 (for short 'the Code') filed on behalf of the State for withdrawal of the prosecution against the accused Akoji Gaure, Ramesh Kumar Sharma and Vinay Mohan Tiwari. Against the said order, the applicant/Sate filed Criminal Revision No.1003/15, accused Ramesh Kumar Sharma, and Vinay Mohan Tiwari also challenged the said order by filing Criminal Revision No. 951/2015 and co-accused Akoji Gaure also challenged the same order by filing Criminal Revision No.976/15.

4. Both the parties in all the above criminal revisions have challenged impugned order dated 13.8.15, submitted against the order passed by the Court below, supported each other and prayed before this Court that the order passed by the Court below is arbitrary, illegal and contrary to the law applicable to the facts and circumstances of the case. The Court below completely ignored the facts regarding consideration of the application for withdrawal of prosecution as required under Section 321 of the Code. The Public prosecutor, who filed the said application was in charge of the said case, competent to make an application for withdrawal, and filed the same after the communication issued on behalf of the State, Law and Legislative Affairs Department,

Raipur in Memo No.12/02/2014/4364/21-Ka(abhi)/CG/2014, Raipur dated 21.05.2014 signed by Under Secretary in the name and as per Order of His Excellency the Governor of the State. The Special Public Prosecutor after applying his mind has filed the detailed application under Section 321 of the Code followed by written argument on behalf of the prosecution/State. All prerequisite conditions were complied with and the refusal for the consent of the Court is not proper. Hence, it is submitted on behalf of all the parties in these criminal revisions that the impugned order passed by the Court below be set aside. Withdrawal from prosecution of the above three accused may be permitted and as charges have been framed, they may be acquitted in respect of the charges framed against them.

5. In all the above three revisions, all the parties supported each other so far as permission to set aside the impugned order is concerned.

6. On behalf all the parties, reliance was placed in the judgment of the Constitution Bench of the Hon'ble Supreme Court in **Sheo Nandan Paswan V. State of Bihar and others, (1987) 1 SCC 288** wherein relevant paras 73, 85, 86 and 90 are quoted as under:

“73. Section 321 gives the Public Prosecutor the power for withdrawal of any case at any stage before judgment is pronounced. This presupposes the fact that the entire evidence may have been adduced in the case, before the application is made. When an application under Section 321 Cr.P.C. is made, it is not

necessary for the court to assess the evidence to discover whether the case would end in conviction or acquittal. To contend that the court when it exercises its limited power of giving consent under Section 321 has to assess the evidence and find out whether the case would end in acquittal or conviction, would be to rewrite Section 321 Cr.P.C. and would be to concede to the court a power which the scheme of Section 321 does not contemplate. The acquittal or discharge order under Section 321 are not the same as the normal final orders in criminal cases. The conclusion will not be backed by a detailed discussion of the evidence in the case of acquittal or absence of prima facie case or groundlessness in the case of discharge. All that 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 these facets of the case, will have to see whether the application suffers from such improprieties or illegalities as to cause manifest injustice if consent is given. In this case, on a reading of the application for withdrawal, the order of consent and the other attendant circumstances, I have no hesitation to hold that the application for withdrawal and the order giving consent were proper and strictly within the confines of Section 321 Cr.P.C.

85. The scope of Section 321 can be tested from another angle and that is with reference to Section 320 which deals with “compounding of offences”. Both these sections occur in Chapter 24 under the heading “General Provisions as to Enquiries and Trials.” Section 320 (1) pertains to compounding of offences, in the table, which are not of a serious nature while Section 320 (2) pertains to offences of a slightly serious in nature but not constituting grave crimes. The offences in the table under Section 320(1) may be compounded by the persons mentioned in the third column of the table without the permission of the court and those given in the Table II, under Section 320(2) can be compounded only with the permission of the court. Under sub-section 4(a), when a person who would otherwise be competent to compound

an offence under Section 320, is under the age of 18 years or is an idiot or a lunatic, any person competent to contract on his behalf may, with the permission of the court, compound such offence. Sub-section 4(b) provides that when a person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, of such person may, with the consent of the court, compound such offence.

86. These two sub-sections use the expression “with the permission of the court” and “with the consent of the court” which are more or less ejusdem generis. On a fair reading of the above mentioned sub-sections it can be safely presumed that the sections confer only a supervisory power on the court in the matter of compounding of offences in the manner indicated therein, with this safeguard that the accused does not by unfair or deceitful means, secure a composition of the offence. Viewed thus I do not think that a plea can be successfully put forward that granting permission or giving consent under sub-section (4)(a) or (4)(b) for compounding of an offence, the court is enjoined to make a serious detailed evaluation of the evidence or assessment of the case to be satisfied that the case would result in acquittal or conviction. It is necessary to bear in mind that an application for compounding of an offence can be made at any stage. Since Section 321 finds a place in this chapter immediately after Section 320, one will be justified in saying that it should take its colour from the immediately preceding section and in holding that this section, which is a kindred to Section 320, contemplates consent by the court only in a supervisory manner and not depending upon a detailed assessment of the weight or volume of evidence to see the degree of success at the end of the trial. All that is necessary for the Court to see is to ensure that the application for withdrawal has been properly made, after independent consideration, by the Public Prosecutor and in furtherance of public interest.

90. Section 321 Cr.P.C. is virtually a step by way of composition of the offence by the State. The State is the master of the litigation in criminal cases. It is useful to remember that by the exercise of functions under Section 321, the accountability of the concerned person or persons does not disappear. A private complaint can still be filed if a party is aggrieved by the withdrawal of the prosecution but running the possible risk of a suit of malicious prosecution if the complaint is bereft of any basis.”

7. On behalf of the parties, reliance is also placed on **Ghanshyam Vs. State of MP & Ors., (2006) 10 SCC 473** wherein the Hon'ble Apex Court in para 14 held as under:

“14. The discretion to withdraw from the prosecution is that of the Public Prosecutor and none else, and so, he cannot surrender that discretion to anyone. The Public Prosecutor may withdraw from the prosecution not merely on the ground of paucity of evidence but on other relevant factors as well in order to further the broad ends of justice, public order, peace and tranquility. The High Court while deciding the revision petition clearly observed that the material already available on record was insufficient to warrant conviction. The flow of facts and the possible result thereof as noticed by the Public Prosecutor and appreciated by the courts below, constituted the public interest in the withdrawal of the said prosecution. The High Court clearly came to the conclusion that the application for withdrawal of the prosecution and grant of consent were not based on extraneous considerations.”

8. It is submitted on behalf of all the parties that the above cited case law are applicable in the present case. On perusal of the application under Section 321 of the Code and the written argument submitted on behalf of the prosecution, it appears that the Public Prosecutor after proper application of mind in the matter and also after receiving above referred communication

from the State duly authorised, prayed for withdrawal from the prosecution of the above three accused. The trial Court has erred by not appreciating the entire facts. It is also submitted that the trial Court appreciated that in the present case, the trial has been commenced and on the other hand all the three accused despite being responsible officers of the State helped private persons to carryout alleged tax evasion worth crores of rupees. It is submitted that the prosecution may withdraw the prosecution of the accused persons at any stage of the trial as per the provisions of sub-section (a) (b) of Section 321 of the Code and so far as to help the private persons for tax evasion of crores of rupees, by proper application of mind, the Special Public Prosecutor in his application dated 26.6.2014 at para 4 (a) and (b) demonstrated that as in case of any tax evasion right to proceed is with the Sales Tax Department and not with the Industries Department. In the detailed appreciation, it is submitted on behalf of the Special Public Prosecution that on perusal of the facts as mentioned in sub-para (a) and (b) of the reply goes to show that all the three accused persons were not involved in helping the private persons to carry out tax evasion and also on behalf of the entire material there is no possibility to prove the offence against these three accused persons though the appreciation of the said facts are not required but in addition, the Special Public Prosecutor demonstrated the entire facts and evidence available and its effect. It is further submitted that it was the satisfaction of

the Public Prosecutor that he examined the facts of the case, fortified the view of the Government thereafter considered the broad ends of justice, moved the application for withdrawal. It is further submitted that as the State is a master of litigation in the criminal case, judgment of the Public Prosecutor under Section 321 of the Code cannot be lightly interfered with unless the Court comes to the conclusion that he has not applied the mind or his decision is not bonafide. In the present case, after appreciation of all other aspects regarding material available for arriving a conclusion regarding the involvement of the above three accused persons in the offence, order passed by the Court below requires interference, hence, it is submitted that order passed by the Court below be quashed. The application filed by the public prosecutor may be allowed. The prosecution may be permitted to withdraw the said criminal case regarding prosecution of above three accused by granting withdrawal from prosecution under Section 321 of the Code.

9. For the purpose of appreciation of relief as prayed under Section 321 of the Code, the same reads as under:

“321 For 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; “

10. To appreciate the arguments advanced in this behalf by the parties, I have perused the impugned order, the said application under Section 321 of the Code, communication received from Chhattisgarh Law and Legislative Affairs Department and the written argument annexed by the Special Public Prosecutor in support of his application.

11. On perusal of the entire facts, this Court is of the considered view that by filing the application for withdrawal of the prosecution under the direction of the competent authority of the State and after applying his mind, the Special Public Prosecutor filed his detailed application showing all the facts relevant to allow his application and also he filed the written argument in support of his application for withdrawal. On perusal of the entire facts, this Court is of the view that as per the settled law even after framing of the charges withdrawal from prosecution may be ordered and of course the same with the consent of the Court and so far as consent of the Court is concerned, as a settled law and also as per the case law cited, the Court has to conclude that whether the prosecutor had applied his mind or his decision is not bonafide. In the considered view of this Court, in the present matter, the prosecutor duly applied his mind and on perusal of the the

reasons mentioned in the application and also in the written argument it cannot be held that his decision is not bonafide and also as per the settled law, power of Court under Section 321 of the Code is limited. Judgment of the public prosecutor cannot be lightly interfered.

12. In the present case, in the considered view of this Court, the trial Court committed illegality and impropriety while rejecting the prayer of the public prosecutor under Section 321 of the Code for withdrawal of the prosecution for the above three accused persons, which requires interference. Consequently, all the above three criminal revisions are allowed. Impugned order dated 13.8.2015 passed by the Court below is hereby quashed. The application dated 26.6.2014 filed by the Public prosecutor for withdrawal of the prosecution for the above three accused namely Akoji Gaure, Ramesh Kumar Sharma, Vinay Mohan Tiwari is allowed. The prosecution is permitted to withdraw the criminal prosecution against all the above three accused persons in Special Sessions Case No.14/98 (State vs. Akoji Gaure & Ors) pending before the Court of Special Judge (Prevention of Corruption Act, 1988)/First Additional Sessions Judge, Raipur (CG) by allowing the application under Section 321 of the Code..

Sd/-
(Chandra Bhushan Bajpai)
JUDGE