

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL MISC. PETITION NO. 445 OF 2014

State of Chhattisgarh, through the District Magistrate, Raigarh, District Raigarh (C.G.)

... Petitioner

Versus

1. Toshram S/o Hiradhar Mali, aged about 32 years, R/o Village Navghatta, Police Station Saria, District Raigarh (C.G.)
2. Hansram S/o Netram Patel, aged about 28 years, R/o Village Jogitarai, Police Station Pusore, District Raigarh (C.G.)
3. Suresh Kumar, S/o Nanhu Ram Agrawal, aged about 40 years, R/o Gobarsindha, P.S. Saria, District Raigarh (C.G.)
4. Vinod S/o Jagannath Goyal, aged about 40 years, R/o Putkapuri, Police Station Pusore, District Raigarh (C.G.)

... Respondents

For Petitioner-State	:	Mr. Ashish Shukla and Mr. O.P. Sahu, Government Advocates.
For Respondents	:	Mr. Awadh Tripathi, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

18/11/2016

1. The present petition under Section 482 of CrPC has been preferred by the State assailing the order dated 29.9.2012 passed by the Additional Sessions Judge, Sarangarh, District Raigarh in Criminal Revision No.44 of 2012.
2. Vide impugned order dated 29.9.2012, the learned Revisional Court had rejected the revision petition preferred by the State Government against the order dated 25.7.2012 passed by the Judicial Magistrate First Class, Sarangarh in Criminal Case No. 850 of 2003, whereby the learned Magistrate has refused to give consent under Section 321 of CrPC to the prosecution for withdrawal of the prosecution cases against the accused persons.

3. Brief facts relevant for the adjudication of the present case is that an FIR was lodged at the instance of the complaint made by the CEO of Janpad Panchayat, Baramkela in respect of embezzlement in collection of food grains from the Fair Price shop of Village Bar in Block Baramkela. As per the case of the prosecution it was found that around 791.97 quintal of grains were lifted on the basis of fake coupons said to have been created by the Respondents and other accused persons, on the basis of which an FIR was lodged and in the course of investigation also the allegations in the FIR were found to be correct and the case was registered against the respondent-accused and the matter was put to trial vide Criminal Case No.850 of 2003 before the Court of Judicial Magistrate First Class, Sarangarh.

4. In the instant case, the FIR was lodged on 10.1.2002 and the charge-sheet was filed on 31.10.2002. In between, the charges were also framed. Meanwhile, it is said that the Law and Legislative Department, Government of Chhattisgarh, issued a letter dated 13.4.2012 to the District Magistrate, Raigarh for withdrawal of the prosecution against the accused persons in Criminal Case No. 850 of 2003 arising out of Crime No.10 of 2002. Based upon the said letter received from the Law and Legislative Department, the Public Prosecutor moved an application under Section 321 of CrPC before the Trial Court on 12.6.2012. The Trial Court after considering the merits of the case vide its order dated 25.7.2012 reached to the conclusion that since the allegation against the respondents is that of committing fraud and cheating by fabricating documents and causing loss to the State Exchequer and prima facie the offence under Sections 420, 467, 468 and 471 read with Section 34 of IPC is said to have been made against the accused persons and further also taking into consideration the fact that for the offence under Section 467 of IPC the

sentence is for life imprisonment and for the offence under Section 468 of IPC the sentence is for 10 years of imprisonment and further the nature of offence seems to be against the public interest and serious in nature, refused to grant consent for withdrawal of the prosecution and accordingly rejected the application vide its order dated 25.7.2012.

5. The said order dated 25.7.2012 of the Trial Court was put to challenge in a revision petition registered as Criminal Revision No. 44 of 2012. The Revisional Court also having considered the merits of the case as adduced by the State finally vide its order dated 29.9.2012 has rejected the revision petition holding that the Court below has not committed any error of law while rejecting the application. Further, the Revisional Court has also found that the manner in which the prosecution had suggested for withdrawal of prosecution also does not seem to be proper as the entire prosecution was sought to be withdrawn without leaving any of the accused persons prosecuted. Further, the Revisional Court also was surprised in the en block withdrawal of the prosecution by the Government particularly when the nature of offence is against the public interest. Further, as no strong case of any of the *Exceptions* as has been pointed out under Section 321 of CrPC being made out by the State in their application, the Revisional Court refused to interfere with the finding of the Trial Court in rejecting the application under Section 321 of CrPC, leading to the filing of the present petition under Section 482 of CrPC.

6. Learned Counsel for the State assailing the two orders of the Courts below submits that it is a case where the Courts below should not have rejected the same but should have properly appreciated the contentions of the State Government and should have allowed the application at the first instance or at least the Revisional Court should have granted the permission for withdrawal of the prosecution. The State Counsel further

submits that from the over all reading of the case diary what reflects is that time and again it is being reflected that the complainant in the instant case, i.e., CEO of Janpad Panchayat, Baramkela in fact appeared to be the main accused and it was he who was found responsible with the manufacturing of the fake coupons and seal of the Janpad Panchayat, Baramkela. It is also the case of the State Government that once when it has been found that it was the complainant to be the main accused person it shows that there is less evidence against the present respondents to have committed the said offence and therefore the two orders deserve to be interfered with and the permission for withdrawal of the prosecution be given to the State.

7. Counsel for the State relied upon the decision of the Supreme Court rendered in the case of **Sheonandan Paswan Vs. State of Bihar and Others** [1987 (1) SCC 288], **Rajender Kumar Jain Vs. State through Special Police Establishment & Others** [1980 (3) SCC 435] and **State of Orissa Vs. Chandrika Mohaptra & Others** [1976 (4) SCC 250]. In addition, the State Counsel has also relied upon the couple of decisions of this High Court rendered in the case of **Dr. Shakrajeet Nayak Vs. State of Chhattisgarh** [2015 (4) C.G.L.J. 150] and in the case of **State of Chhattisgarh & Others Vs. Sushant Shukla**, decided on 28.11.2014 in Criminal Misc. Petition No. 939 of 2014 and other analogous cases.

8. Counsel for the Respondents also supported the contentions of the Petitioner-State and submitted that since there is not much evidence against the respondent-accused, the State Government has wisely taken a decision for seeking withdrawal of the prosecution and that since there is no evidence available and there is also no possibility of the conviction of the accused persons the Respondents cannot be subjected to undergo the trauma of entire trial. Counsel for the Respondents also submits that even otherwise the matter is very old and the prosecution itself would now find it

difficult to establish its case before the Court below and considering the matter to be old, the State Government had rightly taken a decision which should not have refused by the two Courts below. He thus supports the prayer of the Petitioner-State for granting permission for withdrawal of the prosecution.

9. Having considered the submissions put forth on behalf of either side and on perusal of the records it would be relevant at this juncture to quote recent decision rendered by the Supreme Court under the said provision. The Supreme Court recently in the case of **M/s V.L.S. Finance Ltd. Vs. S.P. Gupta & Another** [AIR 2016 SC 721] relying upon on its own decision in the case of **Bairam Muralidhar v. State of A.P.** [2014 (10) SCC 380] held as under :

“37. In **Bairam Muralidhar v. State of A.P.**, while dealing with the said provision it has been laid down that:-

“ ... it is the obligation of the Public Prosecutor to state what material he has considered. It has to be set out in brief. The court as has been held in **Abdul Karim** case, is required to give an informed consent. It is obligatory on the part of the court to satisfy itself that from the material it can reasonably be held that the withdrawal of the prosecution would serve the public interest. It is not within the domain of the court to weigh the material. However, it is necessary on the part of the court to see whether the grant of consent would thwart or stifle the course of law or cause manifest injustice. A court while giving consent under Section 321 of the Code is required to exercise its judicial discretion, and judicial discretion, as settled in law, is not to be exercised in a mechanical manner. The court cannot give such consent on a mere asking. It is expected of the court to consider the material on record to see that the application had been filed in good faith and it is in the interest of public interest and justice. Another aspect the court is obliged to see is whether such withdrawal would advance the cause of justice. It requires exercise of careful and concerned discretion because certain crimes are against the State and the society as a collective demands justice to be done. That maintains the law and order situation in the society. The Public Prosecutor cannot act like the post office on behalf of the State Government. He is required to act in good faith, peruse the materials on record and form an

independent opinion that the withdrawal of the case would really subserve the public interest at large. An order of the Government on the Public Prosecutor in this regard is not binding. He cannot remain oblivious to his lawful obligations under the Code. He is required to constantly remember his duty to the court as well as his duty to the collective.”

10. If we look into the nature of allegations which have been alleged against the respondent-accused what has to be seen is that it clearly reflects to be a case of very serious nature wherein fake coupons were created by the respondent-accused for the purpose of withdrawal of grains from the Fair Price shop and with the said fake and fabricated coupons and seals total 791.97 quintal of grains were lifted. It does not appear to be a case where the allegations levelled seem to have been arisen on account of a political and personal vendetta. Neither is it a case of the prosecution that the charges leveled against the accused persons are in any manner adversely affecting the public policy or is coming in the way of law and order situation.

11. From the bare perusal of the application under Section 321 of CrPC it appears that in the application the sole ground urged by the Public Prosecutor seeking prayer to withdraw the prosecution is the correspondence made by the Law and Legislative Department, Government of Chhattisgarh intimating the District Magistrate for withdrawal of the prosecution in public interest without specifying as to what is the nature of public interest involved in the case and what are the public interests involved which are compelling the State for seeking permission for withdrawal of the prosecution. Further, a perusal of the letter dated 13.4.2012, the letter which is the basis on which the application under Section 321 was moved, also does not reveal the aforesaid details except for the fact that the letter simply depicts a correspondence made by the Additional Secretary, Department of Law and Legislative, Government

of Chhattisgarh written to the District Magistrate of the decision of the State Government wanting for the withdrawal of the prosecution case against the respondent-accused. Surprisingly, in the letter of the State Government the term public interest also is not reflected from the correspondence of the State Government. It only appears to be a decision of the State Government which has been sent to the Magistrate for withdrawal of the prosecution without assigning any reasons whatsoever. In the absence of any justified reasons narrated both in the policy decision of the State Government as also in the application under Section 321, it is hard to believe that there was an occasion as is required for the State Government to grant permission to withdraw the prosecution.

12. For grant of withdrawal of prosecution what is primarily required is that a strong case to be made out to show that in case, if the prosecution is continued the public at large would be adversely affected or at least the entire prosecution and the proceeding would be an empty formality, which again is not the case of the prosecution. Taking into consideration the law laid down by the Supreme Court in the case of *Bairam Muralidhar*, which has been relied upon by the Supreme Court again in the case of **M/s V.L.S. Finance Ltd.** (supra) what clearly reflects is that in exercise of its judicial discretion which has to be exercised while entertaining the application under Section 321 of CrPC it has to be observed by the Court that the grant of consent would normally mean that the Court has to satisfy itself that the executive function of the Public Prosecutor has been properly exercised and that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes. The Court is bound to consider all relevant circumstances and find out whether the withdrawal of the prosecution would advance the cause of justice or it would defeat the interest of justice. The discretion under Section 321 of CrPC has to be

carefully exercised by the Court having due regard of all the relevant facts and shall not be exercised to stifle the prosecution which it appears is being done in the instant case by the aggrieved persons or the State for redressing their grievances. The nature of crime has to be taken into consideration by the Court below. In case, if it is a crime against the society or where the offences are of serious nature, it is the requirement of law that the accused persons are subjected to prosecution and if found guilty they should be punished. Punishing the person who perpetrates crime is an essential requirement for maintenance of law and order and peace in the society. Therefore, the withdrawal of the prosecution can only be permitted when there is a valid reason, explanation and justification by the State in this regard. In the instant case, a perusal of the order of the Law and Legislative Department as also the contents of the application under Section 321 of CrPC do not disclose it to be in public interest. Much less, the State has also not been able to prove before the Court below as to what public interest is involved which compelled the State for ordering the withdrawal of the prosecution.

13. In the aforesaid facts and circumstances of the case, this Court finds that the two Courts below have not committed any error of law or on fact while rejecting the application under Section 321 of CrPC as also while rejecting the revision petition preferred by the State.

14. The Criminal Misc. Petition being devoid of merits the same is accordingly dismissed. No order as to costs.

Sd/-
(P. Sam Koshy)
Judge