

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1302 of 2012

ORDER:

1 Assailing the order, dated 20.06.2012 passed in CrI.M.P.No.478 of 2011 in C.C.No.41 of 2011 on the file of the Court of the II Additional Special Judge for SPE & CBI Cases, City Civil Court, Hyderabad, the accused has filed the present Criminal Revision Case under Sections 397 and 401 Cr.P.C.

2 Sri Hanumantha Reddy, the learned counsel for the petitioner would submit that the trial Court failed to appreciate that the Special Public Prosecutor has filed the petition under Section 321 CR.P.C after satisfying herself objectively with the material available on record. He further submitted that the trial Court dismissed the petition as if the Special Public Prosecutor has not referred the additional material submitted by the accused to the Government, is factually incorrect. He further submitted that the trial Court misconstrued the scope of Section 321 Cr.P.C. and dismissed the petition on erroneous and untenable grounds. It is further submission that the trial Court failed to appreciate that withholding of the relevant material by the investigating officer, which is in favour of the petitioner, itself is sufficient to permit the prosecution agency to withdraw the case and hence it is a fit case to set aside the order of the trial Court while exercising revisional jurisdiction. To substantiate the argument, the learned counsel for the petitioner has drawn my attention to the following decisions:

Sheo Nandan Paswan vs. State of Bihar^[1] wherein the

Hon'ble apex Court held at Para Nos. 70, 71 and 72 as follows:

70. The section gives no indication as to the grounds on which the Public Prosecutor may make the application, or the considerations on which the court is to grant its consent. The initiative is that of the Public Prosecutor and what the court has to do is only to give its consent and not to determine any matter judicially. The judicial function implicit in the exercise of the judicial discretion for granting the consent would normally mean that the court has to satisfy itself that the executive function of the Public Prosecutor has not been improperly exercised, or that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes.

71. The court's function is to give consent. This section does not obligate the court to record reasons before consent is given. However, I should not be taken to hold that consent of the court is a matter of course. When the Public Prosecutor makes the application for withdrawal after taking into consideration all the materials before him, the court exercises its judicial discretion by considering such materials and on such consideration, either gives consent or declines 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 materials available, the order giving consent has necessarily to be upheld.

72. It would be useful to compare the scope of the court's power under Section 321 with some other sections of the Code. There are some provisos in the Code which relate to the manner in which courts have to exercise their jurisdiction in pending cases when applications are made for their withdrawal or when the court finds that there is no ground to proceed with the cases. Sections 203, 227, 245, 257 and 258 are some such sections. Section 203 of Criminal Procedure Code empowers a Magistrate to dismiss a complaint at the initial stage itself if he is of opinion that there is no sufficient ground for proceeding.”

The very same principle is reiterated in ***Name Dasrath vs.***

State of Andhra Pradesh^[2].

Rajender Kumar Jain vs. State through Spl. Police

Establishment and Others^[3] wherein the Hon'ble apex Court held at

Para Nos. 14 and 25 as under:

14. We have referred to the precedents of this Court where it has been said that paucity of evidence is not the only ground on which the public prosecutor may withdraw from the prosecution. In the past, we have often known how expedient and necessary it is in the public interest for the public prosecutor to withdraw from prosecutions arising out of mass agitations, communal riots, regional disputes, industrial conflicts, student unrest etc. Wherever issues involve the emotions and there is a surcharge of violence in the atmosphere it has often been found necessary to withdraw from prosecutions in order to restore peace, to free the atmosphere from the surcharge of violence, to bring about a peaceful settlement of issues and to preserve the calm which may follow the storm. To persist with prosecutions where emotive issues are involved in the name of vindicating the law may even be utterly counter-productive. An elected Government, sensitive and

responsive to the feelings and emotions of the people, will be amply justified if for the purpose of creating an atmosphere of goodwill or for the purpose of not disturbing a calm which has descended it decides not to prosecute the offenders involved or not to proceed further with prosecution already launched. In such matters who but the Government can and should decide, in the first instance, whether it should be baneful or beneficial to launch or continue prosecutions. If the Government decides that it would be in the public interest to withdraw from prosecutions, how is the Government to go about this task?

25. Before bidding farewell to these cases it may be appropriate for us to say that criminal justice is not a plaything and a criminal court is not a playground for politicking. Political fervour should not convert prosecution into persecution, nor political favour reward wrongdoer by withdrawal from prosecution. If political fortunes are allowed to be reflected in the processes of the court very soon the credibility of the rule of law will be lost. So we insist that courts when moved for permission for withdrawal from prosecution must be vigilant and inform themselves fully before granting consent. While it would be obnoxious and objectionable for a Public Prosecutor to allow himself to be ordered about, he should appraise himself from the government and thereafter appraise the court the host of factors relevant to the question of withdrawal from the cases. But under no circumstances should he allow himself to become anyone's stooge.

Jamuna Chaudhary vs. State of Bihar^[4] wherein the Hon'ble apex Court held at Para No.11 as follows:

11. The duty of the Investigating Officers is not merely to bolster up a prosecution case with such evidence as may enable the Court to record a conviction but to bring out the real unvarnished truth.....”

Ashok Tshering Bhutia vs. State of Sikkim^[5] wherein the Hon'ble apex Court held at Para No.44 that:

44. No doubt the prosecution has to establish that the pecuniary assets acquired by the public servant are disproportionately larger than his known sources of income and then it is the public servant to account for such excess.....”

M. Krishna Reddy vs. State Deputy Superintendent of Police, Hyderabad^[6] wherein the Hon'ble apex Court held at Para No.6 as under:

6. An analysis of Section 5(1)(e) of the Act, 1947 which corresponds to Section 13(1)(e) of the new Act of 1988 shows that it is not the mere acquisition of property that constitutes an offence under the provisions of the Act but it is the failure to satisfactorily account for such possession that makes the possession objectionable as offending the law.

State of M.P. vs. Mohanlal Soni^[7] wherein the Hon'ble apex Court held at Para No.7 as under:

7. The crystallised judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for

proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

4 **per** contra, Sri V.Ravikiran Rao, the learned Special Standing Counsel for ACB, Telangana Region submitted that there is no illegality or irregularity in the order passed by the trial Court warranting interference of this Court. He further submitted that the averments made in the petition do not disclose the material basing on which the Special Public Prosecutor filed the petition under Section 321 Cr.P.C. He would further submit that whether the petitioner is in possession of disproportionate assets to the known sources of his income is purely a disputed question of fact, which can be decided after full fledged trial only. He further submitted that the paramount consideration for withdrawal of the case is public interest which is conspicuously absent in the present case. To substantiate the argument, the learned standing counsel has drawn my attention to the following decisions:

Bairam Muralidhar vs. State of Andhra Pradesh^[8] wherein the Hon'ble apex Court held at Para Nos.18 and 19 as under:

18. The central question is whether the Public Prosecutor has really applied his mind to all the relevant materials on record and satisfied himself that the withdrawal from the prosecution would subserve the cause of public interest or not. Be it stated, 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*{(2008) 8 SCC 710}, 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.

19. In the case at hand, as the application filed by the Public Prosecutor would show that he had mechanically stated about the conditions precedent, it cannot be construed that he has really perused the materials and applied his independent mind solely because he has so stated. The application must indicate perusal of the materials by stating what are the materials he has perused, may be in brief, and whether such withdrawal of the prosecution would serve public interest and how he has formed his independent opinion. As we perceive, the learned Public Prosecutor has been totally guided by the order of the Government and really not applied his mind to the facts of the case. The learned trial Judge as well as the High Court has observed that it is a case under the Prevention of Corruption Act. They have taken note of the fact that the State Government had already granted sanction. It is also noticeable that the Anti-Corruption Bureau has found there was no justification of withdrawal of the prosecution.

M. Jagan Mohan Reddy vs. State of Andhra Pradesh^[9]

wherein this Court held at Para No.12 as follows:

12. In the present case, the Public Prosecutor did not file any letter addressed by the Government to him to file an Application along with the G.O., before the Court to enable the Court to give the consent. The Public Prosecutor did not assign any reasons whether in the interest of public the prosecution has to be withdrawn. This is a case where there is an allegation of acceptance of bribe under the Prevention of Corruption Act. The Public Prosecutor did not mention in the Application that there is no likelihood of conviction of the accused from the evidence so far adduced. Neither the Government nor the Public Prosecutor assigned any by reasons and there is no indication in the Application whether the Public Prosecutor has applied his mind. There is an allegation of demanding and accepting bribe against the accused. There is no public interest involved in it. The Government deciding to refer the matter to the Tribunal for Disciplinary Proceedings by itself is not a ground for withdrawal of the case. The Public Prosecutor did not mention how the withdrawal meets the ends of justice, social, economic and political. He also did not mention whether there is any public policy involved in this case and broader public interest like maintenance of law and order, maintenance of public peace and harmony. He also did not mention that the withdrawal of the case against the accused will not stifle or thwart the process of law or cause manifest injustice. There is no indication that the Public Prosecutor considered the material and in good faith reached the conclusion that the withdrawal from the prosecution will serve the public interest. By withdrawing the case, the prosecution should not reward the wrongdoer and if the withdrawal is made on irrelevant considerations, the credibility of the Rule of Law will be lost. The withdrawal can be allowed only in the interest of justice. There are no sufficient circumstances for the Court that the withdrawal of the prosecution against the accused would advance the cause of justice.

In ***S.R. Laxmirajam vs. State of A.P***^[10] this Court held at Para

Nos.11 and 12 as follows:

11. Even if the Government issued the orders, an obligation is cast upon the prosecutor to consider the facts and circumstances independently and impartially and he being a responsible Officer of the Court is required to file a petition in the Court setting out the reasons as to why the prosecution is sought to be withdrawn. In the instant case, the petition filed by the Public Prosecutor do not contain the requisite particulars to show that an impartial and independent decision was taken by the Public Prosecutor in the matter of seeking permission to withdraw the prosecution and that the said withdrawal was within the larger interest of the public.

12. The Court is empowered with the discretion of either giving the consent or refusing to accord permission to withdraw from the prosecution if it is satisfied that the said withdrawal from the prosecution is not in the public interest or will sub serve any of the constitutional obligations of the State. Solemn obligation is cast on the three Agencies to act to uphold the Rule of Law. Deviation if any, should be only in exceptional cases and for the larger good of the society. If a Public Servant is caught red handed demanding and accepting bribe, and if prosecution against such Officer is to be dropped on ground such as retirement on superannuation it will amount to making mockery of the provisions of Prevention of Corruption Act and the provisions of Conduct Rules of Civil Servants.

5 Let me consider the facts of the case in the light of the above legal principle.

6 The inspector of Police, ACB, Karimnagar range, Karimnagar registered a case in Cr.No.5 of 2007 under Sections 13 (2) r/w 13 (1) (e) of the Prevention of Corruption Act in pursuance of the proceedings dated 29.03.2007 vide Rc.No.54/RCA-KNR/2007 issued by the Director General, ACB, A.P, Hyderabad. On 29.03.2007, the ACB officials conducted raid and seized incriminating documents from the possession of the petitioner. The check period relates to 01.07.1991 to 29.03.2007. After completion of the investigation, the investigating officer laid charge sheet alleging that the petitioner is in possession of assets disproportionate to the known sources of his income to a tune of Rs.31,14,035/-. The learned Special Judge has taken the case on file under Sections under Sections 13 (2) r/w 13 (1)

(e) of the Prevention of Corruption Act and numbered it as C.C.No.41 of 2011. Basing on the material available on record, the trial Court framed charges. While so, the petitioner submitted a representation to the Government on 12.06.2009 and the Government issued G.O.Ms.No.696 (Municipal Administration & Urban Development VIG. IV) Department dated 03.12.2009 for withdrawal of the prosecution. Basing on the above G.O., the Special Public Prosecutor filed CrI.M.P.No.478 of 2011 under section 321 Cr.P.C for withdrawal of the main case. The trial Court, after considering the material available on record, arrived at a conclusion that it is not a fit case to permit the prosecution to withdraw the case and dismissed the petition. Hence the present Criminal Revision Case by the accused.

7 The predominant contention of the learned counsel for the petitioner is that the investigating officer had intentionally withheld the documentary evidence which is in favour of the petitioner, which eventually forced the petitioner to face the rigour of trial even though he is not in possession of assets disproportionate to the known sources of his income. Whether the investigating officer has withheld the necessary documents or not is purely a question of fact, which cannot be gone into while exercising revisional jurisdiction by this Court. Suffice it to say that the Court cannot express any opinion on annexures I to IV without scrutinizing and considering their probative value. If this Court expresses any opinion touching the merits of the documents, undoubtedly, the same would cause prejudice to either of the parties to the proceedings. Therefore, this court is not inclined to

express any opinion on these documents in view of the pendency of the main case. Therefore, the decision relied upon by the learned counsel for the petitioner in Jamuna Chaudhary case (4 supra) is no way helpful to the petitioner.

8 The other contention of the learned counsel for the petitioner is that mere acquisition of property does not constitute an offence under the provisions of the Prevention of Corruption Act. As rightly pointed out by the learned counsel for the petitioner the burden of proof lies on the prosecution to establish that the assets acquired by the public servant are disproportionately larger than the known sources of his income. The investigating officer, basing on the material collected by him, prima facie satisfied that the petitioner committed the alleged offence punishable under Sections 13 (2) r/w 13 (1) (e) of the Prevention of Corruption Act. It may not be possible for the prosecution to establish that the petitioner is in possession of assets disproportionate to his known sources of income without conducting trial. During the course of enquiry the petitioner can establish his stand by eliciting necessary information or truth from the prosecution witnesses. The decisions cited by the learned counsel for the petitioner are no way helpful to the petitioner as trial has not yet commenced in this case.

9 The petitioner did not choose to file the petition before the trial Court for discharge. The trial Court after affording a reasonable opportunity to both parties framed charges against the petitioner for

the offences punishable under Sections 13 (2) r/w 13 (1) (e) of the Prevention of Corruption Act. It is an admitted fact that the petitioner did not file revision challenging the framing of charges by the trial Court. It is not in dispute that the trial Court framed charges before filing of the petition under Section 321 Cr.P.C. The decision cited in Mohanlal Soni case (7 supra) deals with framing of charge. In the instant case, as observed earlier, the trial Court had already framed charge, therefore, this decision is also no way helpful to substantiate the case of the petitioner.

10 The crucial question that falls for consideration is whether the Special Public Prosecutor has assessed the material available on record objectively and came to an independent decision that it is a fit case for withdrawal of prosecution. Section 321 Cr.P.C. mandates two things viz., 1) The Public Prosecutor is entitled to file an application for withdrawal of prosecution, and 2) the Court may or may not give its consent for withdrawal of prosecution. In ***Bansi Lal Vs. Chandan Lal***^[11] the Hon'ble apex Court held at Para No.4 as follows:

4. Section 321 of the Code of Criminal Procedure, 1973 which corresponds to Section 494 of the earlier Code of 1898 and is in identical terms empowers the Public Prosecutor to withdraw with the consent of the court from the prosecution of any person either generally or in respect of any one or more of the offences for which he is being tried. Section 494 of the Code of 1898 has been construed by the different High Courts in a number of cases. This Court in *M.N. Sankarayan Nair v. P.V. Balakrishnan* {(1972) 1 SCC 318} explaining the well-established legal position as to the scope and ambit of the powers granted by Section 494 has observed that though the section “does not circumscribe the powers of the Public Prosecutor to seek permission to withdraw from the prosecution, the essential consideration which is implicit in the grant of the power is that it should be in the interest of administration of justice....”

Though it is not possible to catalogue all the circumstances in which this power can be exercised, by way of illustration *M.N.S. Nair case* mentions a few instances where the Public Prosecutor would be apparently justified in

seeking such permission, as in a case where the prosecution

“will not be able to produce sufficient evidence to sustain the charge or that subsequent information before prosecuting agency would falsify the prosecution evidence or any other similar circumstances.”

It is added that the request to grant permission under Section 494 should not be accepted “as a necessary formality”, “for the mere asking”, but the court must be satisfied “on the materials placed before it” that the grant of permission would serve the administration of justice and that

“permission was not being sought covertly with an ulterior purpose unconnected with the vindication of the law which the executive organs are in duty bound to further and maintain.”

11 The principle enunciated in the above case is that the paramount consideration for grant of permission to withdraw the prosecution is that it should be in the interest of administration of justice or that the prosecution will not be able to produce sufficient evidence to sustain the charge or that the subsequent information before the prosecuting agency would falsify the prosecution evidence or any other similar circumstances.

12 A perusal of the G.O.Ms.No.696 dated 03.12.2009 discloses that basing on the representation made by the petitioner, the Government was inclined to accept the request of the petitioner to withdraw the prosecution against him. A perusal of the G.O. reveals that the savings of the petitioner are not correctly reflected in the charge sheet, which resulted in taking cognizance by the Special Court.

13 I have carefully scanned the petition filed before the trial Court in the light of the **Bansi Lal case** (11 supra) in order to ascertain whether basing on which material the Special Public Prosecutor has satisfied herself objectively, thereby, has taken an independent decision *dehors* the G.O.Ms.No.696. There is no indication in the

petition that the Special Public Prosecutor had perused the representation of the petitioner to file the application under Section 321 Cr.P.C. The Special Public Prosecutor has to meticulously scrutinize the additional material, if any, placed before him apart from the recitals of the charge sheet in order to ascertain whether the filing of petition for withdrawal of prosecution subserve the ends of justice. Public interest is the paramount consideration for withdrawal of the case. It is needless to say that individual interest cannot be equated with public interest. It is a settled principle of law that if there is a conflict between individual interest and public interest, the Court has to give due weight to or tilt towards public interest. What is public interest? There is no straight jacket formula to define public interest. The word 'public interest' many a times depends upon factual scenario of that particular case as well as the circumstances under which the accused was prone to commit the offence alleged. In all probabilities the accused must commit the offence not for any personal gain coupled with any justifiable cause, then it can be said that public interest is involved. The absence of *mens rea*, carried away by emotions or ill-feelings may be one of the grounds for withdrawal of the prosecution. Section 321 Cr.P.C. can be pressed into service only to secure the ends of justice. The Public Prosecutor has to satisfy himself with the material placed before him that some injustice is being done to the accused due to the laches on the part of the investigating agency. In the instant case, there is no mention in the petition that the learned Public Prosecutor prima facie satisfied

herself that the petitioner is not in possession of assets disproportionate to his known sources of income. Without such a pleading in the petition, how the Public Prosecutor independently came to a conclusion that it is a fit case for withdrawal of prosecution is not properly explained. By any stretch of imagination, it cannot be said that mere using of phraseology in the petition would amount application of mind by the Special Public Prosecutor to the facts of the case. Nowhere it is mentioned in the petition that it is filed in the interest of public. A perusal of the record clinchingly establishes that the Special Public Prosecutor has not applied her mind independently to the material available on record and it appears that she had simply filed the petition in view of the G.O.Ms.No.696 dated 03.12.2009.

14 It is not in dispute that the petitioner is facing trial for the offences punishable under Sections 13 (2) r/w 13 (1) (e) of the Prevention of Corruption Act. In order to appreciate the stand of the Government, it is apposite to extract hereunder the relevant portion of the said G.O.

“Having regard to the circumstances stated above, Government hereby order to withdraw the prosecution against Sri R.Bal Reddy, Bill Collector, Karimnagar Municipal Corporation and to initiate departmental enquiry on the allegation of possession of disproportionate assets and also violation of the APCS (Conduct) Rules, 1964.”

15 The above said Para consists of two things – first one is withdrawal of the criminal case against the petitioner and the second one is initiation of departmental enquiry against the petitioner on the allegation of possession of disproportionate assets and also violation

of A.P.C.S (Conduct) Rules, 1964. If really the Government has satisfied itself that the petitioner has not committed the offence under the provisions of the Prevention of Corruption Act, what prompted it to initiate departmental enquiry against the petitioner? It is needless to say that initiation of departmental enquiry against the petitioner by itself is not a legally valid ground to withdraw the prosecution. The Public Prosecutor has not expressed any opinion with regard to the stand taken by the Government in Para No.5 of the G.O. This itself clearly indicates that the Special Public Prosecutor has not applied her mind independently. Taking of the independent decision by the Public Prosecutor in the public interest is *sine qua non* to file application under Section 321 Cr.P.C. The Parliament in its wisdom incorporated Section 321 Cr.P.C to protect the innocent persons who were falsely implicated in criminal cases to take political vengeance by the party in power or to protect the persons who indulge in criminal cases due to emotions or under the bonafide belief of fighting for a common cause. In the absence of public interest or public justice pressing into service Section 321 Cr.P.C leads to abuse of process of law, which is against the spirit of the constitution. The trial Court bestowed its attention to the core issue and arrived at a conclusion that the Special Public Prosecutor has not explained how she was satisfied that it is in the interest of public to withdraw the case against the petitioner. I am fully agreeing with the findings recorded by the trial Court. This Court shall not lightly interfere with the orders of the trial Court while exercising revisional jurisdiction. No doubt, this

Court can interfere with the orders of the Court below if there is any irregularity or illegality and only in such circumstances the orders can be set aside. In the instant case, there is no irregularity or illegality in the order passed by the trial Court warranting interference of this Court.

16 For the above discussion, I see no merits in this revision and accordingly this revision case is dismissed as devoid of merit. It is needless to say that any observations made by this Court are confined only to the disposal of this revision which arose on the order passed by the trial Court in CrI.M.P.No.478 of 2011 and hence the trial Court is hereby directed to dispose of the main case in accordance with law without being influenced by any of the observations made by this Court. As a sequel, the miscellaneous petitions, pending in this Criminal Revision Case, if any, shall stand closed.

T. SUNIL CHOWDARY, J

Date: 15th July, 2016

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[\[1\]](#) AIR 1987 SC 877

[\[2\]](#) (2014) 10 SCC 395

[\[3\]](#) AIR 1980 SC 1510

[\[4\]](#) AIR 1974 SC 1822

[\[5\]](#) (2011) 4 SCC 402

[\[6\]](#) AIR 1993 SC 313

[\[7\]](#) (2000) 6 SCC 338

[\[8\]](#) (2014) 10 SCC 380

[\[9\]](#) 2007 (2) ALT (Cri) 325 (A.P.)

[\[10\]](#) 2015 (3) ALT (CrI.) 339 (A.P)

[\[11\]](#) AIR 1976 SC 370