

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No.92 of 2013

Vijay Kumar Mishra, S/o Shishupal Mishra, aged about 47 years,
Occupation Agriculture, R/o Village Kolaibahaal Jamgaon, Thana
Chakradhar Nagar, Tahsil & District Raigarh (C.G.)

(Applicant)
---- Petitioner

Versus

State of Chhattisgarh, Through S.H.O., Police Station Chakradhar
Nagar, Raigarh, District Raigarh (C.G.)

(Non-applicant)
---- Respondent

Writ Petition (Cr.) No.95 of 2013

Bharat Agrawal, S/o Vijay Agrawal, aged about 32 years, R/o
Near Water Tank, Opposite of P.H.E. Office, Chakdradhar Nagar,
Thana Chakradhar Nagar, Raigarh, Tahsil & District Raigarh
(C.G.)

(Applicant)
---- Petitioner

Versus

State of Chhattisgarh, Through S.H.O., Police Station Chakradhar
Nagar, Raigarh, District Raigarh (C.G.)

(Non-applicant)
---- Respondent

Writ Petition (Cr.) No.107 of 2013

1. Suryakant @ Suryaprakash Tripathi, S/o Nilamber Tripathi, aged about 42 years, R/o Village Loing, Thana Chakradhar Nagar, Raigarh, Tahsil & District Raigarh (C.G.)
2. Rajesh Agrawal, S/o Babulal Agrawal, aged about 44 years, R/o Village Kolaibahal, Post Office Jamgaon, Thana Chakradhar Nagar, Raigarh, Tahsil & District Raigarh (C.G.)
3. Umesh Agrawal, S/o Late Laxmi Narayan Agrawal, aged about 48 years, R/o Village Mahapalli, Post Office Loing, P.S., Tahsil & District Raigarh (C.G.)
4. Suresh Agrawal, S/o Kishanlal Agrawal, aged about 48 years, R/o Behind City Kotwali, Danipara, Thana City Kotwali, Raigarh,

- Tahsil & District Raigarh (C.G.)
5. Akhilesh Gupta, S/o Minketan Gupta, aged about 32 years, R/o Village Loing, Thana Chakradhar Nagar, Raigarh, Tahsil & District Raigarh (C.G.)
- (Applicants)
---- Petitioners

Versus

State of Chhattisgarh, Through S.H.O., Police Station Chakradhar Nagar, Raigarh, District Raigarh (C.G.)

(Non-applicant)
---- Respondent

Writ Petition (Cr.) No.108 of 2013

Manish Agrawal, S/o Ramawatar Agrawal, aged about 38 years, R/o Village Mahapalli, P.O. Loing, Thana Chakradhar Nagar, Raigarh, Tahsil & District Raigarh (C.G.)

(Applicant)
---- Petitioner

Versus

State of Chhattisgarh, Through S.H.O., Police Station Chakradhar Nagar, Raigarh, District Raigarh (C.G.)

(Non-applicant)
---- Respondent

AND

Writ Petition (Cr.) No.159 of 2014

Pankaj Agrawal, S/o Late Shri Om Prakash Agrawal, aged about 32 years, R/o Danipara, In front of Rehman Advocate, Raigarh, Police Station City Kotwali, Raigarh (C.G.), Civil & Revenue District Raigarh (C.G.)

(Applicant)
---- Petitioner

Versus

State of Chhattisgarh, Through Police Station Chakradhar Nagar, District Raigarh (C.G.)

(Non-applicant)
---- Respondents

For Petitioners:	Mr. Mateen Siddiqui, Mr. R.K. Pali and Mr. Vikram Sharma, Advocates.
For State/Respondent:	Mr. Arun Sao, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

17/04/2017

1. Since all the above writ petitions involve common question of fact and law, they are being disposed of by this common order.
2. The petitioners herein are accused persons who are calling in question the revisional order passed by the revisional Court whereby the revisional Court has affirmed the order by which the application under Section 321 of the CrPC for withdrawal from prosecution has been rejected by the jurisdictional criminal Court.
3. Learned counsel appearing for the petitioners would submit that the trial Court has merely influenced itself on the ground that the petitioners were not appearing before the trial Court and they are powerful persons, whereas, the requirement of Section 321 of the CrPC has not been considered taking into account while considering the application under Section 321 of the CrPC. Therefore, the impugned orders be set aside.
4. On the other hand, learned State counsel would submit that the State has on the larger public interest decided to withdraw from the prosecution.
5. I have heard learned counsel for the parties and perused the record.
6. Section 321 of the CrPC provides 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 under 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.”

7. The nature and scope of Section 321 of the CrPC has been considered time to time by Their Lordships of the Supreme Court in umpteen number of cases.

8. Way back in the year 1987, the scope and ambit of Section 321 of

the CrPC has been considered by the Supreme Court in the matter of **Sheonandan Paswan v. State of Bihar and others**¹

and it has been observed by Their Lordships 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

¹ (1987) 1 SCC 288

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 essentially in an adjudicatory manner, the grant of consent 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.”

9. Thereafter, in the matter of **Ghanshyam v. State of M.P.**², it has been held by Their Lordships of the Supreme Court that the discretion to withdraw from prosecution is that of Public Prosecutor and none else, he may withdraw from prosecution not merely on ground of paucity of evidence but on other relevant factors as well as in order to further the broad ends of justice, public order, peace and tranquility.

10. Further, in the matter of **Balwant Singh v. State of Bihar**³, it has been by the Supreme Court as under: -

“The statutory responsibility for deciding upon withdrawal squarely vests in the Public Prosecutor. It is non-negotiable and cannot be bartered away 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.”

11. Applying the principles of law laid down in the afore-cited decisions of the Supreme Court and also applying the provisions

2 (2006) 10 SCC 473

3 (1977) 4 SCC 448

of Section 321 of the CrPC, it appears that the Public Prosecutor after receipt of the order / decision from the State Government decided to withdraw from the prosecution after examination of the case. The Public Prosecutor after examining the facts of the case and recording satisfaction, considering it in broader public interest and ends of justice, moved an application before the trial Court. It clearly records that it will not damage the public interest, rather it will further the public interest. The said application was required to be examined by the trial Court in view of Section 321 of the CrPC as interpreted by the Supreme Court in **Sheo Nandan Paswan** (supra), **Ghansyam** (supra) and **Balwant Singh** (supra). But the trial Court influenced itself with the fact that the petitioners are not cooperating in the trial and they are influential persons and decided to reject the application and accordingly, rejected the same which in my considered opinion cannot be the ground to reject the application, the statutory application was required to be examined in the light of the statutory provisions as well as the principles of law enunciated by the Supreme Court on that issue, which was not done by the trial Court as well as by the revisional Court.

12. Accordingly, the impugned revisional order as well as the order passed by the jurisdictional criminal Court rejecting application under Section 321 of the CrPC are hereby quashed. The said applications are restored to the Board of the said Court for hearing and disposal in accordance with law and in view of what

has been mentioned herein-above viz., Section 321 of the CrPC
and decisions of the Supreme Court.

13. The writ petitions are allowed to the extent indicated herein-above
leaving the parties to bear their own costs.

Sd/-
(Sanjay K. Agrawal)
Judge

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