

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRR No.2379 of 2010 (O&M)
Date of Decision: August 03, 2017**

Maghar Singh

...Petitioner

VERSUS

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.T.S.Sangha, Senior Advocate with
Mr.J.S.Lalli, Advocate
for the petitioner.

Mr.A.S.Dhaliwal, Deputy Advocate General, Punjab
for the respondent-State.

Mr.A.P.S.Deol, Senior Advocate with
Mr.Karan Jindal and Mr.R.V.S.Chugh, Advocates
for respondents No.2 to 5 and 7 to 11.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Maghar Singh against State of Punjab and other respondents, challenging the impugned order dated 05.12.2009 passed by learned Addl. Sessions Judge, Mansa, vide which the application filed by learned Addl. PP for the State under Section 321 Cr.P.C. for withdrawal of the case from prosecution, was allowed.

Notice of motion was issued.

Learned State counsel as well as learned counsel for

respondents No.2 to 5 and 7 to 11 appeared and contested the petition.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that during the pendency of the trial in case FIR No.199 dated 17.10.2002 under Sections 420, 468 and 120-B IPC registered against Dalip Singh and others, an application under Section 321 Cr.P.C. was filed for withdrawal of the case from prosecution by learned Addl. Public Prosecutor for the State. Learned trial Court noted down the facts given in the application as under:-

“2. The application under consideration has been moved by learned Addl.PP for the State on the averments that the case was registered on the basis of application of Maghar Singh son of Chanan Singh. As per allegations, Maghar Singh was President of Khalsa High School, Mansa. On 28-6-2001, accused Dalip Singh, Advocate made fictitious committee and thereafter gave the power of correspondent. Thereafter, this fictitious committee of the school appointed employees in the school after taking bribe from them and obtained the rent of the shops of school. Grant of Rs.5,00,000/- was obtained from Sh.Parkash Singh Badal. Shops were illegally constructed in the school. Suspended employees of the school were reinstated after taking bribe. They were given benefit of pension. In this way, this fictitious committee embezzled an amount of Rs.20-22 lac and formed properties. This committee consisted of 12 members namely Harbans Singh, Advocate, Jagjit Singh, Advocate, Dalip Singh, Sukhdev Singh, Narinder Pal Danewalia, Advocate, Kuldip Singh, Sukhdev Singh Mann, Harcharan Singh Sahu, Malkiat Singh Bhapla, Sukhchain Singh, Manjit Singh Sukhwinder Singh Aulakh. Maghar Singh, complainant also alleged that this committee in connivance with DEO Smt.Bhupinder Kaur constituted fictitious committee and embezzled an amount to the tune of Rs.20-22 lac. No record was collected during the investigation to prove that the rental amount or amount of donation embezzled by the accused. No receipt regarding entrustment of rental amount was collected during investigation. The Headmaster of the school vide his letter No.132 dated 22-3-2002 issued utilization certificate of the grant of Rs.5,00,000/- sanctioned by the Chief Minister. So much so, no employee has supported the allegation with regard to obtaining any bribe money from them for making any appointment etc. by any member of the Managing Committee. The statements of Surinder Singh, Panch and Gurdas Singh, Sarpanch are also not worthy of

credence. Review committee was constituted by the Government under the Chairmanship of District Magistrate, Mansa. The fact of the case and evidence collected during investigation was considered by the said committee and it was recommended that the case is fit for withdrawal from prosecution in the public interest. The recommendations of the Review Committee were considered by the government and it was found in the public interest, even by the Government to withdraw the case from prosecution. The recommendation of the government issued vide memo No.7/18/7-2-Judl.(I) endorsed to District Attorney, Mansa, vide No.7/18/7-2-Judl. (1) 2640 dated 16-8-2007 has been received. The disputed pertains to management and control of privately aided school. Due to this dispute, imparting education to the young kids is being affected and their careers are at stake. The proceedings in the present case if allowed to continue would not serve any public purpose, rather the public purpose will be defeated and result in further differences within two working factions. It would be expedient in the interest of justice, peace and tranquility that this dispute is brought to an end and to bring harmony between the parties and for the betterment of institution which imparts education to the students of this backward area. Moreover, the case is at charge stage and even charge sheet has not been framed. No useful purpose would be served by putting to all accused to trial since all the accused in this case are not public servant except DEO, who is a public servant. The provisions of Prevention of Corruption Act could not be made applicable to them. I have also applied my mind independently to the facts of the case and evidence on the file and have come to the conclusion that there is paucity of evidence which would not be sufficient to warrant conviction and it is in the public interest to withdraw the case from prosecution.”

Learned Addl. Sessions Judge, Mansa, after giving notice and taking reply from the complainant and after discussing the law laid down by various Courts, allowed the application vide impugned order dated 05.12.2009. Aggrieved from this order, present revision petition has been filed.

The perusal of the impugned order shows that this order has been passed as per law. First of all, as discussed by learned Addl. Sessions Judge, Mansa, it is only for the public prosecutor to file an application for

withdrawal from the prosecution under Section 321 Cr.P.C. It is discussed in the order by citing the law that complainant and the witnesses need not to be heard in the application as held in ***Razack vs. State of Kerala, 2001(1) RCR (CrL) 189***, wherein, it is specifically held that under the provisions of Section 321 Cr.P.C., when the Public Prosecutor applies for withdrawal from prosecution, the complainant or the charge witnesses have no locus standi in the exercise of the discretion by the Public Prosecutor to withdraw from prosecution. In other case, ***Saramma Peter vs. State of Kerala, 1991 (1) KLT 881***, it is again held that there can be no doubt that only the Public Prosecutor or the Assistant Public Prosecutor in charge of the case and none else, with the consent of the Court, could apply for withdrawal from prosecution. He is not expected to act according to the instructions of the complainant but is the sole Judge.

Learned trial Court further held that the Court **is not to weigh the evidence for the purpose of conviction or prima facie case etc. and if the Public Prosecutor after applying its mind has applied for withdrawal from prosecution, the Court is to give its consent.** It is also held in ***National Capital Territory of Delhi vs. Preet Public Secondary School, 1998(2) RCR 652*** that public prosecutor upon the request of the government on applying his mind to the relevant material can make the application for withdrawal of the prosecution, even though a prima facie case is made out against the accused.

The objection of learned counsel for the petitioner is that learned Addl. Public Prosecutor has taken into consideration the report of Review Committee also. The perusal of the application shows that Public

Prosecutor has also gone through the record and has applied its mind

independently. Otherwise also, even Public Prosecution can apply its mind on the recommendation of the Government. There is no illegality in the same. It is also discussed in the order that the Court is only to give the consent and not to determine any matter judicially as held in ***Ranjit Kaur vs. Manwinder Singh and another, 2005(1) RECR 708***. The Court can look into the matter only for the purpose that function of Public Prosecutor has not been improperly exercised or that it is not an attempt to interfere with the normal course of justice for illegitimate reason or purpose.

The perusal of the record shows that the impugned order dated 05.09.2012 passed by learned Addl. Sessions Judge, Mansa, is correct, as per law and does not require any interference from this Court. No illegality has been committed while passing the impugned order.

Therefore, finding no merit in the present revision petition, the same is dismissed.

August 03, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No