

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRR No. 263 of 2019**

- Purendra Sahu & Others

**---- Applicant**

**Versus**

- State Of Chhattisgarh

**---- Respondent**

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**Post for pronouncement of the order on 09.08.2019**

**JUDGE**

**Sd/-**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Judgment reserved on : 18.07.2019**

**Judgment delivered on : 09.08.2019**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRR No. 263 of 2019**

- Purendra Sahu S/o Tejram Sahu Aged About 41 Years R/o Village- Umarpoti, Post- Purai, Police Station- Utai, District- Durg, Chhattisgarh.
- Parmeshwar Mahilange S/o Late Daulal Aged About 49 Years R/o Ward No. 60, Risali Basti, District- Durg, Chhattisgarh.,
- Ramsingh @ Sonu S/o Gurunaam Singh Aged About 42 Years R/o 216/g, Risali Sector Bhilai, District- Durg, Chhattisgarh.,

**---- Applicants**

**Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station- Navai, District- Durg, Chhattisgarh.

**---- Respondent**

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| For Applicants       | : Shri Ashish Shukla, Advocate |
| For Respondent/State | : Shri I.Lakra, Dy.GA          |

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**Hon'ble Smt. Justice Rajani Dubey**

**C A V Order**

**09/08/2019**

Present revision arises out of the order dated 07.01.19 passed by the learned 8<sup>th</sup> Additional Sessions Judge, Durg in S.T. No. 103/2016 whereby the learned Sessions Judge rejected the application filed by the public prosecutor under Section 321 seeking withdrawal from prosecution.

2. Brief facts of the case are that police station Newai, district Durg filed charge sheet under Section 173(4) of the Code of Civil Procedure against the applicants/accused under Sections 186, 353, 332, 333, 323, 294, 506-B, 147, 149 & 114 IPC. Learned Chief Judicial Magistrate, Durg committed the case to the learned Sessions Court, Durg who again made over the case to the 8<sup>th</sup> Additional sessions Judge, Durg who framed charges under Sections 147,294,333/149 and 506-B IPC and the case was fixed for prosecution evidence.

3. The public prosecutor filed application for permission to withdraw the prosecution on 30.11.18. Learned Sessions Judge by order dated 07.01.19 dismissed the application. Hence, this revision.

4. Counsel for the applicant submits that the court below is arbitrary, illegal and contrary to law as well as facts and circumstances of the case. Learned court below committed error by ignoring the nature and scope under Section 324 o the Cr.P.C. in its proper perspective. It has also committed an error by ignoring the judgment which was passed by the constitution Bench of the Apex Court in the matter of **Sheoanand Paswan Vs. State of Bihar and Others reported in AIR 1987 (1) SCC 283**. The court below has ignored the law laid down by the Apex Court in the matter of **S.K.Shukla Vs. State of UP** reported in **2006(1) SCC 314**; **Rahul Agrawal Vs. Rakesh Jain**, reported in **2005 (2) SCC 377** and **M. K. Ambajahagaon Vs. Superintendent of Police** reported in **2004 (3) SCC 777**. He further submits that the learned court below by ignoring the continuance of the prosecution by the petitioner has abused the process of law. So the order dated 07.1.17 be set aside and the applicants may be discharged from all the charges.

5. On the other hand, State counsel supports the order impugned.

6. I have heard counsel for the parties and considered the rival submissions made therein and perused the records.

7. In order to consider the plea raised at bar, it would be necessary to bear in mind the wide phraseology used in it, the scheme behind it and its field of operation. It is true that it does not given any guideline regarding the grounds on which an application for withdrawal can be made. But in applying it we have to bear in mind that it was enacted with a specific purpose and it would be doing violence to its language and contents by importing into the section words which are not there or by restricting its operation by fetters in the form of conditions and provisos. Section 321 Cr.P.C. reads as under:

“321. Withdrawal from prosecution: The public prosecution or Assistant Public Prosecutor in charge of a case may, with the consent of the Court, at an time before the judgment is pronounced withdraw from the prosecution of any person either generally or in respect of anyone 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.

8. Apex Court in the matter of Rajendra Kumar Jain Vs. State of Bihar reported in AIR 1980 SC 1510 wherein their Lordships pertinently held as under :

“13. Thus from the precedents of this Court, we gather;

1. Under the scheme of the Code prosecution of an offender for a serious offence is primarily the responsibility of the Executive.
2. The withdrawal from the prosecution is an executive function of the Public Prosecutor.
3. The discretion to withdraw from the prosecution is that of the Public Prosecutor and none else, and so, he cannot surrender that discretion to someone else.
4. The Government may suggest to the Public Prosecutor that he may withdraw from the prosecution but none can compel him to do so.
5. The Public Prosecutor may withdraw from the prosecution not merely on the ground of paucity of evidence but on other relevant grounds as well in order to further the broad ends of public justice, public order and peace. The broad ends of public justice will certainly include appropriate social, economic and, we add, political purposes Sans Tammany Hall enterprise.
6. The Public Prosecutor is an officer of the Court and responsible to the Court.
7. The Court performs a supervisory function in granting its consent to the withdrawal.
8. The Court's duty is not to re appreciate the grounds which led the Public Prosecutor to request withdrawal from the prosecution but to consider whether the Public Prosecutor applied his mind as a free agent, uninfluenced by irrelevant and extraneous considerations. The Court has a special duty in this regard as it is the ultimate repository of Legislative confidence in granting or withholding its consent to withdrawal from the prosecution."

This Court has also taken similar stand in Cr.M.P. No. 384/2014 (Sushant Shukla Vs. State of CG and Others) and Cr.M.P. No. 939/2014 (State of Chhattisgarh Vs. Sushant Shukla and Others).

9. In the present case, this Court examined the principles laid down by the Apex Court. It is clear that the Public Prosecutor made application seeking leave for withdrawal of prosecution stating inter alia that State Government has decided to withdraw the criminal case in the public interest and in such case he may be granted leave to withdraw. In Sheonandan Paswan Vs. State of Bihar & Others, the Apex Court has held thus:

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.

10. The discretion in such matters is necessarily exercised only with reference to such material as is by then available and it is not a prima facie judicial determination of any specific issue. In the light of the decisions of the Apex Court and that of the High Court, it is clear that the power of the court under Section 321 Cr.P.C. is very limited. Judgment of public prosecutor under Section 321 Cr.P.C. cannot be lightly interfered unless the court comes to the conclusion that he has not applied his mind or that his decision is not bonafide.

11. In the present case, it is clear that the State Government has decided to withdraw the prosecution and therefore, public prosecutor

had filed the application for withdrawal. Learned trial court observed that the district magistrate is not recommended for withdrawal but the recommendation was done to withdraw by the letters of Joint Collector and Deputy Secretary (Home) Annexure-P/2 and P/3 and thereafter the public prosecutor has filed the application under Section 321 Cr.P.C. Thus, in the considered opinion of this court that the order dated 01.12.18 deserves to be set aside and the application filed by the public prosecutor dated 01.12.18 for withdrawal of the prosecution is allowed.

12. Prosecution is permitted to withdraw criminal case pending in the court of 8<sup>th</sup> Additional Sessions Judge, Durg against the applicants. Accordingly, the revision is allowed.

Sd/-

(Rajani Dubey)  
Judge