**THE HONOURABLE JUSTICE G. SRIDEVI**

**CRIMINAL REVISION CASE No.832 of 2019**

**ORDER** :

1. The present Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. aggrieved by the order, dated 15.04.2019, passed in Crl.M.P.No.239 of 2019 in C.C.No.42 of 2016 on the file of the I-Additional Special Judge for S.P.E. and A.C.B. Cases-cum-V Additional Chief Judge, City Civil Court, Hyderabad, wherein and whereunder an application filed by the respondent/complainant under Section 321 Cr.P.C., seeking permission to withdraw the prosecution case against the revision petitioner/AO, was dismissed.

2. The facts in issue are as under:

The revision petitioner/accused officer, who was working as Deputy Executive Engineer, Greater Hyderabad Municipal Corporation, Hyderabad, has been prosecuted for the offences under Section 13 (1) (e) read with Section 13 (2) of Prevention of Corruption Act, 1988 on the allegation of possessing assets disproportionate to the known sources of income. During the course of investigation, it revealed that he was found in possession of assets to a tune of Rs.88,57,786/- as on the terminal date of check period. During the check period, his legal income from known sources was calculated at Rs.66,02,914/-, his expenditure was estimated at Rs.49,45,406/- and his likely savings was at Rs.16,57,508/-. Thus, the petitioner/accused officer was found in possession of assets disproportionate to known sources of his income to a tune of Rs.72,00,278/-, for which he could not explain satisfactory. Hence, the Government accorded sanction for prosecution of the revision petitioner/AO vide G.O.Ms.No.110, dated 21.04.2016, Municipal Administration and Urban Development (VIG.I) Department.

Pending trial, the revision petitioner/accused officer submitted a representation dated 15.11.2017 to the Government, stating that the Director General, Anti Corruption Bureau, Hyderabad, has not considered his additional income of Rs.1,22,67,914/- (salary and others Rs.66,92,914/-, additional income, rental, sale proceeds, wife salary, loan from Credila of HDFC and other hand loans of Rs.55,75,000/-) and requested to withdraw the prosecution orders and to drop further action in the matter. Considering the material facts, the Government reviewed its decision and decided to withdraw the prosecution orders issued in G.O.Ms.No.110 dated 21.04.2016 and accordingly withdrawn the prosecution orders issued against the revision petitioner/AO, vide G.O.Rt.No.676 dated 29.08.2018, and requested the Director General, Anti Corruption Bureau, Telangana State to take necessary action. Thereafter, the prosecution moved the application under Section 321 Cr.P.C., seeking consent of the Court for withdrawal of the prosecution case against the revision petitioner/AO. By an order, dated 15.04.2019, the learned I-Additional Special Judge, dismissed the said application. Challenging the same, the present Criminal Revision Case is filed.

Heard learned Counsel for the revision petitioner/AO and learned Special Public Prosecutor for ACB Cases appearing for the respondent/complainant.

Before proceeding further, it would be appropriate to refer to Section 321 of Cr.P.C., which reads as under:

> Section 321 of Cr.P.C.: 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,-
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> (a) If it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;
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> (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. (Proviso omitted)

This Section enables the Public prosecutor, in charge of the case to withdraw from the prosecution of any person at any time before the judgment is pronounced, but this application for withdrawal has to get the consent of the court and if the court gives consent for such withdrawal the accused will be discharged if no charge has been framed or acquitted if charge has been framed or where no such charge is required to be framed. It clothes the Public Prosecutor to withdraw from the prosecution of any person, accused of an offence either when no evidence is taken or even if entire evidence has been taken. The outer limit for the exercise of this power is "at any time before the judgment is pronounced".

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.

The Court's function is to give consent. This section does not obligate the court to record reasons before consent is given. However, it 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.

In the case of ***State of Bihar Vs. Ram Naresh Pandey***[1], the functions of the Court and the Public Prosecutor have been correctly outlined. While discussing the role of the court the Hon'ble Supreme Court has held in paragraph 92 as under:-

> " His discretion in such matters has necessarily to be exercised with reference to such material as is by then available and it is not a prima facie judicial determination of any specific issue. The Magistrate's functions in these matters are not only supplementary, at a higher level, to those of the executive but are intended to prevent abuse. Section 494 requiring the consent of the court for withdrawal by the Public Prosecutor is more in line with this scheme, than with the provisions of the Code relating to inquiries and trials by court. It cannot be taken to place on the court the responsibility for a prima facie determination of a triable issue. For instance the discharge that results therefrom need not always conform to the standard of "no prima facie case" under Sections 209(1) and 253(1) or of 'groundlessness' under Section 209(2) and 253(2). This is not to say that a consent is to be lightly given on the application of the Public Prosecutor, without a careful and proper scrutiny of the grounds on which the application for consent is made".

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[1] AIR 1957 SC 389

The Hon'ble Supreme Court in the Case of ***State of Orissa Vs. Chandrika Mohapatra and Others***[2] again considered the principles laid down in Ram Naresh Pandey Case (Supra) and held as under:

> "In understanding and applying the section, two main features thereof have to be kept in mind. The initiative is that of the Public Prosecutor and what the court has to do is only to give its consent and not determine any matter judicially.
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> ..........the judicial function, therefore, implicit in the exercise of 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 of legitimate reasons or purposes.
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> ............the magistrate's function in these matters are not only supplementary, at a higher level, to those of the executive but intended to prevent abuse.
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> .............there is, however, a general concurrence - at least in the latter case - that the application for consent may legitimately be made by the Public Prosecutor for reasons not confined to the judicial prospects of the prosecution".

In conclusion the Hon'ble Supreme Court also held that "the ultimate guiding consideration must always be the interest of administration of justice and that is the touchstone on which the

[2] (1976) 4 SCC 250

question must be determined whether the prosecution should be allowed to be withdrawn."

Hon'ble Supreme Court further held that " We cannot forget that ultimately every offence has a social or economic cause behind it and if the State feels that the elimination or eradication of the social or economic cause of the crime would be better served by not proceeding with the prosecution, the State should clearly be at liberty to withdraw from the prosecution".

After examining the facts of the present case in light of the opinion and guidelines of the Hon'ble Supreme Court referred as above, I find that the Investigating Agency has presented the case against the revision petitioner/AO as it is a case of disproportionate assets gained by him, whereas after looking into the statistics of income and expenses as has been figured by the Investigating Agency, it is apparent that the Investigating Agency has failed to appreciate the additional income of the revision petitioner i.e., Rental, sale proceeds, salary of his wife, and loan obtained from Credila of HDFC etc. in adding it with the total income, whereas after adding it the revision petitioner's income comes out much more than the expenses incurred by him.

While reanalysing the matter, the State Government realised its mistake and, therefore, reviewed its decision. After observing overall the facts and circumstances, I find that once after reviewing the matter, the revision petitioner's income has been found more than the expenses incurred by him, it cannot be said to be a case of disproportionate assets to his income gained by the revision petitioner. Therefore, the continuance of the criminal proceeding against him would be only a futile exercise.

Thus, in the light of the aforesaid facts, I am of the considered view that the administration of justice demands to drop the proceedings initiated against the revision petitioner/AO, as I do not find any error in the decision of the State Government.

Accordingly, the Criminal Revision Case is allowed by setting aside the order, dated 15.04.2019 passed in Crl.M.P.No.239 of 2019 in C.C.No.42 of 2016 on the file of the I-Additional Special Judge for S.P.E. and A.C.B. Cases-cum-V Additional Chief Judge, City Civil Court, Hyderabad, and the Public Prosecutor, incharge of the case before the trial Court is permitted to withdraw the prosecution case against the revision petitioner/AO in the aforesaid C.C. No.42 of 2016.

Miscellaneous petitions, if any, pending in this Criminal Revision Case shall stand closed.

**JUSTICE G. SRIDEVI**

01.11.2019
gkv/Gsn