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

CRM-M-12314-2022

Date of decision:05.04.2022

RAMESH DALAL

...Petitioner

Versus

THE STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Baltej Singh Sidhu, Senior Advocate assisted by
Mr. Arshdeep Sra, Advocate
Mr. Chandan Singh, Advocate
Mr. Sumit Dalal, Advocate
Mr. Ramesh Dalal, Advocate
Mr. Divij Datt, Advocate
for the petitioner.

Mr. Pradeep Prakash Chahar, DAG, Haryana.

SURESHWAR THAKUR, J. (ORAL)

1. Through the instant petition cast under Section 482 of the Cr.P.C., the petitioner prays for quashing, and, setting aside of dis-affirmative concurrent orders, recorded respectively by the learned Judicial Magistrate Ist Class, Rohtak, and, by the learned Additional Sessions Judge, Rohtak, upon the public prosecutor's application cast under Section 321 of the Cr.P.C.

2. The genesis of the prosecution case becomes rested, upon, a FIR bearing No.0068 of 15.02.2016, registered at Police Station Sampla, embodying therein offences constituted under Sections 8A of the National Highway Act, 1956, and, under Sections 283, 341, 147, 149 of the IPC. Since the FIR is laconic thereupon, it is reproduced hereinafter.

“To, SHO, Police Station, Sampla, Jai Hind. Today I, SI alongwith EHC Narender No. 465 and EASI Rameshwar 873 was present at Eastern bypass Chowk, NH-10 at Sampla in connection with law and order duty, where at Sampla Chowk the agitationist of Jat

agitation had blocked the road. They after opening the Jam went to Choturam Museum and again the mob of 100/150 people Jammed the road and started raising slogans and started stopping the vehicles which are coming and going and further stopped the passerby, from the mob Sanjay Dalal, Bullar Pehalwan, Pappu r/o village Mandothi, Manoj Duhan Advocate R/o Jasia, Anil Asauda Politician of Aam Aadmi Party and Ramesh Dalal were not allowing the Jam to open. And the mob is also stopping the vehicles on the asking of above said persons. On the spot Sh. Amit Kumar Dahia, Deputy Superintendent of Police Rohtak and Managing officer Rajbir Singh, Duty Magistrate Subhash Tehsildar Sampla also tried to make them understand to open the Jam but they didn't understand and Manoj Duhan Advocate and Sudip Kalkal Rohtak started raising more provoking slogans and said that they will open the jam only when they will get the Reservation otherwise not. That the Mob blocked the NH-10 from both the sides stopping the commuters to move. Thus they have committed an offence under Section 147, 149, 283, 341 of IPC and Section 8 NH Act. Therefore this Ruka is hereby sent to police station through EASI Rameshwar 873 for registration of FIR. FIR no. be given after registration. Sd/- Dharmbir Singh, SI, P.S. Sampla, Dated 15.12.2016 at 5.45pm.”

3. The date of making of the FIR is in the year 2016, when the agitation made by the Jat community in Haryana for seeking the making of reservations in their favour in public employment(s), rather was at its zenith.

4. The investigating officer concerned, after completing investigations into the FIR (supra), though took to institute an affirmative report under Section 173 of the Cr.P.C., before the learned Magistrate concerned. However, at the pre-charge stage, the learned Public Prosecutor concerned, proceeded to institute an application cast under Section 321 of the Cr.P.C., seeking therein the leave of the Court, to permit the prosecution to withdraw from prosecuting the accused qua the offences constituted in the FIR (supra).

5. The learned trial Magistrate concerned, through an order made thereons, on 22.05.2018, declined to the Public Prosecutor concerned, the asked for relief. The aggrieved one Ramesh Dalal, preferred a revision thereagainst, before the learned Additional District and Sessions Judge, Rohtak. The latter through an order, made on 03.02.2022, upon CRR/26/2019, declined to grant relief to the aggrieved, and, rather proceeded to affirm the order made initially by the learned Judicial Magistrate, Rohtak.

6. Consequently, as afore stated the above made concurrent dis-affirmative orders, upon the prosecutor's application cast under the provisions (supra), bring pain to the aggrieved, and, lead him to institute a petition cast under Section 482 Cr.P.C., before this Court.

7. Both the learned Courts below though have proceeded to analyze the expostulations of law carried in a catena of verdicts, hence governing, and, regulating the exercise(s) of jurisdiction by the Court concerned, upon, the Public Prosecutor's application, cast under Section 321 of the Cr.P.C. However, for the reasons to be assigned hereinafter, both the Courts came to a untenable conclusion, that the interests of justice would not be subserved in case the asked for relief by the Public Prosecutor concerned, rather becomes granted.

8. Though, *prima-facie* the view taken by both the learned Courts below, hence to not mechanically, and, in a slipshod manner grant the asked for relief to the Public Prosecutor concerned, though may become vindicable. However, both the learned Courts below appear to be making a hyper focus, and, became driven by factum of the level, and, scale of the agitation, thereupon, they came to a conclusion, that the interest of justice could not become subserved, upon, the espoused leave becoming granted.

9. An application cast under Section 321 of the Cr.P.C., is to be drawn by the learned Public Prosecutor concerned, after making the deepest application of mind, and, with an objective analysis of the relevant material, as becomes appended with the affirmative report, as filed by the investigating officer concerned, before the learned Magistrate concerned. In determining whether the above rule became complied by the learned Public Prosecutor concerned, a reading of the application cast under Section 321 of the Cr.P.C., becomes imperative, readings whereof does underline, the factum qua the learned Public Prosecutor concerned, making an independent application of mind, qua all the relevant, and, germane foundational facts, rather regulating, and, governing his exercising the statutory empowerment, as, conferred upon him, under Section 321 of the Cr.P.C. The reference to the above factum, is made, in paragraph 4 of the apposite application, as becomes appended, as Annexure P-2 with the petition, paragraph whereof becomes extracted hereafter.

“4. That the undersigned has also independently applied his mind on the issue and has come to the conclusion that the above said case falls within the parameter justifying the withdrawal in view of the principles explained by the courts consistently while commenting upon section 321 of Cr.P.C.”

10. The making of the afore application of mind by the learned Public Prosecutor concerned, becomes rested upon, the factum that though there was a stir amongst the Jat community in the State of Haryana against their under representation in public employment, and, obviously for mitigating their grievance they protested in the streets. However, the protests were called off, and, also when a reading of the above FIR, does not unfold, that during the process of theirs making protests, for the relevant purpose, though the protesters took to block the highway(s) concerned, but they did not indulge in vandalizing,

and, damaging any public property. Therefore, since the allegation(s) of vandalizing public property are not attributed to the protesters concerned, and, also when it is stated at the bar, by the learned counsel for the petitioner, that in the area concerned, as mentioned in the FIR, the stir ended peacefully after four days since its commencement, and, thereafter did not recommence, therefore, it appears that the protesters concerned, did suo motu peacefully suppress their agitation, and, also ensured the restoration of normalcy in the area concerned. Their atonement is to be revered. Consequently, when hence there was no likelihood of disorder to public order being caused, hence the learned Public Prosecutor concerned, did in his application, bear in mind all the relevant circumstances, and, did proceed to after making an objective analysis, thereof besides obviously with an independent application of mind, did make, a lawful endeavour to terminate the prosecution, as became endeavoured against the accused concerned. Therefore, the espoused hence leave became amenable for being accorded.

11. The relevant principles which rather were required to be borne in mind by the learned Courts below became enunciated in paragraph 7 of the verdict made by the Delhi High Court in case titled as '**Kiran Chaudhary versus State, reported in 2003 (70) DRJ**', paragraph whereof becomes extracted hereinafter.

“7. Without adverting to the principles culled out by the learned Magistrate for dealing with the application under [Section 321](#) CrPC, I straight-away refer to the judgment of the Supreme Court reported as **Abdul Karim and others Vs. State of Karnataka and others (2000) 8 SCC 710** wherein the broad principles governing the refusal or grant of the application under [Section 321](#) Cr.P.C. were reiterated as laid down in [Sheonandan Paswan v. State of Bihar](#). These are in short as under:-

- (i) When an application under [Section 321](#) is made, it is not necessary for the court to assess the evidence to discover whether the case would end in conviction or acquittal. What 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.
- (ii) The court, after considering the facts of the case, has to see whether the application suffers from such improprieties or illegalities as would cause manifest injustice if consent was given.
- (iii) When the Public Prosecutor makes an application for withdrawal after taking into consideration all the material before him, the court must exercise its judicial discretion by considering such material and on such consideration, must either give consent or decline consent.
- (iv) [Section 321](#) contemplates consent by the court in a supervisory and not an adjudicatory manner. What the court must ensure is that the application for withdrawal has been properly made, after independent consideration by the Public Prosecutor and in furtherance of public interest.
- (v) [Section 321](#) enables the Public Prosecutor to withdraw from the prosecution of any accused. The discretion exercisable under [Section 321](#) is fettered only by a consent from the court on a consideration of the material before it. What is necessary to satisfy the section is to see that the Public Prosecutor had acted in good faith and the exercise of discretion by him is proper.
- (vi) Though the Government may have ordered, directed or asked a Public Prosecutor to withdraw from a prosecution, it is for the Public Prosecutor to apply his mind to all the relevant material and, in good faith, to be satisfied thereon that the public interest will be served by his withdrawal from the prosecution. In turn, the court has to be satisfied, after considering all that material, that the Public Prosecutor has applied his mind independently thereto, that the Public Prosecutor, acting in good faith, is of the opinion that his withdrawal from the prosecution is in the public interest, and that

such withdrawal will not stifle or thwart the process of law or cause manifest injustice."

(vii) 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 material available, the order giving consent has necessarily to be upheld. "

12. Since a reading of the above extracted para(s) disclose that, when the learned Court concerned, is seized of an application cast under Section 321 of the Cr.P.C., thereupon, it became enjoined to not assess the quality of the evidence adduced by the prosecution, and, nor to discover therefrom, whether the prosecution case would end in an acquittal or conviction, rather the only duty enjoined, upon the learned Court concerned, is to assess whether the public prosecutor concerned, moved the apposite application, for subserving policy, and, justice, and, not for suppressing the process of law, and, besides to gauge whether, in his making the apposite application, rather he exercised an independent application of mind qua all the relevant facts. However, it becomes also enjoined upon the Court concerned, to fathom whether the apposite application, is free from any taint of *malafides*.

13. Consequently, when for the reasons stated (*supra*), the apposite application, is not ridden with any vices of *malafides* nor is made for stiffing the process of law, rather when the Jat community restored normalcy in the area concerned, besides when vandalizing of public property became not indulged into by the protesters. Moreover, when the protest obviously was peaceful except, the protesters blocking the highway, as a measure to ventilate their claim for reservation in public employment. Therefore, it was inappropriate for both the learned Courts to conclude that yet the interest of justice, would not be subserved, in case the application is allowed. It appears that the afore inference

has been drawn on surmised grounds, and, appears to be a sequel of both the learned Courts below assessing the quality of the evidence, and, endeavouring to discover therefrom whether the prosecution case would terminate in a conviction or in acquittal, assessments whereof, are, expostulated in the verdict (supra) rather, to be forbidden or not required to be made.

14. There is merit in the petition, and, the petition is allowed. The impugned orders are quashed, and, set aside.

(SURESHWAR THAKUR)
JUDGE

05.04.2022

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Whether speaking/reasoned:-	Yes/No
Whether reportable:	Yes/No