

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1334 OF 2024

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Sanjay Mukund Kelkar and anr. ...Petitioners
Versus
The State of Maharashtra and ors. ...Respondents

Mr. Pritesh Burad, a/w Mrs. Madhuri Gamre, Mr. Shreyas
Moharin, i/b M/s. Pritesh Burad Associates, for the
Petitioners.

Mr. A. R. Patil, APP for the State.

CORAM: DEVENDRA KUMAR UPADHYAYA, CJ
and N. J. JAMADAR, J.
DATED: 28th JUNE, 2024

ORDER:-

1. This petition is preferred for grant of leave of this Court for withdrawal of the prosecution in SCC No.8287 of 2020 for the offences punishable under Sections 269 and 270 of the Indian Penal Code, 1860 ("the Penal Code"), in view of the order passed by the Supreme Court in Writ Petition (Civil) No.699 of 2016, dated 10th August, 2021, directing that no prosecution against a sitting or former MP/MLA shall be withdrawn without the leave of the High Court.

2. The petitioners are the members of the Maharashtra State Legislature. On 22nd May, 2020, the petitioners and other members of the political party, to which the petitioners

belong, were found holding an agitation against the alleged failure of the Government in arresting the spread of Covid-19 contagion, and for free treatment of the persons, who were infected with Covid-19 virus. The said agitation was in breach of a prohibitory order dated 14th April, 2020 passed under Section 144(1)(3) of the Code of Criminal Procedure, 1973 ("the Code") and the notification issued by the District Collector under the Epidemic Diseases Act, 1897. Ganesh Dakhane, the then Police Naik, attached to the Rabodi Police Station, Thane, thus, lodged report for the offences punishable under Sections 188, 269 and 270 of the Penal Code.

3. By an order dated 27th January, 2021, the learned JMFC, Thane, was persuaded to drop the proceedings under Section 188 of the Penal Code as there was no complaint in writing by the public servant whose lawful orders had been contravened. The trial against the petitioners – accused was directed to be proceeded with for the offences punishable under Sections 269 and 270 of the Penal Code.

4. In the meanwhile, in accordance with the State Government's policy of withdrawal of prosecution arising out of agitation for political and social causes, the committee

constituted under the Government Resolution dated 20th September, 2022 has recommended the withdrawal of the prosecution against the petitioners and other accused as the alleged offences were committed during the course of a political agitation.

5. The learned Counsel for the petitioners submitted that as the petitioners were espousing the cause of general public, leave for withdrawal deserves to be granted.

6. We have perused the report under Section 173 of the Code and the documents annexed with it. We have examined justifiability of the decision to withdraw from the prosecution on the touchstone as to whether the withdrawal is in the interest of public policy and justice, and not for an ulterior purpose.

7. *Prima faice* it appears that the genesis of the alleged offences is in the agitation in extraordinary circumstances which had then arisen on account of Covid-19 Pandemic. Apparently, the petitioners – accused were holding demonstration against the alleged failure of the State Government to arrest the spread of the virus and also to provide treatment to the infected persons. The agitation, *prima faice*, appeared to be for a public cause. The decision

of withdrawal, therefore, seems to be justifiable and does not appear to be guided by extraneous and political considerations.

8. We are, thus, inclined to grant leave for the withdrawal of the prosecution and allow the petition only to the extent of granting leave for withdrawal.

9. In the event, the Public Prosecutor files an application for withdrawal under Section 321 of the Code, the learned Magistrate shall pass appropriate orders in accordance with law.

10. Petition disposed.

[N. J. JAMADAR, J.]

[CHIEF JUSTICE]