

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

**W.P.A. (P) 67 of 2021
IA NO: CAN 1 of 2021
Dipak Mishra
Vs.
The State of West Bengal & Ors.**

With

**W.P.A. (P) 68 of 2021
IA NO: CAN 1 of 2021
CAN 2 of 2021
CAN 3 of 2021
CAN 4 of 2021
Nilanjan Adhikary
Vs.
The State of West Bengal & Ors.**

For the Petitioner in
WPA (P) 67 of 2021 and
WPA (P) 68 of 2021

: Mr. Rajdeep Mazumder, Sr. Adv.
Mr. Moyukh Mukherjee, Adv.
Mr. Sarthak Mondal, Adv.
Ms. Sagnika Banerjee, Adv.
Mr. Soumya Raha, Adv.

For the State

: Mr. Kishore Datta, Ld. A.G.
Mr. Souvik Mitter, Ld. Spl. P.P.
Mrs. Faria Hossain, Ld. A.P.P
Mrs. Mamata Jana, Adv.

For the Respondent Nos.
7, 10-14, 16-20, 23,
25, 29, 34-40, 42, 44, 46,
48, 49, 52, 64, 65, 68 & 71

: Mr. Ayan Poddar, Adv.

in WPA (P) 67 of 2021
and

For the Respondent Nos.
6, 12-19, 22, 24-27, 30, 32,

37, 39, 40, 42, 43, 46, 47,
49-55, 60, 64, 66, 69, 70,
71-75, 77-80, 83-85, 87, 90,
92, 93, 99, 102, 105 and
113 in WPA (P) 68 of 2021

Hearing Concluded on : January 15, 2025
Judgment on : February 10, 2025

DEBANGSU BASAK, J.:-

1. Two writ petitions being WPA (P) No. 67 of 2021 (hereinafter referred to as the first writ petition for the sake of convenience) and WPA (P) No. 68 of 2021 (hereinafter referred to as the second writ petition for the sake of convenience), filed as public interest litigations, have been heard analogously as they involve similar issues.

2. Both the writ petitions have been specially assigned before this Bench.

3. Both the writ petitioners have claimed themselves to be advocates by profession and practising before the Courts of Contai, Tamluk and Haldia. Writ petitioners in both the writ petitions have been represented by the same set of learned advocates.

4. Learned senior advocate appearing for the petitioners has drawn the attention of the Court to the prayers made in the first writ petition. He has contended that, on February 10, 2020, writ petitioner of the first writ petition came to know that, State gave instructions to the respondent No. 6 in such writ petition to apply

under Section 321 of the Criminal Procedure Code to withdraw 4 criminal cases in respect of which charge-sheets had been filed. He has pointed out that, in 3 criminal cases, charge-sheets have been filed, inter alia under Section 302 of the Indian Penal Code. In one of the criminal cases, charge-sheet has been filed, inter alia under Sections 326/307 of the Indian Penal Code read with Sections 25/27 of the Arms Act.

5. Learned senior advocate appearing for the petitioners has drawn the attention of the Court to the prayers made in the second writ petition and contended that, orders passed by the administrative authority deciding to undertake an exercise under Section 321 of the Criminal Procedure Code is under challenge in the writ petitions.

6. Adverting to the facts of the 2nd writ petitions, learned senior advocate appearing for the petitioners, has submitted that, the writ petitioner came to learn on June 9, 2020 that State gave instructions to the respondent No. 5 therein to withdraw prosecution of several criminal cases. Two applications had been filed under Section 321 of the Criminal Procedure Code in such cases on the premise that, peace had been restored between the parties and that the incident involved in the police complaints were generated from a political turmoil.

7. Learned senior advocate appearing for the petitioner has submitted that, the applications purported to be under Section 321 of the Criminal Procedure Code were taken up for hearing on June 9, 2020 itself when the learned Additional Chief Judicial Magistrate, Haldia, Purba Medinipur, by an order dated June 9, 2020 allowed the same.

8. Learned senior advocate appearing for the petitioners has submitted that similarly on June 10, 2020, in 4 other cases, the State respondents gave instructions to the respondent No. 5 for withdrawing prosecution of such cases. On the basis of such instructions, for applications under Section 321 of the Criminal Procedure Code in respect of such cases were filed in June 10, 2020 and allowed on the same date.

9. Learned senior advocate appearing for the petitioners has submitted that, in aggregate, 6 criminal cases had been withdrawn, which are the subject matter in the 2nd writ petition. In respect of all the 6 criminal cases, charge-sheets had been submitted before the jurisdictional Court. Charge-sheets had been filed in 5 criminal cases inter alia under Section 302 of the Indian Penal Code. Charge-sheet in respect of one of the criminal cases had been filed under Section 364 of the Indian Penal Code.

10. Learned senior advocate appearing for the petitioners has submitted that, the charge-sheets in all the criminal cases would demonstrate that, the charges are serious and that, the criminal cases involve commission of heinous crimes.

11. Learned senior advocate appearing for the petitioners has referred to Section 321 of the Criminal Procedure Code. He has contended that, State gave consent to withdraw the prosecution in respect of the criminal cases. Learned Additional Public Prosecutor has blindly filed the application under Section 321 of the Criminal Procedure Code without applying his independent mind. Learned magistrate has also passed mechanical orders without applying the judicial mind.

12. Learned senior advocate appearing for the petitioners has contended that, since, the criminal cases involve commission of heinous crime of murder, the same cannot be dropped on the basis of Section 321 of the Criminal Procedure Code.

13. Referring to the contention of the respondents that the writ petition is not maintainable, learned senior advocate appearing for the petitioners has relied upon **1987 Volume 1 Supreme Court Cases 288 (Sheonandan Paswan Vs. State of Bihar and Ors.), 2014 Volume 10 Supreme Court Cases 380 (Bairam Muralidhar**

Vs. State of Andhra Pradesh), 2012 Volume 10 Supreme Court Cases 303 (***Gian Singh Vs. State of Punjab and Anr.***) to contend that, the writ petitions are maintainable. He has contended that, allowing the prosecution to withdraw criminal cases involving heinous crimes such as murder, as has been done in the present cases, would cause grave injustice to the public at large.

14. Learned senior advocate appearing for the petitioners has referred to Section 362 of the Criminal Procedure Code and contended that, orders of rejections of two previous applications under Section 321 of the Criminal Procedure Code were not taken into consideration when the subsequent application was sought to be allowed. Moreover, a criminal proceeding is not a proceeding for vindication of a private grievance but initiated for the purpose of punishing the offender in the interest of the society. The objective is to maintain stability and orderliness in the society.

15. Learned senior advocate appearing for the petitioners has contended that, the discretion exercised under Section 321 of the Criminal Procedure Code while passing the orders of withdrawal in the criminal cases was not proper. He has contended that, an administrative decision of the State is amenable to the writ jurisdiction under Article 226 of the Constitution of India. He has

referred to Section 482 of the Criminal Procedure Code and also Section 378 thereof.

16. Learned senior advocate appearing for the petitioners has contended that on many occasions, applications for bail of the accused persons in the criminal cases were rejected on merits by the High Court. He has referred to an order dated June 10, 2022 passed in CRM (DB) No. 1472 of 2022 in this regard, passed in a different criminal case.

17. Learned senior advocate appearing for the petitioners has contended that, the withdrawal of the prosecution was done at a stage when the trial had commenced and recording of evidence was in progress. He has pointed out that many of the accused are history sheeters.

18. Learned senior advocate appearing for the petitioners has contended that, soon before the West Bengal State Assembly Elections in 2021, State published a notification dated February 26, 2021 where it was recorded that the State government was pleased to instruct the concerned public prosecutor for withdrawal of the particular murder case. He has contended that the de facto complainant was actively pursuing the case and challenged such notification by way of a writ petition being WPA 6315 of 2021. He

has referred to the order dated July 2, 2021 passed by the Division Bench which expressed its displeasure in the manner in which the learned trial judge allowed the petition under Section 321 of the Criminal Procedure Code. He has pointed out that, in the writ petition being WPA 6315 of 2021, the High Court set aside the notification dated February 26, 2021.

19. Learned Advocate General appearing for the State has questioned the maintainability of the writ petitions. He has contended that judicial orders are not amenable to writ jurisdiction. He has contended that correctness of judicial orders cannot be assailed in writ proceedings be it in adversarial or public interest litigation. Correctness of a judicial order passed in a criminal case can be challenged through the statutory remedy namely Section 482 of the Criminal Procedure Code. In support of his contention, he has relied upon ***All India Reporter 1967 Supreme Court 1 (Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Others), 2015 Volume 5 Supreme Court Cases 423 (Radhey Shyam And Another Vs. Chhabi Nath And Others)*** and ***2008 Volume 6 Supreme Court Cases 776 (Shaukat Hussain Guru Vs. State (NCT) Delhi and Another)***.

20. Learned Advocate General has contended that neither of the two writ petitions can be presented as public interest litigation in

view of Rule 56 of the Rules under Article 226 of the Constitution framed by this High Court. Referring to Rule 56, he has contended that, petitioner has to satisfy either he suffered a legal wrong or injury caused or threatened to a person or determinate class of persons or that there was violation of constitutional rights of the person on whose behalf the writ petition was filed suffers an inability to approach Court owing to disability. He has pointed out that, the orders of the jurisdictional Court under challenge in the two writ petitions allowing the applications under Section 321 of the Criminal Procedure Code, were passed after examining the de facto complainants who expressed their no objection to the prayers for withdrawal made by the prosecution. According to him, therefore, the basic requirements of Rule 56 of the writ Rules have not been satisfied in this case.

21. Referring to proviso to Rule 56 of the writ Rules, learned Advocate General has contended that the same does not apply to the facts and circumstances of the present case, since the writ petitioners have no private interest and did not move the High Court for redressal of any personal grievance.

22. Learned Advocate General has contended that, the writ petitions have been assigned to this Bench as public interest litigations. He has referred to Rule 57 of the writ rules. He has

contended that, the present writ petitions do not satisfy the definition of a public interest litigation.

23. Learned Advocate General has contended that the two writ petitions cannot be converted to an application under Section 482 of the Criminal Procedure Code since Rules 56 and 57 of the writ Rules allow conversion of an adversarial/personal grievance litigation to be treated as a public interest litigation while the converse is not permitted. He has contended that, since there exist Rules framed by the High Court for entertaining public interest litigation, it is no more left to the individual judges to devise their own procedure. In support of such contention, he has relied upon **2022 SCC Online SC 1541 (State of Jharkhand Vs. Shiv Shankar Sharma and Others)**. He has contended that the writ Rules of this High Court do not provide for relaxation of such Rules akin to the Jharkhand High Court. He has also referred to the appellate side Rules and contended that, conversion of the writ petition to be a proceeding under Section 482 of the Criminal Procedure Code is not permissible. There does not exist any enabling provision empowering the Court to undertake such an exercise and therefore, the Court would become coram non-judice if such a procedure is adopted.

24. Learned Advocate General appearing for the State has questioned the locus standi of the writ petitioners. He has contended that, the petitioners subscribe to a political view.

25. Learned Advocate General appearing for the State has contended that, the remedy of the petitioners lies under Section 482 of the Criminal Procedure Code. He has relied upon **1987 Volume 1 Supreme Court Cases 288 (Sheonandan Paswan Vs. State of Bihar and Ors.)** in support of the contention that a stranger has a right to apply for revision against an order of withdrawal of prosecution. He has contended that, assuming that this Bench can exercise inherent powers, then such inherent powers have to be used sparingly and not in all cases. He has contended that Section 482 of the Criminal Procedure Code has its own limitation. He has drawn the attention of the Court to Section 482 of the Criminal Procedure Code. He has contended that, exercise of powers under Section 321 of the Criminal Procedure Code can be considered under Section 482 thereof.

26. Learned Advocate General appearing for the State has contended that, Court should not question the validity of an administrative order when the same has merged into a judicial order. He has contended that the decision of the State to exercise powers

under Section 321 of the Criminal Procedure Code has merged into the judicial order passed by the magistrate.

27. Learned Advocate General appearing for the State has contended that, the executive decision to withdraw proceeding under Section 321 of the Criminal Procedure Code is strictly a policy decision. He has contended that, not only can a prosecution be withdrawn on the basis of paucity of evidence but also in order to further the broad ends of justice. According to him, such broad spectrum of public justice may also include appropriate social economic and political purposes. He has relied upon **1980 Volume 3 Supreme Court Cases 435 (Rajender Kumar Jain Vs. State through Special Police Establishment and Others)** in this regard.

28. On the scope and ambit of the exercise of powers under Section 321 of the Criminal Procedure Code, learned Advocate General appearing for the State has relied upon **2021 Volume 17 Supreme Court Cases 318 (State of Kerala Vs. K. Ajith and Others)**.

29. Learned Advocate General appearing for the State has contended that, gravity of the offence is not a deterrent factor for applying under Section 321 of the Criminal Procedure Code.

30. Learned Advocate General appearing for the State has contended that, out of 10 criminal cases, in 5 cases, previous applications under Section 321 of the Criminal Procedure Code were turned down by the jurisdictional magistrate on December 11, 2019. He has contended that, the previous orders of rejection of the application under Section 321 of the Court is not a bar under Section 362 of the Criminal Procedure Code. He has contended that, the previous order of rejection dated December 11, 2019 stood vitiated by non-application of judicial mind by the learned Magistrate.

31. Learned advocate appearing for the private respondents has submitted that, the writ petitions are not maintainable as the petitioners owe political allegiance to a particular political party. Moreover, the petitioners are guilty of suppression of material facts. He has contended that, the petitioners suppressed the material fact that the petitioners owe political allegiance to a particular political party. According to him, such fact is of significant relevance in the present cases as the accused persons belong to the rival political party. He has also questioned the timing of the public interest litigations. He has pointed out that, the writ petitions were filed in February 2021 when there was an ensuing State Legislative Assembly Election. The order for withdrawal of prosecution had been

passed in June 2020 while the writ petition had been filed in February 2021. Writ petitioners had remained silent and waited for nearly 8 months before instituting the writ petitions to make them coincide strategically with the election cycle. Such timing cannot be dismissed as mere coincidence.

32. Learned advocate appearing for the private respondents has submitted that, the writ petition was filed with mala fide intentions, tainted with political bias and a deliberate attempt to achieve political ends in abuse of judicial process.

33. Learned advocate appearing for the private respondent has relied upon **2010 Volume 3 Supreme Court Cases 402 (State of Uttaranchal Vs. Balwant Singh Chaufal And Others)** and **2022 Volume 12 Supreme Court Cases 815 (K Jayaram and others Vs. Bangalore Development Authority and others)** for the proposition that, where there is suppression of material facts, the writ Court may refuse to entertain the petition and dismiss the same without entering into the merits.

34. Learned advocate appearing for the private respondents has submitted that, a judicial order cannot be challenged by way of a writ petition. He has relied upon **2020 Volume 2 Supreme Court Cases 442 (Balkrishna Ram Vs. Union of India & Anr.), 2014**

Volume 1 Supreme Court Cases 603 (CIT Vs. Chhabil Dass Agarwal), 2015 Volume 5 Supreme Court Cases 423 (Radhey Shyam and Another & Chhabi Nath & Ors.) and 1998 Volume 4 Supreme Court Cases 117 (State of Punjab Vs. Ram Lubhaya Bagga) in support of his proposition that, a judicial order cannot be made a subject matter of a writ petition.

35. Learned senior advocate appearing for the petitioners in response has relied upon **1992 Supp (1) Supreme Court Cases 335 (State of Haryana and Others Vs. Bhajan Lal and Others), 1998 Volume 5 Supreme Court Cases 749 (Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others)** and **2025 INSC 8 (Kim Wansoo Vs. State of Uttar Pradesh and others)** in support of the proposition that, a writ petition is maintainable against an order passed by a Court in seisin of a criminal case.

36. The following issues have arisen for consideration in these writ petitions: –

- i. Are the writ petitions maintainable?
- ii. Are the decisions of the State to apply under Section 321 of the Criminal Procedure Code legal and valid?
- iii. To what relief or reliefs are the parties entitled to?

37. Ten several criminal complaints had been registered as First Information Reports by 2 police stations, namely, Khejuri and Nandigram. In respect of all the first information reports, police had undertaken investigations and on completion thereof submitted chargesheets before the jurisdictional Court.

38. On applications filed under Section 321, by the State, jurisdictional Magistrate had by orders dated February 10, 2020 allowed withdrawal of four Khejuri Police Station Criminal Cases. There are subject matters of WPA (P) 67 of 2021.

39. In respect of 5 of the criminal cases of Nandigram Police Station, subsequent to the filing of the chargesheets, State had filed applications under Section 321 of the Criminal Procedure Code which were turned down by the jurisdictional magistrates on December 11, 2019.

40. Subsequently, on the applications filed under Section 321 of the Criminal Procedure Code, on behalf of the State, in respect of the same 5 criminal cases of Nandigram Police Station, by orders dated June 9, 2020 and June 10, 2020 jurisdictional magistrates have allowed the same. There are subject matters of WPA (P) 68 of 2021.

41. The two writ petitioners being aggrieved by such conduct of the State in respect of the 10 several criminal cases, have filed the two writ petitions as public interest litigations.

42. During the pendency of the writ petitions, by an order dated September 4, 2024, we had called upon the State to produce the file containing the decision of the State to apply under Section 321 of the Criminal Procedure Code as also to produce a copy of the application filed under Section 321 of the Criminal Procedure Code on which, the orders of the jurisdictional Court were passed. We had also called upon the State to produce the case diaries as well as the post-mortem reports in respect of all the police cases, since, chargesheets under Section 302 of the Indian Penal Code had been filed. State had produced some of such materials in the course of hearing of the two writ petitions, subsequent to the order dated September 4, 2024.

43. From the materials that have been produced to the court pursuant to the order dated September 4 2024, it appears that, Judicial Department put up a case for discussion before the Cabinet by a memo No. 44-JL dated January 30, 2014. A Cabinet memorandum had been prepared for the withdrawal from prosecution under section 321 of the Criminal Procedure Code of the

persons in respect of the offences involving agitation relating to the Nandigram and Singur issue.

44. Cabinet memorandum had proceeded on the basis that poor land losers fought for their cause against the then land policy to protect their livelihood as guaranteed under Article 21 of the Constitution of India. They had to some extent exercised right of private defence. Police had launched formal criminal prosecution against those farmers at the instance of the then government.

45. In WPA (P) 67 of 2021 decisions in four police cases relating to Khejuri police station have been questioned. The assistant public prosecutor had applied under section 321 of the Criminal Procedure Code in four police cases of Khejuri police station namely, Khejuri police station case No. 44 of 2007, Khejuri police station case No. 45 of 2007, Khejuri police station case No. 70 of 2007, and Khejuri police station case No. 71 of 2007. In all the four police cases, police had filed chargesheets against the accused. Three out of the 4 police cases relating to Khejuri police station involved murder, with 3 persons having been murdered. Chargesheets in all four police case had been filed with three of the chargesheets being inter-alia under section 302 of the Indian Penal Code.

46. In the applications under section 321 of the Criminal Procedure Code, filed in respect of the four Khejuri police station criminal cases, by the assistant public prosecutor, it has been stated that, the assistant public prosecutor submitted a proposal for withdrawal of the police case under section 321 of the Criminal Procedure Code which was duly forwarded to the learned Legal Remembrance and that, learned Legal Remembrance had approved such prayer on December 19, 2019. The applications have also noted that, the District Magistrate by a writing dated December 18, 2019 requested the Assistant Public Prosecutor to take necessary action in terms of the communication of the learned Legal Remembrance. It has also gone on to say that, in consonance with the sanction, the government of West Bengal intends to withdraw the police cases on the grounds of public policy, such as putting an end to a meaningless prosecution which was launched on whimsical and irrational grounds in a capricious manner to air and advance political agenda of a particular political party then in power.

47. It is on the basis of such four applications under section 321 of the Criminal Procedure Code that, the jurisdictional Magistrate, by orders dated February 10, 2020 had allowed the same. Learned Magistrate had in its order noted the decision of the government to withdraw the prosecution for greater interest. Learned

Magistrate had also noted that, the de facto complainant had been examined and he raised no objection to the grant of such prayer. Accordingly, to restore peace between the parties, learned Magistrate had allowed the prayer of the prosecution, and discharged the accused from the police case by releasing them from their respective bail bonds.

48. Writ petitioner in the second writ petition has assailed steps taken by the State in respect of 6 police cases relating to Nandigram Police Station. The 6 police cases of Nandigram Police Station are FIR No. 111/09 dated May 10, 2009, 75/07 dated April 30, 2007, 80/07 dated May 2, 2007, 188/07 dated November 8, 2007, 156/07 dated October 10, 2007 and 221/07 dated November 15, 2007. In all the 6 police cases, chargesheets had been filed. Nandigram Police Station case No. 111/09 dated May 10, 2009 involves 3 dead persons, Nandigram Police Station case No. 75/07 dated April 30, 2007 involves one dead person, Nandigram Police Station May 2, 2007 involves one dead person, Nandigram Police Station case No. 188/07 dated November 8, 2007 involves 3 dead persons, Nandigram Police Station case No. 156/07 dated October 10, 2007 involves one dead person, Nandigram Police Station case No. 221/07 dated November 15, 2007 involves one dead person.

49. In respect of 5 of the police cases relating to Nandigram Police Station applications under Section 321 of the Criminal Procedure Code had been dismissed by the jurisdictional Magistrate on December 11, 2019.

50. In all of the police cases relating to Nandigram Police Station as noted above, the Assistant Public Prosecutor had applied under section 321 of the Criminal Procedure Code, including those police cases where prayers for withdrawal were rejected, before the jurisdictional Magistrate, claiming that he received approval from the learned Legal Remembrancer by a writing dated November 29, 2019 written on behalf of the State granting approval for withdrawal of the police cases under section 321 of the Criminal Procedure Code. Such applications have also referred to a writing dated December 19, 2019 issued by the District Magistrate as also a writing dated October 21, 2019 issued by the Director Of Directorate of Prosecution, West Bengal for withdrawal of the police cases.

51. The applications under section 321 of the Criminal Procedure Code, have gone on to state that, the Assistant Public Prosecutor in consonance with the sanction of the learned Legal Remembrancer intended to withdraw the police cases on grounds of public policy to put an end to a meaningless prosecution. He has claimed that, broader public interest is involved. According to him,

the police cases had been initiated in the political atmosphere prevailing at the time of an agitation in which majority of the villagers in the concerned police station and surrounding places came en masse against the proposed acquisition of land in those areas. He has also claimed in the application that after a lapse of time, peace, harmony and normalcy has been restored in the area and that, people who were involved during the agitation are living in peace and harmony. The application has referred to 7 grounds in paragraph 14 thereof. It has also claimed that, withdrawal from the prosecution is an executive function of the prosecution and that, when an application under section 321 of the Criminal Procedure Code is made, it is not necessary for the court to assess the evidence to discover whether the case would end in conviction or acquittal.

52. On the basis of such applications, the jurisdictional Magistrate, by orders dated June 6, 2020 noted that, the de facto complainant had no objection to the application for withdrawal. Learned Magistrate had also referred to the order passed by the learned Legal Remembrancer dated November 29, 2019 and the communication of the District Magistrate dated December 19, 2019 and the letter of the Director of Prosecution, dated October 21, 2019. Learned jurisdictional Magistrate had allowed the applications under section 321 of the Criminal Procedure Code in order to restore peace

between the parties. Learned Magistrate had discharged the accused from the case by releasing them from their respective bail bonds.

53. Parties have raised various facets of maintainability of the writ petitions. It has been contended that, none of the writ petitioners have any locus standi to file and maintain the writ petitions. It has also been contended that, the writ petitions do not pass the test of a public interest litigation and therefore not maintainable. Moreover, since the writ petitioners have challenged judicial orders of Courts in the writ petitions, they are not maintainable.

54. ***Balwant Singh Chauhal (supra)*** has issued directions regarding public interest litigations in paragraph 181 thereof which are as follows: –

“181. We have carefully considered the facts of the present case. We have also examined the law declared by this Court and other courts in a number of judgments. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:

(1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High

Court is directed to ensure that a copy of the rules prepared by the High Court is sent to the Secretary General of this Court immediately thereafter.

(3) The Courts should prima facie verify the credentials of the petitioner before entertaining a PIL.

(4) The Courts should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The Courts should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The Courts should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.”

55. Shiv Shankar Sharma (supra) has noticed a number of authorities cited at the bar with regard to misuse of public interest litigations including **Balwant Singh Chaufal (supra)**. It has held that, the locus of the petitioner who initiates a public interest litigation is of extreme importance as public interest litigation should not be used by motivated individuals to abuse the process of the Court for their political purposes or for any other reason.

56. In the facts of the case obtaining in **Shiv Shankar Sharma (supra)** it has been held that, two writ petitions filed by the writ petitioners as public interest litigations were abuse of the process of

the Court. In one writ petition by the same writ petitioner, it has been held that, the allegations made were short of wild and sweeping. Allegations made in the 2nd writ petition have been found to be under consideration of the Election Commission. The writ petitioner has also been found not to approach the Court with clean hands. In such circumstances, the Court has dismissed such writ petitions filed as public interest litigations.

57. When the orders under section 321 of the Criminal Procedure Code were passed, the police cases were governed by the Criminal Procedure Code. As noted above, the orders of discharge cannot be equated with an order of acquittal. Sections 377 and 378 of the Criminal Procedure Code governs the right of appeal in respect of inadequacy of sentence in a criminal case as also acquittal therein. In case of an acquittal, the de facto complainant is vested with the right to prefer an appeal. Criminal Procedure Code makes distinct compartments with regard to right of appeals in criminal cases. None of the writ petitioners before us falls within any of the categories as persons recognised with the right of appeal in a criminal case, under the Criminal Procedure Code.

58. Writ petitioners not falling within any of the categories recognised under section 377 and 378 of the Criminal Procedure Code and, the criminal cases not resulting in either an order of

acquittal or of sentence of punishment, writ petitioners filed the 2 writ petitions, as public interest litigations, challenging inter alia the decision of the State to undertake an exercise under section 321 of the Criminal Procedure Code as also the orders of the jurisdictional court passed in respect of such applications.

59. Writ petitioners are advocates. It is alleged as against them that, they subscribe to a particular political party. Subscribing to a political ideal ipso facto does not disentitle a citizen of India to approach a writ court or to file a public interest litigation.

60. It is alleged as against the writ petitioners that; the writ petitions are motivated and filed in order to extract political mileage and therefore is for a collateral purpose. It is alleged that, despite the orders of discharge being passed the writ petitioners allowed sufficient period of time to elapse and filed the writ petition on the eve of ensuing elections in the State.

61. Such allegations are no longer relevant since, the election spoken of are over. Post the elections, there is nothing on record to suggest that, the writ petitioners are continuing with the writ petitions for political mileage.

62. Test of locus standi of a writ petitioner in a writ petition other than quo warranto or habeas corpus or a public interest litigation is different than the second category.

63. Test of locus standi of a writ petitioner in case of first category has metamorphosed from the test of legal right of the writ petitioner being infringed to a test of whether, the writ petitioner can be said to be a busybody or a complete stranger to the allegations of infringement alleged against Article 12 authorities, in case of a writ petition other than a public interest litigation or writ petition for habeas corpus or quo warranto. In other words, the courts are concerned more with the substance of the allegations and the quality of the infringements rather than the right of a person to bring such infringements to the notice of the court. Once, it is prima facie shown that, Article 12 authorities acted beyond power or in breach of statutory duties, courts are more likely to intervene than not.

64. In the facts and circumstances of the present case, which involves 10 criminal cases relating to murders and possession of illegal arms, in which, applications under section 321 of the Criminal Procedure Code have been allowed, obviously, substantial public interest is involved. Writ petitioners as advocates have brought to the notice of the court, through the public interest litigations that, decisions to undertake an exercise under section 321 of the criminal

procedure code requires consideration by the constitutional court. They have placed materials which suggest that the decision of the State to apply under section 321 of the criminal procedure code was, to put it mildly, not correct.

65. The writ petitioners cannot be said to be without any credential. As advocates and as members of the society, they are eligible as any other member of the public to bring to the notice of the court that, decision to undertake an exercise under section 321 of the criminal procedure code in respect of the concerned 10 criminal cases was improper and that, such decision require interference by a constitutional court. Nothing has been placed before us to suggest that, contents of the writ petitions are not correct or that, substantial public interest is not involved in the writ petitions.

66. As we have noted above, two advocates have filed the two writ petitions. They may or may not subscribe to a political ideology. Nothing has been placed before us to conclusively establish that, they were actuated by any personal gain, private or oblique or ulterior motive of an extraneous reason to file the two writ petitions as public interest litigations. They cannot be said to be mere busybodies. The de facto complainants gave consent for the withdrawal under Section 321 of the Criminal Procedure Code. The

subject matter of the two writ petitions cannot be wished away as having no basis. Involvement of public interest in the outcome of the criminal cases exists.

67. The two writ petitions which involve withdrawal of criminal cases relating to murder and Arms Act can be said to have public importance. Substantial public interest is involved in the outcome of the criminal cases pleaded in the writ petitions.

68. Out of the 10 criminal cases involved in the present 2 writ petitions, 9 of the criminal cases involve murder. All 10 involve heinous crimes. Yet one of the grounds for undertaking an exercise under section 321 of the criminal procedure code is lack of evidence. This so-called lack of evidence was not present when chargesheets were filed in respect of all the 10 criminal cases. Materials in the case diary do not suggest that, there are lack of evidence. Failure of the prosecution to establish such evidence at the trial cannot be equated with lack of evidence. Significantly, the Cabinet memorandum refers to right of private defence being employed. Consequently, the State is aware of the persons who allegedly set up the plea of private defence. It is for the Courts at a trial to decide whether such a plea relating to homicide is acceptable or not. It is not for the State to adjudicate such plea or act thereon.

69. Apart from claiming that, the writ petitioners are motivated by political ideology and have filed the writ petitions to benefit politically, no personal gain, private motive or obvious motive behind filing of the writ petitions have been established. The so-called political benefit no longer exists as, the allegation that, the writ petitions were timed strategically so as to coincide with the elections in the State, is no longer valid in view of the elections being over.

70. In view of the discussions above, we are not in a position to dismiss the writ petitions as not disclosing any cause of action or being filed by busybodies, or no public interest being involved or the writ petitioners were actuated by personal gains or the writ petitions being filed mala fide or for oblique motive.

71. In view of the discussions above, we are not in a position to return a finding that, the writ petitioners have no locus standi to file the writ petitions or that, the writ petitions do not pass the test of public interest litigation.

72. We therefore hold that the writ petitions are maintainable. The first issue is answered accordingly.

73. ***Sheonandan Paswan (supra)*** has held that, grant of permission to withdraw from prosecution does not amount to the discharge of the accused. It has considered the allegation of political

vendetta in the criminal proceedings. An order allowing an application under Section 321 of the Criminal Procedure Code had been challenged before the High Court in a criminal revision application. By an order dated September 14, 1981, the High Court had dismissed the criminal revision application. A special leave petition had been filed against the order of the High Court whereupon, the Supreme Court granted leave to appeal. The appeal had been heard by a Bench of 3 judges. Such appeal had been dismissed by the majority judgement. A review petition had been filed which came to be heard by a 5 judge's Bench ultimately. By the majority decision, the appeal directed against the High Court's order had been dismissed.

74. *Sheonandan Paswan (supra)* has observed that, even if political vendetta is proved in initiation of a criminal prosecution, if such criminal prosecution is otherwise justifiable and based upon adequate evidence, such criminal prosecution does not become vitiated on account of mala fides or political vendetta of the complainant. It is also observed that, a criminal proceeding is not a proceeding for vindication of a private grievance but it is a proceeding initiated for the purpose of punishment to the offender in the interest of the society.

75. While considering the respective roles of the public prosecutor and the Court dealing with an application under Section 321 of the Criminal Procedure Code, ***Bairam Muralidhar (supra)*** has held that, it is the obligation of the Public Prosecutor to state what material he considered and to set it out in brief in the application under Section 321 of the Criminal Procedure Code. It has also held that, the Court considering such an application is required to give an informed consent. It is obligatory on the part of the Court to satisfy itself that from the materials it can be reasonably held that the withdrawal of the prosecution could serve the public interest. It is not within the domain of the Court to weigh the materials. However, it is necessary on the part of the Court to see whether the grant of consent would thwart or stifle the course of law or cause manifest injustice. The Court while giving consent under Section 321 of the Criminal Procedure Code is required to exercise judicial discretion, which is not to be exercised in a mechanical manner. The public prosecutor cannot act like the post office on behalf of the State government. He is required to act in good faith, peruse the materials on record and form an independent opinion that the withdrawal of the case would really subserve the public interest at large. An order of the government on the public prosecutor in this regard is not binding. He cannot remain oblivious of his lawful

obligations under the Code. He is required to constantly remember his duty to the Court as well as his duty to the collective.

76. *Rajender Kumar Jain (supra)* has held that, under the scheme of the Criminal Procedure Code, prosecution of an offender for serious offence is primarily the responsibility of the executive. The withdrawal from the prosecution is an executive function of the public prosecutor. The discretion to withdraw from the prosecution is solely that of the public prosecutor and so he cannot surrender the discretion to someone else. Though the government can give suggestion, advice or guidance in such matters involving public policy but none can compel him in this regard. It has observed that, withdrawal from prosecution and political reasons, if otherwise proper, is valid.

77. *K. Ajith and others (supra)* has formulated the principles which emerged from the various authorities of the Hon'ble Supreme Court on withdrawal of prosecution under section 321 of the Criminal Procedure Code, which are as follows: –

“25. The principles which emerge from the decisions of this Court on the withdrawal of a prosecution under Section 321CrPC can now be formulated:

25.1. Section 321 entrusts the decision to withdraw from a prosecution to the Public Prosecutor but the consent of the court is required for a withdrawal of the prosecution.

25.2. *The Public Prosecutor may withdraw from a prosecution not merely on the ground of paucity of evidence but also to further the broad ends of public justice.*

25.3. *The Public Prosecutor must formulate an independent opinion before seeking the consent of the court to withdraw from the prosecution.*

25.4. *While the mere fact that the initiative has come from the Government will not vitiate an application for withdrawal, the court must make an effort to elicit the reasons for withdrawal so as to ensure that the Public Prosecutor was satisfied that the withdrawal of the prosecution is necessary for good and relevant reasons.*

25.5. *In deciding whether to grant its consent to a withdrawal, the court exercises a judicial function but it has been described to be supervisory in nature. Before deciding whether to grant its consent the court must be satisfied that:*

(a) The 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;

(b) The application has been made in good faith, in the interest of public policy and justice, and not to thwart or stifle the process of law;

(c) The application does not suffer from such improprieties or illegalities as would cause manifest injustice if consent were to be given;

(d) The grant of consent subserves the administration of justice; and

(e) The permission has not been sought with an ulterior purpose unconnected with the vindication of the law which the Public Prosecutor is duty-bound to maintain.

25.6. *While determining whether the withdrawal of the prosecution subserves the administration of justice, the court would be justified in scrutinising the nature and gravity of the offence and its impact upon public life especially where matters involving public funds and the discharge of a public trust are implicated.*

25.7. *In a situation where both the trial Judge and the Revisional Court have concurred in granting or refusing consent, this Court while exercising its jurisdiction under Article 136 of the Constitution would exercise caution before disturbing concurrent findings. The Court may in exercise of the*

well-settled principles attached to the exercise of this jurisdiction, interfere in a case where there has been a failure of the trial Judge or of the High Court to apply the correct principles in deciding whether to grant or withhold consent.”

78. In the facts of the present case, the Assistant Public Prosecutor in ten criminal cases had applied under Section 321 of the Criminal Procedure Code not only on the ground of paucity of evidence but also on the ground of peace and tranquillity having returned. The applications under Section 321 of the Criminal Procedure Code do not disclose any material to suggest let alone establish that, the Assistant Public Prosecutors applied their mind and formed an independent opinion on the criminal cases before seeking consent of the Court to withdraw from the prosecution.

79. The application under Section 321 suggests that, Assistant Public Prosecutor had proceeded on the basis of the directions issued by the legal Remembrancer and the District Magistrate on withdrawal. They had abdicated their primary duty of forming an independent opinion on the subject.

80. The orders of the jurisdictional Magistrate allowing the applications under Section 321 of the Criminal Procedure Code do not disclose that the Courts made any effort to elicit the reasons for the withdrawal so as to ensure that the Assistant Public Prosecutor was satisfied that the withdrawal of the prosecution is necessary for

cogent and relevant reasons. The orders of the jurisdictional Magistrate do not speak on such subject at all.

81. The orders of the jurisdictional Magistrate are silent as to the Court being satisfied that the Assistant Public Prosecutor undertook a proper exercise to form any opinion, or that application under Section 321 of the Criminal Procedure Code is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes. Jurisdictional Magistrate has not spoken on the subject as to whether the application under Section 321 of the Criminal Procedure Code had been made in good faith or in the interest of public policy and justice and not to thwart or stifle the process of law. The orders also are non-speaking on various other important subjects on the parameters of grant of an application under Section 321 of the Criminal Procedure Code as noted in ***K. Ajith and others (supra)***.

82. As has been noted above, the decision of the State to undertake an exercise under Section 321 of the Criminal Procedure Code has emanated primarily from two fountain heads. One of them is, political vendetta in the incident leading up to the criminal cases being instituted. The other is return of “public peace and tranquillity” subsequently.

83. None of those two grounds are sufficient for the State to apply under Section 321 of the Criminal Procedure Code. That apart, the Assistant Public Prosecutor owes an obligation independent of the instruction of the State in evaluating the materials in the case diary prior to applying under Section 321 of the Criminal Procedure Code.

84. Political vendetta in the incident or in the lodgement of the criminal case is of no consequence when, the criminal case by itself has substance. The present criminal cases involve multiple murders. It has been accepted by the State that, some persons allegedly exercised a right of private defence. As has been noted above, whether or not, private defence was available to the accused is an issue which is required to be decided at the trial of the criminal cases. Criminal prosecution in all the criminal cases is otherwise justifiable and is based on adequate evidence. Police had filed charge sheets in the criminal cases. As has been noted in ***Sheonandan Paswan (supra)*** that, even if political vendetta for initiation of a criminal prosecution is proved, then also such criminal prosecution does not become vitiated on the ground of mala fide or political vendetta, so long, the criminal case is based upon some evidence to put up the accused on trial.

85. The case diary that we have perused in all the criminal cases contains sufficient materials to prosecute the accused. Police had also filed charge sheets.

86. Further, more than 10 persons had been murdered in different incidents in a locality. Criminal cases with regard to such incidents must not, let alone should not, be allowed to be withdrawn under Section 321 of the Criminal Procedure Code on the ground of return of peace and tranquillity. Society cannot be at peace and tranquillity with murderers roaming around without the fear of prosecution. In such a situation, the so called peace and tranquillity is at a price which erodes the basic fabric of a law abiding society. Such conduct of the State is inimical to public peace and administration of criminal justice.

87. Eradication of violence of any form in a society is an ideal which a State should strive for. In a democracy, violence in any manner or form, either pre or post poll, should be eschewed. A State must exhibit zero tolerance towards any form of violence. Any attempt to justify a crime and clothing it with political issues is insufferable.

88. State's action to undertake a process under Section 321 in criminal cases involving murders, in the facts and circumstances of

the present case, has evenly ingredient to send a wrong signal to the society. It has the potential of being misinterpreted as condoning political violence when the Constitutional provisions obligates any State to disincentivise violence in any manner or form.

89. Accused in the 10 criminal cases must stand trial. Murders did take place. Post-mortem reports available with the case diaries establish such fact. Therefore, as on date, in the society there are persons who are guilty of such murders. Allowing the prosecution to withdraw under Section 321 of the Criminal Procedure Code will not be in public interest. In fact, it would cause public harm and injury.

90. The decision of the State to apply under Section 321 of the Criminal Procedure Code in support of the criminal cases involved, not being founded upon any acceptable legal proposition or fact, cannot be said to be legal and valid.

91. The second issue is accordingly answered in the negative and as against the respondents.

92. ***Gian Singh (supra)*** has considered the relative scope of Sections 482 and 320 of the Criminal Procedure Code. It has framed guidelines on exercise of power of quashing of the High Court. It has also noted that, power of the High Court in quashing criminal proceeding or first information report or complaint in exercise of its

inherent jurisdiction is distinct and different from the power of criminal Court of compounding offences under Section 320 of the Criminal Procedure Code. It has also observed that, heinous and serious offences of mental depravity, or offences like murder, rape, dacoity or offences under special statutes or offences committed by public servants while working in their capacity as public servants, cannot be quashed even if the victim or victim family or offender has settled the disputes. Such offences are not private in nature and have serious impact on society.

93. *Naresh Shridhar Mirajkar (supra)* has held that, an order of the High Court is not amenable to challenge under Article 32 of the Constitution of India.

94. *Radhey Shyam (supra)* has noticed the distinctions in jurisdiction under Article 226 of the Constitution of India and Article 227 thereof. It has also clarified the effects of the amendments to Section 115 of the Code of Civil Procedure introduced by Act 46 of 1999. It has held that, judicial orders of civil Court are not amenable to writ jurisdiction under Article 226 of the Constitution of India. It has laid down that, challenging the judicial orders could lie by way of statutory appeal or revision or under Article 227 but not by way of a writ under Article 226 or 32 of the Constitution of India.

95. *Shaukat Hussain Guru (supra)* has held that, it is not permissible in exercise of powers under Article 32 of the Constitution of India to set aside a judgement delivered by a Division Bench of the Supreme Court, confirmed by the dismissal of the review petition as also of the curative petition.

96. *Balakrishna Ram (supra)* has held that, High Court may and can exercise its extraordinary writ jurisdiction against orders passed by the Armed Forces Tribunal. It has observed that, the principle that a High Court should not exercise its extraordinary writ jurisdiction when an efficacious alternative remedy available, is a rule of prudence and not a rule of law.

97. *Chhabil Dass Agarwal (supra)* has held that, ordinarily, High Court will not entertain a writ petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person. However, it has noticed that, there are some recognised exceptions to the rule of alternative remedy, that is, the statutory body has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, then the writ petition can be entertained.

98. *Ram Lubhya Bagga (supra)* has held that, policy matters cannot be judicially scrutinised although, the Court can consider whether the policies are arbitrary or violative of law.

99. *Bhajan Lal and others (supra)* has held that, normally quashing of criminal proceeding should be sought and done in exercise of the inherent power of the High Court under Section 482 of the Criminal Procedure Code, but that does not mean that, High Court cannot invoke extraordinary powers under Article 226 of the Constitution of India for such quashing.

100. *Pepsi Foods Ltd (supra)* has held that, although a Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, nonetheless, the accused can approach the High Court under Section 482 of the Criminal Procedure Code or under Article 227 of the Constitution of India to have the proceedings quashed against him when the complaint does not make out any case against him.

101. *Kim Wansoo (supra)* has noticed ***Bhajan Lal and others (supra)*** and ***Pepsi Foods Ltd (supra)*** and in the facts of that case held that, High Court erred in refusing to exercise the extraordinary power under Article 226 of the Constitution of India to quash a first information report and all further proceeding pursuant thereto.

102. Although authorities cited at the bar have suggested that, judicial orders cannot be scrutinised under Article 226 of the Constitution of India, we need not enter into such arena, in view of the reliefs that we propose to grant to the parties.

103. Since the decision of the State to undertake an exercise under Section 321 of the Criminal Procedure Code has been declared to be bad in law and since, the Assistant Public Prosecutor making the applications did not apply their mind to form an independent opinion as to the requirement of such an application, it would be appropriate to set aside the decision of the State to undertake an exercise under Section 321 of the Criminal Procedure Code as also the decision of the Assistant Public Prosecutor to invoke Section 321 of the Criminal Procedure Code.

104. Assistant Public Prosecutor or the Public Prosecutor, as the case may be, in charge of the criminal cases, will take necessary and suitable measures to ensure that, the concerned criminal cases are revived and prosecuted, in accordance with law. In so doing, the Public Prosecutor or the Assistant Public Prosecutor as the case may be will take appropriate steps and measures including applying for revision of the orders of the jurisdictional Magistrate allowing the application under Section 321, if so required.

105. It is expected that the Public Prosecutor in charge of criminal matters in the Courts where, the orders of acceptance of the application under Section 321 of the Criminal Procedure Code were passed, will take appropriate measures within a fortnight from the date of this judgment and order.

106. This judgment and order will not prevent the petitioners herein to take such measures including applying for revision, as are available to them in law, in order to ensure that the criminal cases are prosecuted and brought to their logical conclusion.

107. Third issue is therefore answered accordingly.

108. WPA (P) 67 of 2021 and WPA (P) 68 of 2021 along with all connected applications are disposed of without any order as to costs.

[DEBANGSU BASAK, J.]

109. I agree.

[MD. SHABBAR RASHIDI, J.]