

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.129 OF 2026

IN

SUO MOTU WRIT PETITION NO.1 OF 2022

State of Maharashtra ... Applicant
versus
High Court on its Own Motion ... Respondent

Mrs. M.M.Deshmukh, Public Prosecutor with Mr. A.R.Patil, Addl. Public Prosecutor, for State.

**CORAM: SHREE CHANDRASHEKHAR, CJ &
N.J.JAMADAR, J.**

DATE : 29 JANUARY 2026

Per, N. J. Jamadar, J. :

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1. Heard the learned Counsel for the parties.
2. This Special Bench has been constituted pursuant to the directions of the Supreme Court in Writ Petition (Civil) No.699 of 2016 in an order dated 10 August 2021, dealing with the issue of withdrawal of criminal cases pending against the legislators by the State for extraneous and political considerations, by utilizing the power under Section 321 of the Code of Criminal Procedure, 1973. The Supreme Court emphasised that the said power under Section 321 was required to be exercised with utmost good faith to serve the larger public

interest. The Supreme Court directed, inter alia, that no prosecution against the sitting or former MP/MLA shall be withdrawn without the leave of the High Court.

3. In the Lok Sabha General Election-2009, a public meeting was organized on 22nd April 2009 between 6.00 pm to 9.00 pm on the ground in front of Gayatri Vidyalaya, Thane, to canvass the candidature of Anand Paranjape (A2). The accused including Accused Nos. 3 and 4, who are the former Chief Ministers of the State of Maharashtra, attended the said meeting.

4. It is alleged, in the said meeting, Accused No.3, the then Working President of a political party, played a C.D. containing material which was defamatory and amounted to character assassination of a candidate of the rival political party. The said rival candidate addressed complaints to the Returning Officer and police.

5. On the basis of said complaint, the police registered non-cognizable case No. 798 of 2009 for the offences punishable under Section 171G, 500 and 501 of the Indian Penal Code, 1860 read with Section 123(4) of the Representation of the People Act, 1951.

6. It was alleged that the said C.D., which contained false statements in relation to the personal character of the rival candidate was played with intent to affect result of the election and prejudice the prospects of the rival candidate in the said election.

7. On the basis of the said NC complaint, Summary Criminal Case No. 2617 of 2009 has been registered.
8. In the instant Application, it is averred that, in pursuance of the decision taken by the State Government to withdraw the prosecution arising out of social and political agitations, the proposal to withdraw the instant prosecution was placed before the committee constituted by the State Government vide GR dated 20th September 2022. In its meeting held on 31st October 2023, the said committee has considered the proposal and recommended the withdrawal of the prosecution.
9. The Assistant Public Prosecutor has reported that the rival candidate-complainant has passed away. The alleged offences entail minor punishment. And, in his opinion, it would be advisable to withdraw the prosecution.
10. We have perused the averments in the Application and the material on record. It seems, since the offences punishable under Section 171G, 500 and 501 of the Indian Penal Code, 1860, are non-cognizable, a NC complaint was registered. After the NC complaint was lodged before the Magistrate, a Summary Criminal Case has been registered. The rival candidate-complainant has passed away. Evidently, the offences were allegedly committed during the course of campaigning for the parliamentary election, held in the year 2009.

11. The committee constituted by the State Government seems to have been examined the proposal for withdrawal of the prosecution in conformity with the parameters prescribed in the GR. In the context of the indictment, there was no question of loss of life or damage to the public property.

12. In these circumstances, we find that the view of the committee to withdraw the prosecution appears to have been guided by considerations which advance the object of withdrawal of prosecution.

13. It does not appear that the prosecution is being withdrawn for any extraneous consideration. After an independent evaluation the learned Public Prosecutor, entrusted with Summary Criminal Case No. 2617 of 2009, has opined that the prosecution may be withdrawn.

14. In the totality of circumstances, especially having regard to the time lag and developments in the intervening period, though we are inclined to grant leave to the State Government to withdraw the prosecution, yet, in the facts of the case, the Magistrate will be required to examine the aspect of withdrawal of prosecution for the offences punishable under Sections 500 and 501 of the Indian Penal Code, 1860. Under the provisions of Section 321 of Criminal Procedure Code, 1973, the withdrawal from the prosecution can be either generally or in respect of one or more of the offences for which the accused is facing the trial.

15. Thus, the Application stands disposed with the direction that, in the event the concerned Public Prosecutor files an application for withdrawal of the prosecution, the jurisdictional Court shall pass an appropriate order in accordance with law.

(N.J.JAMADAR, J.)

(CHIEF JUSTICE)