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

**CRM-M No.34848 of 2016
Date of decision: 14.01.2026**

Balbir Singh

... Petitioner

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Alok Mittal, Advocate and
Mr. Sylvester, Advocate,
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab,
for the respondent-State.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 482 of the Code of Criminal Procedure (For short "Code") seeking quashing of a Kalendra instituted and filed under Section 66 of the Police Act, 2007 (For short "Act, 2007") as well the order dated 29.08.2016 passed by the Court of learned Additional Chief Judicial Magistrate, Kapurthala in the abovesaid Kalendra whereby an application moved by the State under Section 321 of the Code for withdrawal of the Kalendra had been dismissed.

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2. Brief facts relevant for the purpose of disposal of this petition are that a complaint was submitted by Gurmeet Singh with the police alleging that his daughter Narinderjit Kaur was married with Gurinderjit Singh on 03.07.2011. She had subsequently obtained an ex parte decree of divorce from the Courts at America from the said Gurinderjit Singh. The complainant had been residing abroad and had come to India to perform second marriage of his daughter on 06.01.2014. The present petitioner who is relative of Gurinderjit Singh and is also a Power of Attorney holder, gave an information at the Police Station NRI Kapurthala to the effect that Narinderjit Kaur was performing second marriage without getting divorce. This information was false and due to the same, the complainant suffered insult in society and in relations. Therefore, he prayed for taking penal action against the petitioner and Gurinderjit Singh for giving false information to the police. On the aforementioned complaint, an inquiry was conducted. Information so given by the petitioner was found to be false. A Kalendra under Section 66 of Act, 2007 was prepared by SHO, Police Station NRI Kapurthala and was presented before the jurisdictional Magistrate. During the pendency of the Kalendra, the public prosecutor filed an application under Section 321 of the Code for allowing him to withdraw the Kalendra by submitting that the information given by the petitioner was not found to be false as the fact that Narinderjit Kaur had secured ex

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parte divorce decree from Gurinderjit Singh in USA was not within his knowledge at the relevant time and that Gurinderjit Singh was not even living in India at that time.

3. The learned Additional Chief Judicial Magistrate considered the pleas as taken in the application and dismissed the same by observing that the application was not supported by any affidavit and that no material had been produced on record by the prosecution to conclude that the withdrawal of the Kalendra from the prosecution would serve public interest.

4. Feeling aggrieved, the present petition has been filed.

5. It is argued by learned counsel for the petitioner that the impugned order is not sustainable in the eyes of law since the information supplied by him to the police was not false. He was not aware that an ex parte divorce decree had been secured by Narinderjit Kaur. No case for filing Kalendra under Section 66 of the Act, 2007 had been made out against him. More so, while filing application under Section 321 of the Code, the prosecution had independently examined the matter and had given detailed reasons seeking permission to withdraw the Kalendra which had not been properly considered by the learned trial Court. It is further argued that the prosecution had been wrongfully launched against him. The learned Magistrate was not required to assess the evidence/material placed on record while dealing with the application for

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withdrawal of prosecution and was required to exercise judicial discretion by considering the material placed on record by the prosecution which had not been done. The learned Magistrate did not apply her judicious mind. The prosecution/State was master of litigation and was very much competent to seek withdrawal of the prosecution which had rightly been done but the learned Magistrate did not consider the pleas as taken in the application in a proper manner and passed a non speaking and cryptic order which is not sustainable in the eyes of law. With these broad submissions, it is urged that the impugned Kalendra and the order dated 29.08.2016 are liable to be quashed, the application filed by the prosecution under Section 321 of the Code deserves to be allowed and the Kalendra as filed against the petitioner deserves to be withdrawn.

6. The learned Senior Deputy Advocate General, Punjab has not raised any serious objection to the pleas as taken by the petitioner's counsel.

7. This Court has considered the submissions as made by learned counsel for the petitioner.

8. Section 321 of Cr.P.C. enables the public prosecutor/incharge of a case to withdraw from prosecution of any person at any time before the judgment is pronounced, but the application for withdrawal is required to get the consent of the Court. Upon such withdrawal, the person named as accused is to be discharged, if charge is not framed and

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to be acquitted, if charge has been framed. The Hon'ble Apex Court had summarized the legal position flowing from Section 321 of the Code in case cited as **R.K. Jain v. State through Special Police Establishment**, (1980) 3 SCR 982 as follows:-

- (i) Under the scheme of the Code, prosecution of an offender for a serious offence is primarily the responsibility of the Executive.
- (ii) The withdrawal from the prosecution is an executive function of the Public Prosecutor.
- (iii) The discretion to withdraw from the prosecution is that of the Public Prosecutor and none else, and so, he cannot surrender that discretion to someone else.
- (iv) The Government may suggest to the Public Prosecutor that he may withdraw from the prosecution but none can compel him to do so.
- (v) The Public Prosecutor may withdraw from the prosecution not merely on the ground of paucity of evidence but on other relevant grounds as well in order to further the broad ends of public justice, public order and peace. The broad ends of public justice will certainly include appropriate social, economic and, political purposes sans Tammany Hall enterprise.
- (vi) The Public Prosecutor is an officer of the Court and responsible to the Court.
- (vii) The Court performs a supervisory function in granting its consent to the withdrawal.
- (viii) The Court's duty is not to reappreciate the grounds which led the Public Prosecutor to request withdrawal from the prosecution but to consider whether the Public Prosecutor applied his mind as a free agent, uninfluenced by irrelevant and extraneous considerations. The Court has a special duty in this regard as it is the ultimate repository of legislative confidence in granting or

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withholding its consent to withdrawal from the prosecution.

9. In **Sheo Nandan Paswan v. State of Bihar and others**, AIR 1987 SC 877, which has been cited by learned counsel for the petitioner, the Hon'ble Supreme Court had observed that the function of the Court is to give consent after taking into consideration all the materials produced before it. It has to exercise judicial discretion after considering such material either by giving consent or declining consent. The Court is required to satisfy that the exercise of discretion by public prosecutor is proper. It was also observed that Section 321 is virtually a step by way of a composition of offence by the State. The State is the master of the litigation in criminal cases. The Magistrate is required to consider that 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. It was also observed that the function of the Court is to give consent and this section does not obligate the Court to record reasons before consent is given. A private complaint can still be filed if a party is aggrieved by withdrawal of the prosecution. Reliance can also be placed upon **M.N. Sankaranarayanan Nair v. P.V. Balakrishnan**, (1972) 2 SCR 599 and **State of Orissa v. C. Mohapatra**, (1977) 1 SCR 335, wherein it was observed by Hon'ble Supreme Court that ultimate guiding consideration must be in the interest of administration of justice.

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10. In view of the principles laid down in the above cited cases, it is clear that public policy, interest of administration, inexpediency to proceed with the prosecution for reasons of State and paucity of evidence can be considered good grounds for withdrawal from prosecution. Apart from that, it is to be considered that the public prosecutor has moved application for withdrawal in good faith after careful consideration of the material placed before him. Filing of an application for withdrawal from prosecution is well within the domain of public prosecutor and while acting independently, he has to be satisfied.

11. Now coming to the peculiar facts of the instant case. The public prosecutor had moved application under Section 321 of the Code seeking withdrawal of the Kalendra in question from prosecution by submitting that making the accused faced proceedings would be a waste of time and energy as investigating agency has given clean chit to the accused and FIR registered against them separately had been cancelled. It was also submitted that the entire circumstances had been examined and the withdrawal was in public interest. The learned jurisdictional Magistrate while passing the impugned order, observed that the application was not supported by any affidavit and material that it will serve the public interest. However, on going through the record, this Court is of the considered opinion that the learned Magistrate was not required to delve deeper into the merits of the case and was required to

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satisfy herself that the withdrawal from prosecution was or was not in the administration of justice. As per Section 66 of the Act, 2007 any person making a false statement to the police officer for the purpose of obtaining any benefit is liable for punishment. The prosecution submitted that Kalendra had been presented in a hasty manner by the investigating agency without conducting proper inquiry and no purpose was going to be served by continuing with the same. Even the FIR lodged by the father of Narinderjit Kaur against Gurinderjit Singh had been cancelled. As per the law laid down by Hon'ble Apex Court, the discretion to withdraw from the prosecution was that of the public prosecutor and the learned trial Magistrate was performing a merely supervisory function in granting consent for such withdrawal. As such, he was not to re-appreciate the grounds which led the public prosecutor to request withdrawal from the prosecution and was only required to consider that the public prosecutor had been acting as a free agent uninfluenced by extraneous consideration. However, no such observation was made that the public prosecutor had not applied his mind or has misconducted himself. As such, the judgment of public prosecutor seeking withdrawal could not have been lightly interfered with unless it was apparent on record that his decision was not bona fide which is not the position in the instant case.

12. In view of this discussion, this Court is of the considered opinion that the impugned order is not sustainable in the eyes of law and

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is liable to be set aside as the learned trial Court was only required to satisfy itself that the executive function of the public prosecutor has not been properly exercised and that withdrawal was not sought as an attempt to interfere with the normal course of justice for illegitimate reasons and purposes. In view of the discussion as made above, this Court finds that application for withdrawal from prosecution was made by the public prosecutor in good faith after a due consideration of the material placed on record and hence, the same deserves to be allowed. Accordingly, the petition is allowed, the impugned order is set aside and the application filed by the public prosecutor is allowed resulting into withdrawal of the prosecution launched against the petitioner resultantly quashing of the impugned Kalendra.

14.01.2026
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No