



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Revision Petition No. 152/2016

Mubarak @ Salman S/o Sultan Khan, R/o Umand, Police Station
Kapasana, District Chittorgarh

-----Petitioner

Versus

1. State of Rajasthan through Public Prosecutor
2. Ramesh Chandra Son of Shri Champa
3. Ramesh Chandra Son of Shri Bhagtawar Nalvaya
4. Madhav Lal Son of Shankar Lal
Respondent no. 2 and 3 resident of Village-Umand, Police
Station Kapasana, District Chittorgarh.
5. Champa Lal Son of Nanda @ Nand Ram, Resident of
Jhakro Ka Kheda, District Kapasana, District Chittorgarh.
6. Bhagwan Lal Son of Teja Nayak, Resident of Village-
Umand, Police Station Kapasana, District Chittorgarh.
7. Suresh Singh Son of Shri Bhanwar Singh Rathore,
Resident of Village-Umand, Police Station Kapasana,
District Chittorgarh.
8. Balu Ram Son of Shri Naval Ram
9. Ratan Son of Partha Jat
10. Suresh Son of Partha Jat
11. Pappu Son of Gehri Lal Jat
12. Mohan Son of Kalu Gadri
13. Kajju @ Kajod Son of Miya Ram Jat
14. Nand Lal Son of Lobh Chand Jat
Respondent No. 7 to 13 Resident of Village-Umand, Police
Station Kapasana, District Chittorgarh.
15. Gopi Lal Son of Bhera Jat
16. Toli Ram Son of Bhera Jat
17. Raghuveer Son of Nand Kishore Sharma
18. Banshi Lal Meghwal Son of Ram Lal Meghwal
19. Raju @ Rajesh Son of Ramesh Lohar
20. Ratan Son of Lakmi Chand Meghwal
21. Ranjeet Singh Son of Bhanwar Singh Rathore



22. Basanti Lal Son of Shiv Prakash Sharma
23. Dhanna Ram Son of Chunni Ram Mali
24. Pooran Son of Bhera Ram Lohar
25. Sanjay Sharma Son of Ramnarayan Sharma
26. Omprakash Son of Chunni Ram Mali
27. Udai Lal Son of Lobhchand Jat
28. Botmal Son of Lobh Chand
29. Bansi Lal Son of Ram Lal,
Respondent No. 14 to 24 Resident of Village-Umand,
Police Station Kapasan, District Chittorgarh.
30. Shankar Lal Jat Son of Kishore Jat, Resident of
Kuthana, Police Bhadsoda, Kapasan, Chittorgarh.

----Respondents

For Petitioner(s)	:	Mr. Firoz Khan} Mr. Ansarul Hak}
Respondent(s)	:	Mr. Anil Joshi, GA-cum-AAG Mr. Rajat Chhparwal AAG Mr. Jayant Mahecha for Mr. Sudhir Saruparia

HON'BLE MR. JUSTICE FARJAND ALI

Order

ORDER RESERVED ON :::: **04/07/2023**
ORDER PRONOUNCED ON :::: **18/09/2023**

Reportable

BY THE COURT:-

1. The legality, propriety and correctness of the order dated 08.01.2016 passed by the learned Additional Sessions Judge No. 3, Chittorgarh in Criminal Case No. 52/2014 have been challenged by the petitioner whereby the criminal prosecution was allowed to be withdrawn by the learned trial Court and the proceedings against the accused-respondents were dropped.



2. Bereft of elaborate details, brief facts necessary for disposal of the instant criminal revision would be that on 23.12.2007, the respondents, in furtherance of their common object, trespassed into the house of the petitioner-complainant, ransacked and vandalized the house as a result of which the entire belongings were destroyed. The fire was of such magnitude that all the household articles got damaged. An FIR bearing No. 460/2007 came to be lodged by the petitioner at Police Station Kapasan, District Chittorgarh upon which, the investigation was conducted. The coloured photographs, site memo, the statements of the witnesses and other independent evidence prima facie made a foolproof case against the accused-respondents for the offences under Sections 147, 148, 149, 435, 436, 454 & 379 IPC and accordingly, charge sheet got submitted against them. The learned Magistrate took cognizance of the offences and since the case was not exclusively triable by Court of Magistrate, the order of committal was passed and thus, the file was received by the learned Additional Sessions Judge No.3, Chittorgarh. On several occasions, adjournments were sought by the accused-respondents to argue on the point of charge. On 18.12.2015, the learned Additional Public Prosecutor submitted an application under Section 321 of the Cr.P.C. along with a resolution issued by the Department of Home, Government of Rajasthan and thus, a prayer was made for withdrawal from the prosecution of accused-respondents. The learned trial judge kept the application for perusal and posted the matter for consideration on





08.01.2016. On 08.01.2016, the learned trial judge passed the order to the effect that since the State of Rajasthan has withdrawn the prosecution, thus, nothing survives in the trial and accordingly, directed to discharge the bail bonds of the accused-respondents and dropped the proceedings against them and consigned the file to the record as well. For ready reference, the order sheet dated 08.01.2016 is reproduced herein below:

“AdPP उपस्थित है। मुलजिमान मय वकील उपस्थित है। पत्रावली का अवलोकन किया। यह प्रकरण राजस्थान सरकार गृह (ग्रुप-10) विभाग के आदेश क्रमांक एफ 13(46) गृह-10/2015 जयपुर दिनांक 28.9.15 वापस ले लिया गया है। चूंकि प्रकरण राज्य सरकार द्वारा वापस ले लिया गया है अतः प्रकरण में कार्यवाही शेष नहीं रहती है। मुल० सभी के हाजरी बाबत निष्पादित जमानत मुचलके निरस्त किये जाते है। पत्रावली में कार्यवाही शेष नहीं रहती है शुमार फैसल होकर वाद तकमील दाखिल दफतर हो।”

3. Heard learned counsel for the petitioner, learned Public Prosecutor for the State and learned counsel for the accused-respondents. Perused the record of the case, more particularly the application filed by the Additional Public Prosecutor and the resolution taken by the Government of Rajasthan. Empowered with the power laid down under Section 397 CrPC, this Court examined the record of the proceedings for the purpose of satisfying itself to the correctness, legality or propriety of the order dated 08.01.2016. The accused are duly represented by their counsel.

4. The foundation laid by the framers of the law very conspicuously ensured recognition and protection of the legal rights of every citizen including any other individual who is otherwise not a citizen. These rights are very much engraved and



solidly placed in our Constitution and are famously known as the **Fundamental Rights**. This theory of recognition of basic human rights regarding one's life and liberty has evolved from the ancient times where there was conceptualization of common human dwelling with certain set of rules which were formulated so as to provide **a social, habitable environment** which guaranteed a sense of security and stability for every person dwelling in that social setup.

5. The urge for basic sense of security and stability is per se a recurring process till infinity. The Constitution of India does not just critically recognize this basic minimum right rather guarantees it to each and every person. The process and impact of the word 'guarantees' is left to the resourceful State who shall ensure that no rights of an individual are interfered with and if the same are encroached upon, then the remedy to that person whose rights are being infringed will be provided by the state through due process of law which is just, fair and reasonable.

6. The Indian Penal Code establishes the substantive rights of every person upon which the applicability of the Code exists. The Code expressly provides certain acts and omissions to be an "offence" which is illegal and prohibited by the law of the land.

7. The acts enumerated in the Code are also called as **mala prohibita** which means the wrongs which are prohibited by a criminal statute. The Indian Penal Code dwells upon the concept of proscriptive morality which not only prevents a particular act of an individual rather also attaches the punishment for that



illegal act. In other words, it can safely be inferred that such proscriptive character principally derives its soul from a Latin maxim, that is, ***ubi jus ibi remedium*** which means where there is a right, there is a remedy as the person against whom the wrong has been committed cannot be left remediless. The remedy for wrong acts so committed upon an individual victim is to be provided by the force of statute and the process of imparting the remedy has to be initiated as per the due process of law, i.e. through the process laid down in the Code of Criminal Procedure.

8. As the Constitution of India has expressly cast a duty upon the State to protect the fundamental rights of every citizen as a custodian and guardian, it is considered that every crime committed is an act which challenges the societal peace and security and such cowardly acts substantially shake the societal cohesiveness and its conscience at large. The very element of fear and unrest shocks the basic human behaviour of keeping trust upon an individual and as such, if thought further, apprehensiveness keeps brewing in the mind of an individual constantly as they tend to become vulnerable of being a future victim of such act, thus, every offence so committed is also an offence committed against the society and the State, being a representative of the society, takes charge of prosecuting the wrong doer with the resources so required for it which is why the state represents itself as a prosecuting party in criminal matters



and the prosecution of such cases is conducted by a State-appointed legal representative called a Public Prosecutor.

9. Here, the factual conspectus manifests that the petitioner is a victim of a series of unruly and uncivilized wrongful acts so committed upon his life and liberty whereby the basic elements to lead a dignified life have been ravaged by all the accused respondents while showcasing their fierce audacity to rage and commit rampant acts ignoring the well-established mandate of law. The alleged acts of the individuals not only shake the very edifice of lawfulness in the society rather they are a blatant challenge to all the stakeholders who are bound to ensure and protect the rights of every innocent citizen.

10. The grief and pain of an unattended complainant puts a stigma over the democratic setup as founded by the forefathers of the Indian democracy as in the end, he is left with no remedy and made to accept a loss as a result of which the legal right of a victim stands cornered in the society with no legal reparation and no possible recourse.

11. The framers of the constitution had, in all solidarity, promoted the ultimate object of disbursing the feeling of fraternity while assuring the dignity of an individual and unity and integrity of the nation. As it appears from the record as well as from the order so passed in connection therein, all the stakeholders, even the learned Judge, failed to look into the matter as it is supposed to be done and required to be dealt with while staying within the ambit of law and as per the mandate of



law as well as to satiate the quest of justice for which alone the courts were and continue to be established. All courts of law are meant to be and supposed to have been made for imparting justice and justice only. The provisions of law are tools for a judicial officer to serve the cause of justice.

12. The record of the case speaks volumes about the material so collected during the course of the investigation; the manner and intent in which the offence has been committed by all the accused respondents prima facie establishes that the present case is not a fit case where the State government should have exercised its executive discretion to seek withdrawal of the prosecution under Section 321 of Code of Criminal Procedure.

13. Nothing on the record suggests that the State Government had meticulously examined the prevailing circumstances of the case as well as the record of the case thereby directing the Additional Public Prosecutor to move an application for withdrawal from prosecution under Section 321 of Cr.P.C.

14. The order dated 28.09.2015 issued by Special Secretary Home reflects complete non-application of mind, as it appears that the said order is completely hinged upon the term 'janhit' i.e. public interest; it being the sole consideration.

15. Whether mere iteration of the words 'public interest' in the order makes for a sufficient enough reason to absolve the State Government from accountability is worth mulling over. Well, in the light of the various judicial pronouncements, this court is not



in complete affirmation of the aforesaid order of withdrawal so issued by the State Government.

16. It is appropriate to reproduce the order dated 28.09.2015 and the same is provided neath:



"राजस्थान सरकार
गृह (ग्रुप-10) विभाग

क्रमांक :-एफ.13(46) गृह-10 / 2015

जयपुर, दिनांक 28.9.15

आदेश

राज्य सरकार प्रथम सूचना रिपोर्ट संख्या 460 / 2007 पुलिस थाना कपासन, (चित्तौड़गढ़) सरकार बनाम भगवान लाल व अन्य अन्तर्गत धारा 147, 148, 435, 436, 454, 379 व सपठित धारा 149 भा.द.स. में न्यायालय, ए.डी.जे. नं. 01 चित्तौड़गढ़ में विचाराधीन प्रकरण को विचारोपरान्त जनहित में न्यायालय से वापस लेती है।

अतः संबंधित अपर लोक अभियोजक को निर्देश प्रदान किये जाते हैं कि वे सक्षम न्यायालय में प्रकरण को वापस लिये जाने के संबंध में प्रार्थना पत्र पेश करें।

ह०
(राजेन्द्र सिंह चौधरी)
विशिष्ट शासन सचिव गृह
एवं संयुक्त विधि परामर्शी"

17. It shall be the duty of the Government before instructing the Public Prosecutor for withdrawal from prosecution to consider the matter carefully and the file for which consideration is made should contain reasons. When a matter pertains to benefit of society, there is no scope or need of its being confidential. If this procedure is followed, chances of favouritism or extraneous political considerations would be curbed to a great extent.



18. It appears from the record that the State Government had completely lost the sight of as well as ignored the factum that being a guardian of the citizens, when such a rampant act of dislodgment and vandalization has taken place, how can the accused persons be set free and that too, when a frame of a strong prima facie case is standing against them. The aforesaid order issued does not even reflect the application of mind by the authority as to how they reached to such a conclusion. There is no whisper as to what material were examined; what were the circumstances assessed; and what type of public interest persuaded them to exercise their executive power for withdrawal of proceedings. The answers to these rudimentary questions are conspicuously missing.

19. To understand the controversy better, it is apposite to see what Section 321 of the Cr.P.C., 1973 says. It reads as follows:

321. Withdrawal from prosecution.—The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and, upon such withdrawal,—

(a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;

(b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences:

Provided that where such offence—



(i) was against any law relating to a matter to which the executive power of the Union extends, or

(ii) was investigated by the Delhi Special Police Establishment under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or

(iii) involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or

(iv) was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty,

and the Prosecutor in charge of the case has not been appointed by the Central Government, he shall not, unless he has been permitted by the Central Government to do so, move the Court for its consent to withdraw from the 146 prosecution and the Court shall, before according consent, direct the Prosecutor to produce before it the permission granted by the Central Government to withdraw from the prosecution.

20. Upon meticulously going through the language of the aforesaid section, the structure of the provision can substantially be divided and interpreted majorly in three parts. The same are discussed as under:-

(i) Who can approach for withdrawal, i.e. **the prosecution part.**

(ii) Judicial check or requirement of consent of court which forms **the judicial part.**

(iii) Unattended complainant/victim who forms **the victim part.**





21. Beginning with **part (i)**, it can be grasped that the provision suggests that it **enables** the Public Prosecutor or the Assistant Public Prosecutor, having charge or so given, to withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried with the consent of the Magistrate or judicial officer before whom the case is alive. A judicial check, in the form of seeking '**consent**' is attached to it and if the same is granted, its effect leads to culmination of the application moved. The acceptance of the Court results into discharge or acquittal of the accused as the case may be. Section 321 Cr.P.C. provides an enormous weightage and credence to the discretion of a Public Prosecutor and his role in withdrawal from prosecution. Having said so, it is expected rather warranted from a Public Prosecutor to act fairly adhering to the spirit of law, free from all executive pressure and its nuances. The Public Prosecutor is regarded as an officer of the court and his duty is on a higher pedestal than any other stakeholder as his fairness and just exercise of his function in the matter goes on to materially assist the Court through which justice is served in its true letter and spirit.

22. In the cases of withdrawal from prosecution, the role of the Public Prosecutor becomes more crucial and relevant as his independent opinion is very much imperative as far as object of filing the application under Section 321 Cr.P.C. is concerned. Before filing of the application under the said provision, it is well expected from the public prosecutor that he will exercise his



discretion and that too, a legal one where his dexterity should reflect from his final conclusion whether it is a fit case to file an application by invoking the provision of Section 321 Cr.P.C. or not.

23. There may be occasions and circumstances where the Public Prosecutor does not find enough evidence to further the case of the prosecution against the accused or where he realises that furthering the case of the prosecution will lead to a negative outcome as the prosecution may not be in the interest of public justice, peace or tranquility. Thus, Section 321 Cr.P.C. provides discretion to the Public Prosecutor to withdraw from prosecution, with the consent of the Court, in such cases where he thinks such withdrawal will lead to a larger public interest being served.

24. The Legislature has provided leeway to the Public Prosecutor to proceed in the cases where the circumstances are prevailing for such withdrawal. It is expected rather incumbent upon him to frame a plausible reasoning being a law officer having legal knowledge as to what could be done and what not. Here, the Public Prosecutor shall not act as a mere postman or a State Government employee following the orders as directed to him by his executive/appointing authority as under the Code of Criminal Procedure, 1973, prosecution was brought under a separate agency and detached from the police department. The position of Prosecutor is very important in the criminal justice system for a free trial. The prosecutor is representative of the



State but he is an officer of the Court too, whose inalienable duty is to assist the Court, that too, for the cause of justice.

25. In the first volume of the 154th Report drafted in 1996 on 'The Code of Criminal Procedure, 1973', the 14th Law Commission of India had dealt with 'Independent Prosecuting Agency' and it had discussed thereunder that '**a man of integrity**' should be chosen to be in charge of prosecution and the purpose of a criminal trial being determination of guilt or innocence of the accused, it is the duty of a Public Prosecutor not to represent any particular party but to act in an objective manner.

26. Kerala High Court has held in **Babu Vs. the State of Kerala** reported in (2010) 9 SCC 189 to the afore-mentioned effect and the same has been quoted by Hon'ble the Supreme Court in **Center for PIL and Ors. Vs. Union of India (UOI) and Ors.** reported in (2012) 3 SCC 117. The relevant lines are as follows:

"4. ...Public Prosecutors are really Ministers of Justice whose job is none other than assisting the State in the administration of justice. They are not representatives of any party. Their job is to assist the Court by placing before the Court all relevant aspects of the case. They are not there to see the innocent sent to the gallows; they are also not there to see the culprits escape conviction. ..."

27. But the facts and relevant, material documents of the case specially reflect how and in what manner the concerned prosecutor acted which, according to this Court, was without an independent opinion. Reflection of complete non-exercise of



discretion as well as legal reasoning for filing the application can very well be gathered from the application itself. The casual manner in which the application has been filed and the provision of law so mentioned in the application is very unfortunate. The incorrect provision of law used in the application is like a nail in the coffin which cements the view of this Court that the prosecutor has acted in a highly callous manner having no regard to the provisions of law. For laying emphasis on the point made herein above, the said application is reproduced as under:

"सेवामें,

श्रीमान न्यायालय अपर सेशन न्यायाधीश,
क्रमांक-3, चित्तौड़गढ़

राज्य बनाम भगवान लाल वगैरा
प्रकरण संख्या 52/2014 एस.सी.
प्रार्थना पत्र अन्तर्गत धारा 311 द.प्र.सं.
तारीख पैशी :- 09.10.2015

महोदय,

उक्त उनवान के प्रकरण सें अभियोजन पक्ष की ओर से निम्न प्रकार निवेदन है:-

1. यह कि उक्त प्रकरण न्यायालय आप में विचाराधीन होकर वास्ते चार्ज दिनांक 09.10.2015 को नियत है। प्रकरण को जनहित में वापस लेने बाबत विशिष्ट शासन सचिव गृह एवं संयुक्त विधि परामर्शी का आदेश क्रमांक एफ.13(46) गृह-10/2015 जयपुर दिनांक 28.09.2015 प्राप्त हुआ है।
2. यह कि उक्त प्रकरण में अभियोजन पक्ष कोई कार्यवाही नहीं चाह कर प्रकरण को वापस लेना चाहता है।

अतः प्रार्थना है कि प्रार्थना पत्र अभियोजन स्वीकार फरमाया जाकर विचाराधीन प्रकरण को इसी स्टेज पर विज्ञो किये जाने का आदेश फरमावें।

संलग्न :- प्रासंगिक आदेश की फोटोप्रति।



दिनांक :- 18.12.2015

अपर लोक अभियोजक
संख्या-3, चित्तौड़गढ़"

28. From a bare reading of the above application, it can safely be inferred that how much pain was undertaken and heed was paid while drafting the application under the incorrect provision of law, thus, this court is very well satisfied that the concerned Public Prosecutor not only acted as a delivery agent of the state authority to convey the Court regarding resolution of withdrawal from prosecution as directed to him but he further showcased his utter ignorance even while drafting the application for the same where he could not even undertake the effort to draft it as per the correct provision of law. Mentioning of Section 311 CrPC instead of Section 321 CrPC itself is making it abundantly clear that law officer didn't apply his mind while filing the application.

29. It can be further inferred that no meticulous insight has been given to the material collected by the state investigating agency. While making such application, no reasons were recorded for the satisfaction of the conclusion that progressing with the present case would lead to no fruitful purpose; in fact, for that matter, no such conclusion was recorded at all. This Court is well aware and conscious that quoting legal provision/section is not required while filing any application but if it is mentioned, then in the least, that provision/section of law should be mentioned correctly, being the bare minimum that is expected from the officer of the Court. The possibility that the concerned prosecutor did not know or was not well-versed with the law as



well as the legal parameters set by precedents over time goes into the bargain.

30. Time and again, in various judicial pronouncements, Hon'ble the Supreme court has embarked upon discussion on the independent role and discretion of a Public Prosecutor while invoking the provision of Section 321 Cr.P.C. Hon'ble the Supreme Court has opined in ***Sheonandan Paswan Vs. State of Bihar & Others*** reported in (1983) 1 SCC 438 that the Public Prosecutor can not act like a letterman or messenger or act on the direction of the State Government. He has to act objectively as he is also an officer of the Court. At the same time, Court also has the freedom to assess whether the prima facie case is made out or not. If satisfied, the Court can also reject the prayer. But the action of a Public Prosecutor cannot be said to be illegal just because he was in receipt of any communication/instruction from the State. On the contrary, the Public Prosecutor can not file an application for withdrawal from prosecution on his own without instruction from the Government. The following grounds have been cited in ***Sheonandan Paswan*** (supra) for seeking withdrawal from prosecution-

1. Bleak possibility of successful prosecution bearing in mind the evidence;
2. Incrimination of individuals born out of political or personal vendetta;
3. Inexpediency of the prosecution for reasons of State and public policy;





4. Unfavourable impact that the perpetuation of prosecution will bring to the public interest in the light of the altered scenario.

31. In the facts and circumstances of this case, none of the four grounds for seeking withdrawal from prosecution are present. Firstly, the evidence available at this stage shows prospects of triumphing of the prosecution; secondly, there are no signs of personal or political vendetta owing to which the prosecution may be withdrawn; thirdly, there is no policy of the State or any other public policy that would come in the way of prosecution and lastly, if the prosecution is continued, it would not proceed in a manner that could cause any pernicious impact on public interest.

32. Similarly, in the case of **Rajender Kumar Jain and Ors. Vs. State through Special Police Establishment and Ors.** reported in (1980) 3 SCC 435, Hon'ble the Supreme Court has held that:

"16. ...We may add it shall be the duty of the Public Prosecutor to inform the Court and it shall be the duty of the Court to appraise itself of the reasons which prompt the Public Prosecutor to withdraw from the prosecution. The Court has a responsibility and a stake in the administration of criminal justice and so has the Public Prosecutor, its 'Minister of Justice'. Both have a duty to protect the administration of criminal justice against possible abuse or misuse by the Executive by resort to the provisions of Section 361 Criminal Procedure Code.



The independence of the judiciary requires that once the case has travelled to the Court, the Court and its officers alone must have control over the case and decide what is to be done in each case."

33. Here, in this particular case, two aspects discussed above, are especially amiss, namely, the fulfillment of the duty to prevent abuse of process of law by the Prosecutor and the onus upon the Court to decide and use its control in a judicious and effective manner. The manner in which the use of phrase '*resort to the provision of Section 321, Cr.P.C.*' has been employed in the above reproduced excerpt reflects that Section 321 has been provided as a tool to the prosecutor to prevent the abuse or misuse of administration of criminal justice which the Prosecutor has failed to refer to or use.

34. That in the case of ***M.N. Sankarayarayanan Nair Vs. P.V. Balakrishnan and Ors.***, reported in (1972) 1 SCC 318, Hon'ble the Supreme Court tried to outline the guideline in regard to which the Public Prosecutor can exercise his discretion. The Court observed that:

"5. ...Though the Section is in general terms and does not circumscribe the powers of the Public Prosecutor to seek permission to withdraw from the prosecution the essential consideration which is implicit in the grant of the power is that it should be in the interest of administration of justice which may be either that it will not be able to produce sufficient evidence to sustain the charge or that subsequent information before prosecuting agency would falsify the prosecution evidence or any other similar circumstances which it is



difficult to predicate as they are dependent entirely on the facts and circumstances of each case. Nonetheless it is the duty of the Court also to see in furtherance of justice that the permission is not sought on grounds extraneous to the interest of justice or that offences which are offences against the State go unpunished merely because the Government as a matter of general policy or expediency unconnected with its duty to prosecute offenders under the law, directs the public prosecutor to withdraw from the prosecution and the Public Prosecutor merely does so at its behest.

A large number of cases have been referred to but it is unnecessary to consider them except for a few as typifying the approach in cases where permission to withdraw from the prosecution was sought on grounds extraneous to and not germane to the maintenance and enforcement of the law and which permission though given by the Trial Court was quashed by the High Court."

35. In the case at hand, the withdrawal was not in the interest of administration of justice and neither was the collected evidence lacking to the extent that would not be enough to sustain charges nor was there any such perilous situation concerning law and order that would make withdrawal from prosecution necessary.

36. In the event of withdrawal from prosecution, observations regarding the role of the Public Prosecutor, his independent legal identity and the guiding legal considerations for exercising his discretion have been critically made by Justice Krishna Iyer, while speaking on behalf of the court, in ***Subhash Chander Vs.***



**State (Chandigarh Administration) and Ors.** reported in **AIR****1980 SC 423.** He observed as neath:

"9. The functionary clothed by the Code with the power to withdraw from the prosecution is the Public Prosecutor. The Public Prosecutor is not the executive, nor a flunkey of political power. Invested by the statute with a discretion to withdraw or not to withdraw, it is for him to apply an independent mind and exercise his discretion. In doing so, he acts as a limb of the judicative process, not as an extension of the executive.

10. ...At the same time, it is necessary to point out that the District Magistrate acted illegally in directing the Assistant Public Prosecutor to withdraw. ..."

11. ...

12. We cannot dispose of this petition without drawing attention to the very disturbing presence of the District Magistrate in the withdrawal proceedings. The jurisprudence of genuflexion is alien to our system and the law expects every repository of power to do his duty by the Constitution and the laws, regardless of commands, directives, threats and temptations. The Code is the master for the criminal process. Any authority who coerces or orders or pressurises a functionary like a public prosecutor, in the exclusive province of his discretion violates the rule of law and any public prosecutor who bends before such command betrays the authority of his office.

May be, Government or the District Magistrate will consider that a prosecution or class of prosecutions deserves to be withdrawn on grounds of policy or reasons of public interest relevant to law and justice in



their larger connotation and request the public prosecutor to consider whether the case or cases may not be withdrawn. Thereupon, the Prosecutor will give due weight to the material placed, the policy behind the recommendation and the responsible position of Government which, in the last analysis, has to maintain public order and promote public justice. But the decision to withdraw must be his."

37. Justice Krishna Iyer, being true to his reputation of being a savant of the craft of expression, has articulated the role of a Public Prosecutor as well as his independent authority in the context of withdrawal from prosecution so well in the aforementioned paragraphs. The Public Prosecutor is a functionary and he has to act like one rather than acting like a party stooge or a mere liveried footman for the executive. He has the role of a chef to play in the process of withdrawal rather than that of a scullion. In the above extract, it was emphasized by the Hon'ble Court that the Code is the master for the criminal process and the Public Prosecutor derives his power to withdraw from prosecution from it, thus, neither the government nor the magistrate can influence/prod/direct him to take any decision with regard to withdrawal. Not only does the public prosecutor has to apply his own independent mind to the matter but the same has to be contemplated upon by the Court in addition to contemplating upon the legitimacy of the grounds presented in favour of the withdrawal before granting consent.



38. In **Subhash Chander** (*supra*), it was further pointed out by Justice Krishna Iyer regarding the entrustment and control of court over the prosecution that:

"4. ...The even course of criminal justice cannot be thwarted by the Executive, however high the accused, however sure Government feels a case is false, however unpalatable the continuance of the prosecution to the powers-that-be who wish to scuttle court justice because of hubris, affection or other noble or ignoble consideration. Justicing, under our constitutional order, belongs to the judges. Among the very few exceptions to this uninterrupted flow of the court process is Section 494, Cr.P.C. Even here, the Public Prosecutor-not any executive authority-is entrusted by the Code with a limited power to withdraw from a prosecution, with the court's consent whereupon the case comes to a close. What the law has ignited, the law alone shall extinguish.

5. Although skeletal, the conditions for such withdrawal are implicit in the provision, besides the general principles which have been evolved through precedents. Once a prosecution is launched, its relentless course cannot be halted except on sound considerations germane to public justice. ..."

39. And again, to quote the words of Krishna Iyer, J. in the same case:

"The position was confirmed in *Bansi Lal v. Chandan Lal*: 1976 CriLJ 328 and *Balwant Singh and Ors. v. Bihar*: 1977 CriLJ 1935. The law is thus well settled and its application is all that calls for caution. In the special situation of this case, two principles must be hammered home. The decision to withdraw must be of the Public



Prosecutor, not of other authorities, even of those whose displeasure may affect his continuance in office. The court is monitor, not servitor, and must check to see if the essentials of the law are not breached, without, of course, crippling or usurping the power of the public prosecutor. The two matters which are significant are (a) whether the considerations are germane, and (b) whether the actual decision was made of only obeyed by the Public Prosecutor."



40. The Public Prosecutor cannot therefore withdraw from the prosecution unless the court before which the prosecution is pending gives its consent for such withdrawal. This is a provision calculated to ensure non-arbitrariness on the part of the Public Prosecutor and compliance with the equality clause of the Constitution. It should ideally be difficult to obstruct the journey of a prosecution once it has been launched save for instances where there are cogent concerns apropos to public justice. The spirit of *Nolle Prosequi* which means to be unwilling to pursue is preserved by way of consent of Court which acts as a check over the power of the public prosecutor and ensures that public justice is furthered in the larger sense rather than being suppressed.

41. At this stage, it is appropriate to refer to and rely upon the judgment of Hon'ble the Apex Court in the case of **S.K. Shukla and Ors Vs. State of U.P. and Ors.** reported in (2006) 1 SCC 314 wherein a greater responsibility has been cast on the shoulders of Public Prosecutor while filing an application under Section 321 of the Code and it has been held as under:

"Writ Petition (Crl) 132-134 of 2003



33. This petition is filed against the order passed by the State Government dated 29.8.2003 whereby public prosecutor was directed to withdraw the POTA cases against the accused persons. An application was moved by public prosecutor for withdrawal of these cases before Special Judge, though no order was passed permitting withdrawal of these cases. However, in view of our finding in SLP (Cri) 5609 of 2004, we cannot affirm the order of the State Government for withdrawal of these cases and consequential application made by the public prosecutor for withdrawal of these cases. The order passed by the Government dated 29.8.2003 as well as application moved by the special public prosecutor before the Special Judge, Kanpur Nagar cannot be sustained and accordingly the order passed by the State Government and the application moved by the special public prosecutor before the Special Judge at Kanpur, both are rejected. In this connection our attention was invited to 1983(1) SCC 438, 1980(3) SCC 435, 1996(2) SCC 610, 2002(3) SCC 510. In these cases it has been laid down that the public prosecutor has to shoulder a greater responsibility for withdrawal of the cases under Section 321 Cr.P.C. In Sheonandan Paswan vs. State of Bihar and others 1983 (1) SCC 438, it was held, *that the settled law laid down by the Supreme Court has been that the withdrawal from the prosecution is an executive function of the Public Prosecutor and the ultimate decision to withdraw from the prosecution is his. Before an application is made under Section 321, the Public Prosecutor has to apply his mind to the facts of the case independently without being subject to any outside influence. The Government may suggest to the Public Prosecutor that a particular case may not be proceeded with, but nobody can compel him to do so.*





However, Section 321 of the Code does not lay any bar on the Public Prosecutor to receive any instruction from the Government before he files an application under that section. If the Public Prosecutor received such instructions, he cannot be said to act extraneous influence. On the contrary, the Public Prosecutor cannot file an application for withdrawal of a case on his own without instruction from the Government, since a Public Prosecutor cannot conduct a case absolutely on his own, or contrary to the instruction of his client, namely, the Government. Unlike the Judge, the Public Prosecutor is not an absolutely independent officer. He is appointed by the government for conducting in court any prosecution or other proceedings on behalf of the Government concerned. So there is the relationship of counsel and client between the Public Prosecutor and the Government. If the Government gives instructions to a Public Prosecutor to withdraw from the prosecution of a case, the latter after applying his mind to the facts of the case may either agree with instructions and file a petition stating grounds of withdrawal or disagree therewith having found a good case for prosecution and refuse to file the withdrawal petition. In the latter event the Public Prosecutor will have to return the brief and perhaps to resign, for, it is the Government, not the Public Prosecutor, who is in the know of larger interest of the State". The Public Prosecutor cannot act like a post box or act on the dictate of the State Governments. He has to act objectively as he is also an officer of the Court. At the same time court is also not bound by that. The courts are also free to assess whether the prima face case is made or not. The court, if satisfied, can also reject the prayer. However in the present case we have examined the matter and found that there is a prima facie case to proceed against the





accused persons under Section 4(b) of the Act and other provisions of the Explosive or Arms Act, therefore, the sanction granted by the Government and application moved by public prosecutor for withdrawal of the cases cannot be sustained. Hence writ petition Nos.132-134 of 2004 is accordingly allowed and the order of the State Government dated 29.8.2003 withdrawing the cases against the accused persons is quashed, likewise direction to the public prosecutor for withdrawing the cases from the Court.”

42. Thus, from the upshot of the above discussion, it is clear that the role and dominion of public prosecutor over withdrawal from the prosecution as enumerated in the provision finds its foundation firstly upon judicial relevancy and secondly, upon unerring legal discretion which reeks of fairness and thirst for justice could be seen which uphold and solidifies the Justice Delivery Mechanism in which the Public Prosecutor, being an officer of Court, could be seen standing completely for the cause of justice.

43. The constitutionality of the law of the land ensures, that no absolute conferment of un-canalised discretion should be given to any of the stakeholders in justice delivery system as it would be violative of the equality clause of the Constitution, thus, every executive action, having direct nexus with the basic fundamental rights of the citizens, is always under the judicial check and balances just to remind/ensure that no one, that is, to say no one is above the Law as provided by the Constitution of India.



44. Now, let us move to the **second part, i.e. Judicial check and balance**. The provision under Section 321 of CrPC empowers the Court to exercise its discretion to assess whether the withdrawal is appropriate or not. The Court's role in this matter is to ensure that the society becomes the beneficiary of justice and it must consider several factors before granting permission for prosecution withdrawal.

45. It is expected from the Court rather it is the duty of the Court that its judicial dexterity be such that it is able to identify and gauge the probable and possible consequences of miscarriage of justice if the prosecution is withdrawn. The provision in itself recognizes the judicial discretion and places it over the rest of the stakeholders as a check. Justice should be served as per the scheme of the constitution and its spirit, thus, in order to prevent miscarriages of justice, it is essential for the Court to play a vigilant role while considering prosecution withdrawal. The Court should carefully assess the reasons provided by the Public Prosecutor, scrutinize the material or evidence presented/placed before it and ensure that the withdrawal is not a result of any external pressure or collusion.

46. The Court must act as an umpire to protect the rights of the accused and victims while simultaneously upholding the principles of fairness and justice. The Court should strike a balance between respecting bonafide decisions of Prosecutors to withdraw cases which lack merit and preventing the arms of the executive to encroach upon such decisions. This becomes even



more apparent and necessary in the cases where non-compoundable offences are involved because those cases are, by their very nature, far more serious and the accused cannot be left off the hook easily without any repercussions. Besides these, the role of victims as stake holders have to be positively acknowledged as withdrawal from prosecution, if gone wrong, hits hard on the spirits of the victim and ultimately the society which they form a part of.

47. There are various Judicial pronouncements which this Court wishes to refer to shed light over the issue that when such applications are presented before the Courts, then what should be their thrust or what should be the primary parameters for considering such prosecution withdrawal applications as moved by the Public Prosecutors.

48. In the case of ***The State of Bihar Vs. Ram Naresh Pandey*** reported in AIR 1957 SC 389, the Supreme Court held that the court should not act as a mere stamp while granting permission for withdrawal. It must apply its mind and consider all the relevant factors. The exercise of judicial discretion would mean that the Court has to satisfy itself that the Public Prosecutor applied his mind and took a proper decision as well as that the withdrawal is not an endeavour to thwart delivery of justice for unlawful reasons. The relevant paragraph of the aforesaid judgment is as follows:

"5. The section is an enabling one and vests in the Public Prosecutor the discretion to apply to the Court for its consent to withdraw from the prosecution of any





person. The consent, if granted, has to be followed up by his discharge or acquittal, as the case may be. The section gives no indication as to the grounds on which the Public Prosecutor may make the application, or the considerations on which the Court is to grant its consent.

There can be no doubt, however, that the resultant order, on the granting of the consent, being an order of 'discharge' or 'acquittal', would attract the applicability of correction by the High Court under Sections 435, 436 and 439 or 417 of the Code of Criminal Procedure. The function of the Court, therefore, in granting its consent may well be taken to be a judicial function. It follows that in granting the consent the Court must exercise a judicial discretion. But it does not follow that the discretion is to be exercised only with reference to material gathered by the judicial method.

Otherwise the apparently wide language of s. 494 would become considerably narrowed down in its application. In understanding and applying the section, two main features thereof have to be kept in mind. The initiative is that of the Public Prosecutor and what the Court has to do is only to give its consent and not to determine any matter judicially. As the Privy Council has pointed out in *Bawa Faqir Singh v. The King Emperor* (1938) L.R. 65 I.A. 388,

"It (section 494 of the Code of Criminal Procedure) gives a general executive discretion (to the Public Prosecutor) to withdraw from the prosecution subject to the consent of the Court, which may be determined on many possible grounds."

The judicial function, therefore, implicit in the exercise of the judicial discretion for granting the consent would normally mean that the Court has to satisfy itself that





the executive 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. In this context it is right to remember that the Public Prosecutor (though an executive officer as stated by the Privy Council in *Bawa Faqir Singh v. The King Emperor* (1938) L.R. 65 I.A. 388 is, in a larger sense, also an officer of the Court and that he is bound to assist the Court with his fairly-considered view and the Court is entitled to have the benefit of the fair exercise of his function. It has also to be appreciated that in this country the scheme of the administration of criminal justice is that the primary responsibility of prosecuting serious offences (which are classified as cognizable offences) is on the executive authorities. Once information of the commission of any such offence reaches the constituted authorities, the investigation, including collection of the requisite evidence, and the prosecution for the offence with reference to such evidence, are the functions of the executive. But the Magistrate also has his allotted functions in the course of these stages. For instance, in the course of investigation, a person arrested must be brought before him within 24 hours (s. 61 of the Code of Criminal Procedure). Continuance of the arrested person in detention for purposes of investigation from time to time has to be authorised by him (s. 167). A search can be conducted on the issue of warrant by him (s. 96). Statements of witnesses and confessions may be recorded by him (s. 164). In an appropriate case he can order investigation or further investigation (ss. 155(2) and 202). In all these matters he exercises discretionary functions in respect of which the initiative is that of the executive but the responsibility is his. His discretion in such matters has necessarily to be





exercised with reference to such material as is by then available and is not a prima facie judicial determination of any specific issue. The Magistrate's functions in these matters are not only supplementary, at a higher level, to those of the executive but are intended to prevent abuse. Section 494 requiring the consent of the Court for withdrawal by the Public Prosecutor is more in line with this scheme, than with the provisions of the Code relating to inquiries and trials by Court. It cannot be taken to place on the Court the responsibility for a prima facie determination of a triable issue. For instance the discharge that results therefrom need not always conform to the standard of "no prima facie case" under Sections 209(1) and 253(1) or of "groundlessness" under Sections 209(2) and 253(2). This is not to say that a consent is to be lightly given on the application of the Public Prosecutor, without a careful and proper scrutiny of the grounds on which the application for consent is made."

49. ***In State of Maharashtra v. Vikram Anantrai Doshi (2014)***, while discussing how the quashing of proceedings in that matter neither helped to secure the needs of justice nor did it prevent the abuse of process of Court, Hon'ble the Supreme Court had held that Court cannot be a mute spectator and allow the proceedings to be withdrawn or give in to the cleverness of the accused persons invoking the jurisdiction of Court under Article 226 of Constitution of India or Section 482 of the Code of Criminal Procedure. It was further held that the same is not legally permissible and that the Court is expected to be wary of such adroit moves.



50. These judicial pronouncements reflect the Court's responsibility to ensure a fair and just legal process when considering prosecution withdrawal under Section 321 CrPC. The Court's decision plays a crucial role in upholding the principles of justice and maintaining the integrity of the criminal justice system. From the above discussions, it is trite to say that every judge before whom such circumstance is prevailing, must make his judicial consciousness adhere to certain considerations while dealing with provision under Section 321 Cr.P.C. which are namely, interest of justice, public policy, fair trial, valid grounds, victims' rights and miscarriage of justice.

51. The Court should, at the very threshold, examine whether the withdrawal is in the interests of justice; whether it serves the larger public interest; whether the withdrawal aligns with public policy; and whether it upholds the rule of law as upon infringement of right of a citizen, the societal conscience is verily shaken. If the proposition of proposed threat is left unattended the society would be on alarm. The Court must assess the reasons presented by the Public Prosecutor for seeking withdrawal meticulously and should ensure that same are genuine and not frivolous.

52. Further, it must also ensure that the right to a fair trial is not compromised for any of the parties, be it accused or victim. It shall be the duty of the Court to satisfy itself that the withdrawal is not a result of any undue influence or coercion. The impact of the withdrawal shall not adversely affect the legal



rights of the victims and they shall not be left stranded without any justifiable legal explanation as the same would be violative of the scheme of the Constitution which provides that their rights and interests should be protected.

53. The negative aspect attached with withdrawal from prosecution is that if the permission is granted by the Court without adhering to the criteria as discussed in the aforesaid paragraphs, it would lead to unfair and undesired consequences for the victims as well as for the public at large. Some of the concerning implications are summarized as below:

(i) Denial of victims' rights: Victims of a crime have the right to see that the accused is brought to justice. When prosecution is withdrawn without justifiable reasons, it results in the denial of victims' rights to seek justice and receive compensation or redressal which is against the spirit of law.

(ii) Loss of public faith: A miscarriage of justice due to wrongful withdrawal erodes public trust in the legal system. It creates a perception that influential individuals or entities can manipulate the process and evade accountability, leading to a loss of confidence in the administration of justice.

(iii) Encouraging impunity: When prosecution is withdrawn without proper cause, it can encourage a culture of impunity where offenders feel emboldened to commit crimes without fearing the consequences,



knowing that there might be a way to avoid prosecution.

(iv) Impact on deterrence: One of the key purposes of the criminal justice system is deterrence, that is, discouraging individuals from committing crimes. If prosecution is withdrawn without valid reasons, it weakens the deterrent effect of the law, potentially leading to an increase in criminal activities.

(v) Wrong perception in the minds of citizens & threat to majesty of law: It has to be a common perception that the law and order agencies are supposed to prosecute a wrong doer and the court of law has to adjudicate upon the issue of guilt. An accused should be required to face trial for the alleged offence and then, he should be exonerated only after going through a judicial proceeding. Stifling of a judicial proceeding in midway due to executive intervention may put a false perception in the society that even during a judicial proceeding, one can be absolved by use of executive power which may be due to use of influence and might of a political leader or with the assistance of an unscrupulous public servant. These circumstances may lead to a threat to the majesty of law.

For instance, the citizens should not be of the perception that upon passing of an order by an





administrative officer of the State, acting on his/her/their whims and fancies, it is sufficient for a culprit to be exonerated from ongoing criminal proceedings. It would give rise to a dilemma in the minds of common people that an officer of administrative service is powerful enough to cause the proceedings of a judicial trial to come to an end and in order to avoid this particular conception, the legislature has framed the provision in such a deliberate manner so as to give due importance to consent of court and cause the resolution passed by a public servant to be judicially scrutinized. In these circumstances, only the larger interest of society would be the decisive factor for the judicial officer to consent to the withdrawal.

Thus, in order to avoid the aforesaid implications, it is considered imperative upon the court to give due weightage to each case as every single case is hinged upon its unique bundle of facts and the decision thereby must be based upon critical examination of the material and merits of the case before it as well as the peculiar circumstances of the case prevailing at the relevant time in order to prevent any miscarriage of justice.

54. Ergo, any executive discretion, which endeavours to encroach upon the right conferred by any law to an individual or group of people without any valid reasoning, would always be subject to judicial scrutiny so as to ensure societal stability and security.





55. Hon'ble the Apex Court has held in **Rahul Agarwal Vs. Rakesh Jain and Ors.** reported in (2005) 2 SCC 377 that while dealing with the application under Section 321 CrPC, the Court referred to certain decisions which were based upon the earlier decision passed by the Constitutional Bench in **Sheonandan Paswan** (supra) and the relevant excerpt from the same is as under:

“10. From these decisions as well as other decisions on the same question, the law is very clear that the withdrawal of prosecution can be allowed only in the interest of justice. Even if the Government directs the Public Prosecutor to withdraw the prosecution and an application is filed to that effect, the court must consider all relevant circumstances and find out whether the withdrawal of prosecution would advance the cause of justice. If the case is likely to end in an acquittal and the continuance of the case is only causing severe harassment to the accused, the court may permit withdrawal of the prosecution. If the withdrawal of prosecution is likely to bury the dispute and bring about harmony between the parties and it would be in the best interest of justice, the court may allow the withdrawal of prosecution. The discretion under Section 321 of the Code of Criminal Procedure is to be carefully exercised by the court having due regard to all the relevant facts and shall not be exercised to stifle the prosecution which is being done at the instance of the aggrieved parties or the State for redressing their grievance. Every crime is an offence against the society and if the accused committed an offence, society demands that he should be punished. Punishing the person who perpetrated the crime is an essential requirement for the maintenance of law and



order and peace in the society. Therefore, the withdrawal of the prosecution shall be permitted only when valid reasons are made out for the same.”

56. Hon'ble the Supreme Court had further carved out an analogy in ***Sheonandan Paswan*** (*supra*) pertaining to the scope of Section 321 when read with Section 320 of CrPC thereby inferring the relevance of permission and supervisory jurisdiction of the court even in the compoundable cases where the power of compounding lies with the person with whom the offence has been committed. This supervisory power of the Court is there to eradicate any suspicion of deceitful and unfair practice by the accused in a case. The Court has critically examined the relevancy of the section as below:

“72. ...The scope of Section 321 can be tested from another angle and that with reference to Section 320 which deals with "compounding of offences". Both these Sections occur in Chapter 24 under the heading "General Provisions as to Enquiries and Trials". Section 320(1) pertains to compounding of offences, in the table, which are not of a serious nature while Section 320(2) pertains to offences of a slightly serious in nature but not constituting grave crimes. The offences in the table under Section 320(1) may be compounded by the persons mentioned in the third column of the table without the permission of the Court and those given in the table-II, under Section 320(2) can be compounded only with the permission of the Court. Under Sub-section (4)(a), when a person who would otherwise be competent to compound an offence under Section 320, is under the age of 18 years or is an idiot or a lunatic, any person competent to contract on his



behalf may, with the permission of the Court, compound such offence. Sub-section (4)(b) provides that when a person who would otherwise be competent to compound an offence under this Section is dead, the legal representative, as defined in the CPC, of such person may, with the consent of the Court, compound such offence.

These two sub-sections use the expression "with the permission of the Court" and "with the consent of the Court" which are more or less ejusdem generis. On a fair reading of the above-mentioned sub-sections it can be safely presumed that the Sections confer only a supervisory power on the Court in the matter of compounding of offences in the manner indicated therein, with this safeguard that the accused does not by unfair or deceitful means, secure a composition of the offence. Viewed thus I don't think that a plea can be successfully put forward that granting permission or giving consent under Sub-section (4)(a) or (4)(b) for compounding of an offence, the Court is enjoined to make a serious detailed evaluation of the evidence or assessment of the case to be satisfied that the case would result in acquittal or conviction. It is necessary to bear in mind that an application for compounding of an offence can be made at any stage. Since Section 321 finds a place in this chapter immediately after Section 320, one will be justified in saying that it should take its colour from the immediately preceding Section and in holding that this Section, which is a kindred to Section 320, contemplates consent by the Court only in a supervisory manner and not essentially in an adjudicatory manner, the grant of consent not depending upon a detailed assessment of the weight or volume of evidence to see the degree of success at the end of the trial. All that is necessary for the Court to





see is to ensure that the application for withdrawal has been properly made, after independent consideration, by the public prosecutor and in furtherance of public interest. ..."

57. The learned Additional Sessions Judge did not pay any heed as to why did the State desire to withdraw from the prosecution.

The application seeking withdrawal came to be allowed without application of mind and sans consideration of merits of the case.

The learned Additional Sessions Judge should have considered that non-application of mind over the infinitesimal contents of the ill-drafted application could have resulted in injustice to the victim. Allowing of the application in an unscrupulous manner only to obey the order passed by the State Government is not what is expected of a judge presiding over a Sessions Court. If the order passed on 08.01.2016 is read verbatim, it is manifesting that the learned judge has not consented to the withdrawal per se and it appears that because the State has given permission, thus, nothing remains to be further considered.

Without even deliberating upon the factor that whether the application for prosecution withdrawal was in the interest of justice, the learned judge has allowed the application and dropped the proceedings against the accused thereby consigning the file to the record. The manner in which the order has been passed is highly objectionable and utterly unbecoming of an Additional Sessions Judge. It is appearing from the order that the learned Judge was not aware of the fact that the Court has to consent to the application of withdrawal after its filing and not



take the filing of the application as well as the resolution passed by the State as an order to terminate the prosecution. Here, in this matter, the learned Judge simply stated that since the State does not wish to continue with the prosecution, therefore, nothing remains in the case to proceed further and accordingly, he dropped the proceedings and consigned the file to the record. This process deserves to be deprecated and is accordingly, deprecated by this Court.

58. That now, from the aforesaid judicial dictums, it can safely be inferred that the provision of withdrawal from prosecution is more of a legal dominant tool which can only be used for the betterment of collective societal conscience and not otherwise. The provision in itself entails various factors which need to be addressed and checked in the given circumstances of each case as to whether the action taken under this provision is legally sustainable or not.

59. Thus, this Court finds that the constitutional values and ethos are the basic guiding force behind the structure of the provision and the role of the Court is meant to put a '**judicial check**' upon the executive supremacy which can be abused for fixing political scores and for diluting the larger interest of public and its societal cohesiveness.

60. Now, we come to the third and the final part, that is, **the Victim**: This Court has observed or rather felt that the rights of one of the basic stakeholders in this entire picture, i.e. the victim, have been left unattended. It is so because the structure of the



provisions and a plain reading of their wordings have been silent upon the legal entitlement/remedy of an individual whose rights have been transgressed or rather demolished.

61. In the intricate interplay between victim's rights and withdrawal from prosecution, the legal landscape finds itself at a crossroads where ethical principles and pragmatic considerations converge. This juncture necessitates a holistic perspective that transcends the legal statutes and delves into the realm of societal values, human empathy and the pursuit of genuine justice. As we navigate this complex terrain, it becomes evident that the rights of victims are not merely legal constructs but moral imperatives. The acknowledgment of victims' suffering, the provision of information, the avenue for participation and the right to compensation constitute the building blocks of a justice system that values every individual's dignity and rights. By embedding victims' rights within the framework of prosecution withdrawal, legal systems express their commitment to fostering a fair and inclusive society. This commitment extends beyond the courtroom, resonating in the hearts of individuals who have endured the trauma of victimization. It resonates in communities that seek reassurance that the justice system is not an impersonal entity but a mechanism designed to protect, empower and heal. In the grand narrative of justice, the successful integration of victims' rights in prosecution withdrawal cases will ultimately shape the legacy of legal systems. The strides made toward striking an equitable balance between the rights of victims



and the principles of due process will be remembered as a testament to the evolution of justice itself. In summation, the synergy of victims' rights and prosecution withdrawal stands as an embodiment of evolution of a system of justice. It signifies the transformation from rigid legal constructs to dynamic entities that respond to the nuances of human experience. Through this synergy, society reiterates its commitment to recognizing, healing and protecting those who have suffered while ensuring that justice remains a beacon guiding us towards a world that is just, compassionate and truly equitable.

62. A comprehensive examination of victim rights has emerged as a vital component of modern criminal justice systems, aiming to rectify historical imbalances by acknowledging the needs and concerns of individuals who have suffered due to criminal acts. In cases where prosecution is being withdrawn, the rights of victims come into sharp focus, requiring a delicate balance between ensuring justice for victims and maintaining the principles of fairness and due process.

63. The executive discretion coupled with the prosecution action has been a major issue in several countries and the victims' Right to Review scheme ("VRR") is a response which has come out in recent years in England. The Crown Prosecution Service ("CPS") is the public agency responsible for conducting criminal prosecutions in England and Wales. VRR essentially gives victims of crimes a mechanism through which they can check the decision of the CPS to not bring charges or the decision to terminate



proceedings. The system came partly in light of **R Vs. Christopher Killick** reported in [2011] EWCA Crim 1608 wherein it was held that that a victim of crime has a right, derived from the ordinary principles of English law, to seek a review of decision of CPS not to prosecute; meaning thereby that a clear procedure for the exercise of this right is required.

64. This approach creates a multiple-step process with each stage of the review being time-bound in accordance with the time limits in the Criminal Code. This encourages victims who are aggrieved with such decisions to file applications to the CPS and brings in accountability as there is no such law as on date which entails such mechanism. Having such mechanisms will not only ensure speedy justice but can also potentially go a long way in ensuring that people access courts enthusiastically as a means to find their remedy and it will strengthen the faith of the common people in the Judicial system.

65. Hon'ble the Apex Court, in **Anita Kushwaha and Ors. Vs. Pushap Sudan and Ors.** reported in (2016) 8 SCC 509, has held that access to justice is a fundamental right under Article 14 and Article 21 of the constitution. This court feels that to fulfil this right in part, a victim's right to review in such circumstances could be adopted in India so that victims may seek reviews of decisions where cases are withdrawn. From the aforesaid judgment, it can also be gathered that non-participation of the victim in such proceedings would tantamount to deviation from



the fundamental concept of "Access to Justice"; non-adherence of the same would verily end up as sham justice.

66. Similarly, in **Tamilnad Mercantile Bank Share Holders Welfare Association Vs. S.C. Sekar and Ors.**, reported in 2009 2 SCC 784, Hon'ble the Supreme court has categorically held that an aggrieved person cannot be left without remedy and that access to justice is a human right and in certain situations, it is even a fundamental right.

67. As for the present legal framework, this court observes that the Courts before which such matters arrive, must be mindful of the factors affecting the justice delivery system as per the language of Section 321. When those who are part of the executive tend to act in self-interest in issuing directions for withdrawal of criminal cases, it becomes important for the judiciary to be mindful of its role in making sure that such cases are not readily withdrawn on mere asking. As and when the executive oversteps its boundaries, it creates fault lines for any healthy functioning, liberal democracy. The independence of the judiciary is important but it is also important to remember that,

“Other societies, and notably those which place great reliance on written constitutions including entrenched clauses, tend to trust the judiciary with the task of coordination. In doing so they invariably run the risk of politicising the administration of law by inviting jurisdiction over matters of political controversy.”¹

1 "A Confusion of Powers: Politics and The Rule of law", The Modern Law Review, Vol. 40, No. 1, January 1977.



Ordinarily, the same shouldn't be allowed in the first place because of the implications entailed. The issue was perhaps best articulated by the Supreme Court in ***Sheonandan Paswan*** (supra) case where the Hon'ble Court has opined that "*it would be desirable in the interest of public justice that high political personages accused of offences should face the judicial process and get discharged rather than seem to manoeuvre the judicial system and thus endanger the legitimacy of the political and judicial process.*"

68. Thus, withdrawal from prosecution cases present a complex scenario where victims' rights must be considered alongside the need for due process. Striking a balance is not only a legal imperative but also a moral one. A comprehensive and nuanced approach is necessary, recognizing that while the rights of the accused are integral to justice, the acknowledgment and protection of rights of the victims are equally vital for a fair and compassionate criminal justice system.

69. This Court is well aware and conscious of the dictum passed by Hon'ble the Supreme Court in ***The State of Kerala Vs. K. Ajith and Ors.*** reported in AIR 2021 SC 3954 wherein the case of ***Rajender Kumar Jain*** (supra) has been referred and it has been held that:

"16. ...To say that an offence is of a political character is not to absolve the offender of the offence. But the question is, is it a valid ground for the Government to advise the Public Prosecutor to withdraw from the prosecution? We mentioned earlier that the Public



Prosecutor may withdraw from the prosecution of a case not merely on the ground of paucity of evidence but also in order to further the broad ends of public justice and that such broad ends of public justice may well include appropriate social, economic and political purposes. ...”

70. That, further, it has been observed by Hon'ble the Supreme court in **K. Ajith** (supra), that the role of the courts while entertaining such applications before it is to check and see as to whether such application is an attempt to interfere with the normal course of justice or not. The relevant portion from the afore-mentioned judgment is as follows:

“58. The test which has been laid down in the decisions of this Court commencing with Ram Naresh Pandey (supra) in 1957, spanning decisions over the last 65 years is consistent. The true function of the court when an application Under Section 321 is filed is to ensure that the executive 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. The court will grant its consent if it is satisfied that it sub-serves the administration of justice and the purpose of seeking it is not extraneous to the vindication of the law. It is the broad ends of public justice that must guide the decision. ...”

71. That, in the said case, Hon'ble the Apex court had also formulated the guiding principles for withdrawal from prosecution under section 321 Cr.P.C. and the same are reproduced as under:

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



(i) 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;

(ii) 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;

(iii) The public prosecutor must formulate an independent opinion before seeking the consent of the court to withdraw from the prosecution;

(iv) 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;

(v) 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 sub-serves 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;

(vi) While determining whether the withdrawal of the prosecution subserves the administration of justice, the court would be justified in scrutinizing 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; and

(vii) 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."

72. The aforesaid judgment not only establishes the guiding principles for withdrawal from prosecution but it also reaffirms that the Courts should be committed towards maintaining the integrity of legal proceedings and must ensure that the **pursuit of justice** shall be the paramount consideration as the principle of **pursuit of justice** constitutes a foundational tenet within the framework of jurisprudence, signifying the imperative to establish equitability, procedural rectitude and impartiality in the administration of legal proceedings. The purview of the pursuit of justice extends beyond the mere act of retributive punishment for culpable acts; it encompasses protection of the rights and





liberties of the accused as well as of the society and the victim too, by fostering public confidence in the legitimacy of the legal apparatus. The intricacies of balancing the interests of the accused with the broader societal interest in upholding the rule of law are central to this principle.

73. The judicial determination in **K. Ajith** (supra) underscores the centrality of the pursuit of justice within its deliberations. The Court's assessment involved a meticulous examination of whether acceding to the petitioner's plea for the withdrawal of prosecution would harmonize with the overarching aim of justice or potentially undermine its attainment. The gravity of the charges, the implications for aggrieved parties and the potential precedent-setting implications were ostensibly subjected to comprehensive analysis. Emanating from the depths of legal jurisprudence, pursuit of justice is more than a doctrinal concept; it emerges as a cardinal guidepost steering the navigations of legal processes, a facet that shapes the contours of legal principles and moulds the precedential trajectory of judicial pronouncements. In its quintessence, the pursuit of justice epitomizes an allegiance to impartiality, parity and the sanctity of legal norms. The Courts play a crucial role in ensuring that justice is not only done but is seen to be done. This concept extends beyond individual cases and influences the development of legal precedents that shape future judgments.

74. Pursuant to the aforementioned discourse, this Court, while dealing with the factual matrix of the case and keenly going



through the available record as well as the guiding force of law in this regard, draws a firm opinion that the present case does not fulfill the want of principles of law and the order dated 08.02.2016 passed by learned Additional Sessions Judge No. 3 Chittorgarh in Criminal Case No.52/2014 deserves to be quashed and set aside being in dissonance with law and accordingly, the same is hereby quashed and set aside. The order is declared non-est. The resolution No. F.13(46)Grih-10/2015 dated 28.09.2015 passed by Secretary, Home-cum-Joint Legal Remembrancer is hereby quashed and set aside being bad in law. The matter is remanded back to the learned trial court with the direction to re-register the case to its original number and the proceedings shall commence from the stage wherefrom the application under Section 321 CrPC was filed and decided. The trial court is further directed to proceed as per the law in the matter without being prejudiced by any of the observations made herein above in the present judgment. After appearance of the parties, it shall hear them on the point of framing of charges as contemplated under Sections 226-228 of CrPC and then to proceed as per the scheme of law.

(FARJAND ALI),J

151-Mamta/-