

Court No. - 10

Case :- CRIMINAL REVISION No. - 12 of 2021

Revisionist :- State of U.P.

Opposite Party :- The Court Of Spl. Judge M.P./M.L.A./A.S.J.Viraebareli Andors

Counsel for Revisionist :- G.A.

Counsel for Opposite Party :- Sudhir Pande

Hon'ble Dinesh Kumar Singh,J.

1. Present revision has been filed by the State under Section 397/401 Cr.P.C. against the order dated 14.10.2020 passed by learned Special Judge/M.P./M.L.A./ VI-Additional Sessions Judge, Raebareli on an application filed by the Public Prosecutor for withdrawal from prosecution in Criminal Case No.573 of 2012: State vs Mayankeswar Saran Singh and others arising out of Crime No.158 of 2007 under Sections 147, 148, 149, 307, 436, 397, 395, 323, 504, 506, 427 IPC and 2(3) U.P. Gangsters and Anti-Social Activities (Prevention) Act, (for short 'Gangsters Act') Police Station Mohanganj, District Raebareli.

2. Learned trial Court has rejected the said application on the ground that charge has not yet been framed inasmuch as the accused has not remained present before the Court. The case has remained pending since 2007. Application for withdrawal from prosecution under Section 321 Cr.P.C. was moved in the year 2012/2019. However, Public Prosecutor in application had not stated any fact on the basis of which it would be evident that withdrawal from prosecution would be in larger public interest. Public Prosecutor has only mentioned in the application that there is no sufficient evidence available on record to support the charge. Prosecution case is weak and, therefore, in public interest, permission be granted for withdrawal from prosecution. It has been observed that on the basis of present case, provisions of Section 2/3 of the Gangsters Act were invoked against the accused Mayankeswar Saran Singh. District Magistrate gives permission for invoking the provisions under Section 2/3 of the Gangsters Act only where there is sufficient evidence against the accused for his prosecution. Learned Magistrate therefore, held that stand of the prosecution itself is contradictory.

3. It has been further observed that Public Prosecutor has not applied his judicial mind properly at the time of filing of the application. Accused, Mayankeswar Saran Singh was a sitting M.L.A. and State Minister in the Cabinet of the State Government. It has been said that despite him holding a constitutional post, he along with 20-25 people sprinkled petrol on the house of the complainant and set it on fire. Withdrawal from prosecution in such a case would not be in public interest, and if such a case is allowed to be withdrawn, wrong message would be sent in public and it would not be in the public interest.

4. The facts of the case are that the election for U.P. Legislative Assembly 2007, respondent No.2- Mayankeswar Saran Singh, who was sitting M.L.A. from Tiloi Constituency in Raebareli was a candidate of Samajwadi Party and Dinesh Pratap Singh was the candidate of Bahujan Samajwadi Party in the said State Assembly Election. The complainant (respondent No.14) was supporter of Mr.Dinesh Pratap Singh, candidate of Bahujan Samajwadi Party. He was earlier a supporter of the accused, Mayankeswar Saran Singh.

5. During course of said election for U.P. Legislature Assembly Election 2007, an FIR came to be registered on a complaint of respondent No.14 alleging that on 03.05.2007 at around 10:00 P.M., when the complainant was sitting outside his house at that time, respondent No.2 along with his 20-25 supporters came from 4 vehicles. They started abusing him. Accused-Maynkeswar Saran Singh exhorted others to kill the complainant as he had opposed him in the election. He also exhorted his supporters to take out petrol from the vehicles and set the house of the complainant on fire. On this exhortation, Ashok Singh, Krishna Kumar Soni, Manoj Singh, Narsingh, Kunj Bihari Singh, Lallan Singh and 8-9 persons, who came along with him took out petrol from their vehicles and ran towards the complainant. The complainant went inside his house and closed the door from inside. Persons came with accused-Mayankeswar Saran Singh tried to break open the house, and when they were not successful, they sprinkled petrol and set the door of the house on fire. It was said that that complainant could flee from the place from another door. On raising alarm by him, some villagers came running towards the house of the complainant but the accused terrorized them by firing and threatened them that if anyone come near the house of the complainant, he would loose his life. After an hour,

the accused went back in their vehicles. It was alleged that wife and children of the complainant were badly assaulted. It was further alleged that the accused were throwing children in the fire. However, their mother could save them. It was further alleged that the accused had also taken away jewellery, which was kept for marriage of the daughter of the complainant, and his household items were set on fire. The accused had destroyed tractor of the complainant and they had set the tractor trolley on fire.

6. On the basis of the compliant, FIR No.31 of 2007 was registered on 04.05.2007 against respondent No.2 and other accused.

7. Police after investigating the offence filed charge-sheet against respondent No.2 and other persons on which cognizance was taken on 13.07.2009.

8. Public Prosecutor had filed an application under Section 321 Cr.P.C. for withdrawal from prosecution after the State Government granted permission for withdrawal from prosecution. In the said application, it was said that Mr.Dinesh Pratap Singh, who was rival candidate in the State Assembly Election 2007, was present at the police station when the FIR came to be registered on 04.05.2007. It was further said that medical examination of the son of the complainant was conducted on 04.05.2007 at 12:50 Hours. However, no medical examination of any other person was conducted. It was further said that the investigating officer recorded the statements of the family members of the complainant, and there were glaring contradictions in the statements of the family members and other independent witnesses. The application further mentions that on considering the evidence available in the case diary, case against the accused appears to be very weak. Complainant's son, Sajjan Singh did not mention that how he received three injuries. Son of the complainant was in security of Dinesh Pratap Singh. There is no date mentioned in the approval allegedly granted by District Magistrate for invoking provisions of the Gangsters Act against the accused and, therefore, it was prayed that the application be allowed and it should be withdrawn from prosecution.

9. Notice was issued to the complainant, respondent No.14. Initially, he opposed the application for withdrawal but on 06.03.2020, he moved another application and said that he did not press his objection against withdrawal from prosecution and his objection be rejected and he would

have no objection, if application under Section 321 Cr.P.C. was allowed.

10. Heard Mr.Anurag Verma, learned A.G.A. along with Mr.V.K. Sahi, learned Additional Advocate General for the State and Mr.Sudhir Pandey, learned counsel for opposite party No.2.

11. Section 321 Cr.P.C. as applicable in the State of U.P. reads as under:-

"**321.** Withdrawal from prosecution. The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, *on the written permission of the State Government to that effect (which shall be filed in the Court)*, 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 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."

12. The scope of Section 321 Cr.P.C., ambit of power and manner in which it has to be exercised by the Public Prosecutor have been dealt with in several decisions by the Supreme Court. Only a few decisions rendered by the Supreme Court would be apt to quote here to throw light on the scope of Section 321 Cr.P.C. and ambit and manner of exercise of the power by the Public Prosecutor under the aforesaid section. Ultimate authority to allow withdrawal from prosecution vests with the Court and the guiding consideration must always be interest of administration of justice when deciding the question whether prosecution should be allowed to be withdrawn or not.

13. In **Bansi Lal Versus Chandan Lal and others (1976) 1 SCC 421**, the Supreme Court has held in para-5 which, on reproduction, reads as under:-

"5.....Therefore when the Additional Sessions Judge made the impugned order, there was no material before him to warrant the conclusion that sufficient evidence would not be forthcoming to sustain the charges or that there was any reliable subsequent information falsifying the prosecution case or any other circumstance justifying withdrawal of the case against the respondents. Consenting to the withdrawal of the case on the view that the attitude displayed by the prosecution made it "futile" to refuse permission does not certainly serve the administration of justice. If the material before the Additional Sessions Judge was considered sufficient to enable him to frame the charges against the respondents, it is not possible to say that there was no evidence in support of the Prosecution case. The application for stay of the proceeding made before the committing Magistrate cannot also be said to falsify the prosecution case. If the prosecuting agency brings before the court sufficient material to indicate that the prosecution was based on false evidence, the court would be justified in consenting to the withdrawal of the prosecution, but on the record of the case, as it is, we do not find any such

justification....."

14. In *Balwant Singh and others Versus State of Bihar (1977) 4 SCC 448*, the Supreme Court, while considering the role of the Public Prosecutor while moving an application for withdrawal from prosecution, has dealt upon the consideration which must weigh for moving such an application. The Public Prosecutor must keep in mind the administration of justice inasmuch as he is discharging the statutory responsibility and while discharging the statutory responsibility the only factor, which should be considered, is administration of justice and nothing else.

Relevant portion of paragraph-2 is reproduced hereinbelow:-

"2.The statutory responsibility for deciding upon withdrawal squarely vests on the public prosecutor. It is non-negotiable and cannot be bartered away in favour of those who may be above him on the administrative side. The Criminal Procedure Code is the only matter of the public prosecutor and he has to guide himself with reference to Criminal Procedure Code only. So guided, the consideration which must weigh with him is, whether the broader cause of public justice will be advanced or retarded by the withdrawal or continuance of the prosecution. As we have already explained, public justice may be a much wider conception than the justice in a particular case. Here, the Public Prosecutor is ordered to move for withdrawal....."

15. In *Sheonandan Paswan Versus State of Bihar and others (1983) 1 SCC 438*, the Supreme Court has held that before an application is moved under Section 321 Cr.P.C., the Public Prosecutor needs to apply his mind to the facts of the case independently, without being influenced by outside factors. Relevant paragraphs, on reproduction, read as under:-

"85. In our opinion, the object of Section 321 Cr.P.C. appears to be to reserve power to the Executive Government to withdraw any criminal case on larger grounds of public policy such as inexpediency of prosecutions for reasons of State; broader public interest like maintenance of law and order; maintenance of public peace and harmony, social, economic and political; changed social and political situation; avoidance of

destabilization of a stable government and the like. And such powers have been, in our opinion, rightly reserved for the Government; for, who but the Government is in the know of such conditions and situations prevailing in a State or in the country? The Court is not in a position to know such situations."

.....

134. The statutory responsibility for deciding upon withdrawal squarely rests upon the Public Prosecutor. It is non-negotiable and cannot be bartered away. The court's duty in dealing with the application under Section 321 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 un-influenced by irrelevant and extraneous or oblique considerations as the court has a special duty in this regard inasmuch as it is the ultimate repository of legislative confidence in granting or withholding its consent to withdrawal from prosecution. The court's duty is to see in furtherance of justice that the permission is not sought on grounds extraneous to the interest of justice."

16. The Supreme Court has also dealt with in a catena of decisions the manner in which an application for withdrawal from prosecution moved by the Public Prosecutor needs to be considered by the Court.

17. In **State of Punjab Versus Union of India and others (1986) 4 SCC 335**, the Supreme Court has held that while granting permission to the Public Prosecutor for withdrawal from prosecution, the Court needs to be satisfied itself that the Public Prosecutor has properly exercised statutory function and has not attempted to interfere with the normal course of justice for ulterior purposes. The administration of criminal justice should be the touchstone on which the application under Section 321 Cr.P.C. needs to be decided. Relevant portion of paragraph-1, on reproduction, reads as under:-

"1. The ultimate guiding consideration while granting a permission to withdraw from the prosecution must always be the interest of administration of justice and that is the touchstone on which the question must be determined whether the prosecution

should be allowed to withdraw. 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 such broad ends of public justice may well include appropriate social, economic and political purposes."

18. Similar views have been reiterated in **Sheonandan Paswan Versus State of Bihar and others (1987) 1 SCC 288** by the Supreme Court.

Paragraph-73, on reproduction, reads as under:-

"73. Section 321 gives the Public Prosecutor the power for withdrawal of any case at any stage before judgment is pronounced. This presupposes the fact that the entire evidence may have been adduced in the case, before the application is made. When an application under Section 321 Cr.P.C. is made, it is not necessary for the court to assess the evidence to discover whether the case would end in conviction or acquittal. To contend that the court when it exercises its limited power of giving consent under Section 321 has to assess the evidence and find out whether the case would end in acquittal or conviction, would be to rewrite Section 321 Cr.P.C. and would be to concede to the court a power which the scheme of Section 321 does not contemplate. The acquittal or discharge order under Section 321 are not the same as the normal final orders in criminal cases. The conclusion will not be backed by a detailed discussion of the evidence in the case of acquittal or absence of prima facie case or groundlessness in the case of discharge. All that the court has to see is whether 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. The court, after considering these facets of the case, will have to see whether the application suffers from such improprieties or illegalities as to cause manifest injustice if consent is given. In this case, on a reading of the application for withdrawal, the order of consent and the other attendant circumstances, I have no hesitation to hold that the application for withdrawal and the order giving consent were proper and

strictly within the confines of Section 321 Cr.P.C."

19. In S.K. Shukla and others Versus State of U.P. and others (2006) 1 SCC 314, the Supreme Court has held that the Public Prosecutor cannot work like a post box. He needs to act objectively being an officer of the Court and it is always open to the Court to reject the prayer if it is not guided in the interest of administration of justice. Relevant portion of paragraph-32, on reproduction, reads as under:-

"32.The Public Prosecutor cannot act like a postbox or act on the dictates of the State Government. He has to act objectively as he is also an officer of the court. At the same time the court is also not bound by that. The courts are also free to assess whether a prima face case is made or not. The court, if satisfied, can also reject the prayer."

20. In Vijaykumar Baldev Mishra alias Sharma Versus State of Maharashtra (2007) 12 SCC 687 the Supreme Court has held as under:-

"12. Section 321 of the Criminal Procedure Code, 1973 provides for withdrawal from prosecution at the instance of the public prosecutor or Assistant public prosecutor. Indisputably therefore the consent of the Court is necessary. Application of mind on the part of the Court, therefore, is necessary in regard to the grounds for withdrawal from the prosecution in respect of any one or more of the offences for which the appellant is tried. The provisions of TADA could be attracted only in the event of one or the other of the four 'things' specified in Nalini (supra) is found applicable and not otherwise. The Review Committee made recommendations upon consideration of all relevant facts. It came to its opinion upon considering the materials on record. Its recommendations were based also upon the legality of the charges under TADA in the fact situation obtaining in each case. It came to the conclusion that in committing the purported offence, the appellant inter alia had no intention to strike terror in people or any section of the people and in fact the murder has been committed only in view of group rivalry and because the parties intended to take revenge, the provisions of the TADA should not have been invoked.

13. The Public Prosecutor in terms of the statutory scheme laid down under the Code of Criminal Procedure plays an important role. He is supposed to be an independent person. While filing such an application, the public prosecutor also is required to apply his own mind and the effect thereof on the society in the event such permission is granted."

21. In *Rahul Agarwal Versus Rakesh Jain and another* (2005) 2 SCC 377, the Supreme Court has held that while considering an application moved under Section 321 Cr.P.C., the Court should consider all relevant circumstances and find out whether the withdrawal from prosecution advances the cause of justice. The withdrawal can be permitted only when the case is likely to end in an acquittal and continuance of the case would only cause severe harassment to the accused. Relevant para-10 is extracted hereunder:-

"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, 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."

22. This Court vide judgment and order dated 12th December, 2013 passed in writ petition bearing Writ Petition No. 4683 (M/B) of 2013 "Ms. Ranjana Agnihotri and others Versus Union of India' while dealing the scope, power and ambit under Section 321 Cr.P.C. has held in paras-116 and 117 which, on reproduction, read as under :-

"**116.** In view of above, the Public Prosecutor is the final authority to apply mind and take a decision whether an application for withdrawal of a criminal case is to be moved or not. For that, option is open to him to receive necessary instructions or information from the Government to make up mind on the basis of material made available. The Public Prosecutor cannot act like post box or at the dictate of the State Government. He has to act objectively as he is also an officer of the court. It is also open for the appropriate Government to issue appropriate instruction to him but he has to act objectively with regard to the withdrawal of cases. But the instruction sent by the government shall not be binding and it is the Public Prosecutor who has to take a decision independently without any political favour or party pressure or like concerns. The sole object of the Public Prosecutor is the interest of administration of justice. Power conferred on Public Prosecutor to take independent decision for the interest of administration of justice is not negotiable and cannot be bartered away in favour of those who may be above him on administrative side. He is stood to be guided by letter and spirit of Code of Criminal Procedure only and not otherwise. Neither the Public Prosecutor nor the Magistrate can surrender their discretion while exercising power at their end.

117. Similarly, the Court has duty to protect the administration of criminal justice against possible abuse or misuse by the executive by resort of the provisions contained in Section 321

Cr.P.C. The court has to record a finding that the application moved by Public Prosecutor is in the interest of administration of justice and there is no abuse or misuse of power by the Public Prosecutor or the Government. In case an application is allowed, it must be recorded by the Court that the application has been moved in good faith to secure the ends of justice and not in political or vested interest. The court has final say in the matter and the decision should be free and fair with independent exercise of mind in the interest of public policy and justice. It must ensure that the application is not moved to thwart or stifle the process of law or suffers from such improprieties or illegalities as to cause manifest injustice if consent is given."

23. In the present case, from reading of the application, it appears that Public Prosecutor had filed the application under Section 321 Cr.P.C. in good faith after careful consideration of the material available on record. The FIR got registered because of political rivalry. The complainant himself has submitted an application before the learned trial Court that he would have no objection, if the application is allowed, and his earlier objection on application under Section 321 Cr.P.C. for withdrawal from prosecution be ignored.

24. The Court is required to consider whether withdrawal from prosecution would further cause of justice or not and whether it would be in public interest to allow the withdrawal from prosecution. When the complainant himself is not supporting the prosecution case, this Court is of the view that there is no chance of conviction of the accused in the case. The case has been remained pending since 2007 and continuance of trial would be nothing but a futile exercise and Court's precious time would get wasted for futile exercise, if the application for withdrawal from prosecution is not allowed.

25. Considering the stand of the complainant, this Court is of the view that withdrawal from prosecution would be in the interest of justice. It would be appropriate to allow the application for withdrawal from prosecution. In view thereof, this Court finds that view taken by the learned Special Judge does not appear to be correct view. The revision is **allowed**. Impugned order dated 14.10.2020 passed by learned Special Judge/M.P./M.L.A./ VI-

Additional Sessions Judge, Raebareli is hereby set aside. The application for withdrawal from prosecution is also allowed.

(Dinesh Kumar Singh, J.)

Order Date :- 12.7.2022/prateek