

Court No. - 87

Case :- APPLICATION U/S 482 No. - 2704 of 2023

Applicant :- Uma Shankar Singh And 10 Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashok Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Kumar Singh,J.

1. The present petition under Section 482 Cr.P.C. has been filed for setting aside the order dated 30.9.2022 passed by the learned Additional District and Sessions Judge, Court No.3, Ballia on Application No.96 Kha filed under Section 321 Cr.P.C. in Session Trial No.12 of 2015 (State Vs. Ramdev Ram and others), arising out of Case Crime No.38 of 2010, under Sections 406, 409, 419, 420, 467, 468 and 471 IPC and Sections 13(1)(c) and 13(2) of Prevention of Corruption Act, Police Station Kotwali, District Ballia, pending in the aforesaid court.

2. The complainant, Dev Nandan son of Hari Narain, who claims himself to be the proprietor of Dev Construction Company, had given a complaint to the Secretary/Manager of the District Cooperative Bank, Bhrigu Ashram, Ballia alleging that some imposter had opened the account in the name of Dev Construction Company in District Cooperative Bank, Bhrigu Ashram, Ballia and the entire money was withdrawn by the said imposter fraudulently. The bank conducted a detailed enquiry and a direction was issued to the Branch Manager for lodging an FIR.

3. In pursuance to the aforesaid direction, the FIR was registered at Police Station Kotwali, District Ballia at Case Crime No.38 of 2010, under Section 409 IPC by Rama Shanker Rai, a bank official on 21.5.2010. The FIR would disclose that one Ajay Kumar Sharma, Son of Akshaya Lal Sharma had opened the account in the name of Dev Construction Company and had withdrawn the deposited amount.

4. Petitioner no.1 is a apolitical activist and a business man. He is sitting Member of Legislative Assembly from Rasra Constituency of District Ballia and is engaged in several social activities for upliftment of poor people, such as solemnizing

marriages of poor couples and engaging them in employment and distribution of food grains to the needy poor people. It is also said that during COVID-19 pandemic, petitioner no.1 made available about 500 oxygen cylinders along with its accessories to the District Hospital, Ballia from his own resources. He is a reputed man and commands respect in every walk of life. The complainant is also in construction business and he carries out the construction work and take contracts in the name of his proprietorship of Dev Construction Company.

5. It is said that Dev Nandan, sole proprietor of Dev Construction Company, under the influence of his father, who was a Minister, had opened an account in the District Cooperative Bank, Ballia. It is said that Dev Nandan had withdrawn the amounts from the bank, which was deposited in the said account in respect of the payment received for construction work carried out by Dev Construction Company. The account opened in the District Cooperative Bank, Bhriugu Ashram, Ballia was closed on 4.10.2004 and, thereafter, no transaction was made from the said account. It is said that the complaint regarding fraudulent withdrawal of amount from the said account of Dev Construction Company was made on 30.10.2008 by Dev Nandan i.e. after four years from the date of closing down the account.

6. On this complaint, an enquiry was conducted by the bank and the matter was transferred to the CBCID for investigation. The CBCID after investigating the offence, filed charge sheet under Sections 406, 409, 419, 420, 467, 468 and 471 IPC and Section 13(1)(c) and 13(2) of Prevention of Corruption Act. Cognizance was taken on the charge sheet and the petitioners were summoned to face the trial. The petitioners obtained bail from the learned trial court itself.

7. It is further said that the complainant and the accused named in the FIR, thereafter, had settled the dispute amicably and the complainant gave an affidavit in the trial court stating that he would not have any objection if the application under Section 321 Cr.P.C. for withdrawal from prosecution of the petitioners is allowed.

8. The Government vide its order dated 8.11.2019 had taken a decision to withdraw from prosecution in the said case in the public interest and permission was granted

to the Public Prosecutor to move an application under Section 321 Cr.P.C. for withdrawal from prosecution.

9. In pursuance to the Government Order dated 8.11.2019, District Magistrate, Ballia vide order dated 14.11.2019 directed the Joint Director (Prosecution), Prayagraj (Allahabad) to file an application under Section 321 Cr.P.C. seeking withdrawal from prosecution of the petitioners.

10. The Public Prosecutor after considering the facts and circumstances of the case and the evidence available on record, moved a detailed application under Section 321 Cr.P.C. in the court of Special Judge, MP/MLA, Allahabad on 9.6.2020 praying for withdrawal from prosecution of the petitioners in the said case. However, the learned trial court has rejected the said application vide impugned order dated 30.9.2022.

11. Learned trial court has held that the matter appears to be serious in nature, and the learned Public Prosecutor has not applied his independent mind while moving the application under Section 321 Cr.P.C. for withdrawal from prosecution. He has merely said in the application that the Government had taken a decision to withdrawn from prosecution. It was also said that while filing the said application, no prior permission was taken from the High Court and granting permission to withdraw from prosecution would not be in the public interest.

12. Sri Dileep Kumar Gupta, learned Senior Advocate assisted by Sri Ashok Kumar Pandey, learned counsel for the petitioners submits that the observation of the learned trial court that the learned Public Prosecutor had not applied his independent mind while filing the said application under Section 321 Cr.P.C., does not borne out from the record. If the application filed by the Public prosecutor is perused, it would disclose that the learned Public Prosecutor has marshalled the facts and circumstances of the case, and has come to the conclusion that continuation of the proceedings would not be in the interest of justice and no purpose would be served as the dispute was personal in nature, and the parties had settled their dispute amicably. The complainant himself filed an affidavit before the

learned trial court to that effect.

13. In support of his contention, learned counsel for the petitioners has placed reliance on the judgement of this Court rendered in ***Criminal Revision No.12 of 2021, State of U.P. Vs. The Court of Special judge, MP/MLA/Additional Sessions Judge, Raibareli and others, decided on 12.7.2022***, wherein this Court has observed that while considering the application for withdrawal from prosecution, the Court is required to consider whether the withdrawal from prosecution would further the cause of justice or not, and whether it would be in public interest to allow the withdrawal from prosecution. If the complainant himself is not supporting the prosecution, there would be no chance of conviction of the petitioners and the Court's time would get wasted in futile exercise and, therefore, it would be in the interest of public interest to avoid wasting of the Court's time. In such a case, the application for withdrawal from prosecution should be allowed.

14. On the other hand, Sri J.B. Singh, learned AGA has not disputed the facts and circumstances of the case and has submitted that the Government after considering the relevant facts and circumstances of the case, had permitted the learned Public Prosecutor to move an application under Section 321 Cr.P.C. to withdraw from prosecution.

15. I have considered the submissions advanced on behalf of the learned counsel for the parties and perused the record.

16. The application under Section 321 Cr.P.C. filed by the Public Prosecutor would disclose that he had not only considered the facts and circumstances of the case, but also considered the evidence in a fairly detail manner. The dispute between the parties appears to be personal in nature. The offence was allegedly committed in the year 2008 and we are in 2023, and till date charge has not been framed. The complainant himself has given an affidavit before the learned trial court in support of the application for withdrawal from prosecution. The finding recorded by the learned trial court that the learned Public Prosecutor had not applied his independent mind while filing the application under Section 321 Cr.P.C., is not

borne out from the record. The application under Section 321 Cr.P.C. would disclose that the learned Public Prosecutor has applied his independent mind and finding that continuation of the proceedings against the petitioners would not be in the public interest and withdrawal from prosecution would further cause of justice, he has moved the said application.

17. It is also well settled law that the criminal proceedings are result of personal/private dispute, the same can be quashed by the High Court in exercise of its powers under Section 482 Cr.P.C., if the parties have arrived at a compromise as held by the Supreme Court in the cases of *B.S. Joshi and others versus State of Haryana and another*:(2003) 4 SCC 675, *Nikhil Merchant versus C.B.I. and another*: (2008) 9 SCC 677, *Manoj Sharma versus State and others*: (2008) 16 SCC 1, *Gian Singh versus Station of Punjab*: (2010) 15 SCC 118 and *Narinder Singh and others versus State of Punjab and another*: (2014) 6 SCC 466.

18. Having considered the submissions of the learned counsel for the parties and the facts and circumstances of the case, I am of the view that the impugned order passed by the learned trial court rejecting the application filed by the Public Prosecutor under Section 321 Cr.P.C. for withdrawal from prosecution is liable to be set aside.

19. Thus, the present petition is **allowed** and the impugned order dated 30.9.2022 passed by the learned Additional District and Sessions Judge, Court No.3, Ballia on Application No.96 Kha filed under Section 321 Cr.P.C. in Session trial No.12 of 2015 (State Vs. Ramdev Ram and others), arising out of Case Crime No.38 of 2010, under Sections 406, 409, 419, 420, 467, 468 and 471 IPC and Section 13(1) (c) and 13(2) of Prevention of Corruption Act, Police Station Kotwali, District Ballia, is hereby set aside and the application filed by the learned Public Prosecutor under Section 321 Cr.P.C. for withdrawal from prosecution is hereby allowed. Consequences to follow.

Order Date :- 7.2.2023

Rao/-