

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 961 of 2013****Reserved on 10.12.2018****Pronounced on 16.01.2019**

- State Of Chhattisgarh , Through Distt. Magistrate, Raigarh (C.G.)

---- **Petitioner****Versus**

1. Deepak Dora, S/o Late Ramdhari Agrawal, Aged About 33 Years, R/o Itwari Bazar, Raigarh C.G.,
2. Sitaram Vishwakarma, S/o Late Harikrishna Vishwakarma, Aged About 39 Years, R/o Beladula Kharaghat, Raigarh C.G.,
3. Javed Khan, S/o Late Jalil Ahmed Aged About 29 Years R/o Bidpara, Raigarh C.G.,
4. Mahesh Kankarwal, S/o Khusiram Kankerwal, Aged About 33 Years R/o Gaurishanker Mandir Road, Raigarh C.G.,
5. Ajay Agrawal, S/o Hariram Agrawal, Aged About 40 Years, R/o Near Gaurishanker Mandir, Raigarh C.G.,
6. Bharat Agrawal, S/o Vijay Agrawal, Aged About 25 Years, R/o Near Water Tank Beladula, Raigarh C.G.,
7. Nawal Agrawal, S/o Prahlad Agrawal, Aged About 35 Years, R/o Gaddi Chowk, Raigarh C.G.,
8. Munna @ Mittal Agrawal, S/o Radheshyam Agrawal, Aged About 22 Years R/o Gaddi Chowk, Raigarh C.G.,
9. Vijay Mishra S/o Sisupal Mishra, Aged About 36 Years, R/o Kolaibahal Jamgaon, Raigarh C.G.,
10. Billu Agrawal, S/o Likhil Agrawal, Aged About 35 Years, R/o Kolaibahal Jamgaon, Raigarh C.G.,
11. Shrikant Somawar, S/o Late Ramanji Somawar, Aged About 48 Years, R/o Near Gaurishanker Mandir, Raigarh C.G.,
12. Surat Patel, S/o Ghanshyam Patel, Aged About 40 Years, R/o Village Loing, Raigarh C.G.,
13. Navneet Jagatramka S/o Prem Jagatramka, Aged About 40 Years, R/o Itwari Bazar, Raigarh C.G.,
14. Ghantu @ Sushil Agrawal, S/o Hanuman Prasad Agrawal, Aged About 40 Years R/o Near Gaurishanker Mandir Road, Raigarh C.G.,

15. Pawan Sharma, S/o Vimal Sharma, Aged About 20 Years, R/o Danipara, Raigarh C.G.,
16. Sonu, S/o Balbir Singh, Aged About 25 Years, R/o Danipara, Raigarh C.G.,
17. Suresh Agrawal, S/o Laxminarayn Agrawal, Aged About 45 Years R/o Jamgaon, Raigarh C.G.,
18. Bhanu Kankarwal, S/o Khusiram Kankerwal, Aged About 25 Years R/o Gaurishanker Mandir, Road, Raigarh C.G.,
19. Sonu Dalmia, S/o Poonam Dalmia, Aged About 22 Years, S/o Gandhi Ganj, Raigarh C.G.,
20. Jamir Khan, S/o Late Jalil Ahmed, Aged About 32 Years R/o Bidpara, Raigarh C.G.,
- Respondents**

For Petitioner/State	:	Shri Raj Kumar Gupta, Deputy Advocate General.
For Respondents	:	Shri Raj Kumar Pali with Shri Amit Kumar Sahu, Advocate

Hon'ble Shri Justice Sanjay Agrawal

C A V Order

1. By way of this petition, the petitioner is questioning the legality, validity and propriety of the order dated 08.01.2013 passed by the Sessions Judge in unregistered Criminal Revision affirming the order dated 26.10.2012 passed in Criminal Case No.418/2012 (Old No.786/2009) by the Judicial Magistrate First Class, Raigarh whereby the application filed by the Petitioner/State under Section 321 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr.P.C.) seeking withdrawal of the prosecution in Crime No.265/2008 registered in Police Station Chakradharnagar, Raigarh, in connection with offences punishable under Sections 147, 148, 149, 294, 506-B, 427, 332, 186, 353 and 336 IPC has been rejected.
2. Shri Raj Kumar Gupta, learned Deputy Advocate General for the Petitioner/State submits that the order impugned as passed by the Courts below refusing to grant permission for withdrawal of the prosecution under

Section 321 of the Cr.P.C. by observing that in order to closure of the prosecution, it is required to be established by the prosecution that sufficient evidence is not available to bring home the guilt of the accused persons and in absence thereof, the application cannot be allowed, is not sustainable. According to him, the said application, which has been made by the Assistant District Public Prosecutor after applying his mind, ought not to have been refused unless the Court comes to the conclusion that he did not apply his mind bona fide. He submits further that the said provision nowhere provides that an application for withdrawal of the prosecution should necessarily be made only if the evidence is of weak in nature and not sufficient to establish the prosecution case. Further contention of Shri Gupta is that the evidence collected by the Investigating Agency and produced before the Court is not sufficient to convict the accused persons. The order impugned is, therefore, liable to be set aside and instead the application filed under Section 321 of the Cr.P.C. seeking withdrawal of the prosecution be allowed. In support, he placed his reliance upon the decision rendered in the matter of **Ramesh Kumar Sharma & Anr. vs. State of C.G. & Others** reported in **(2016) 3 C.G.L.J. 1**.

3. I have heard learned counsel for the petitioner and perused the entire papers annexed with this petition carefully.
4. On account of the incident occurred on 19.11.2008 at 22.45 hours, the report was lodged by one Indrapal Singh Paikra in Police Station Chakradhar Nagar, District Raigarh. It is alleged therein that on the date of incident, he was present in the Police Station and was doing his official work. At the relevant time, Head Constable Dhaneshwar Prasad Bharadwaj, lady Head Constable Suman Chouhan, Constables Khageshwar Patel, Santosh and Assistant Sub-Inspector Shrinath Pandey, who had come from Kotra Road,

were working. It is alleged in the report that all of a sudden, 35-40 persons including present respondents, came to the Police Station in an aggressive mood and started shouting with filthy words and saying to set fire the Police Station, threatened to kill and tried to enter into the Police Station. They have broken the glass of window by stones and bricks and the complainant Indrapal Singh received injuries in the wrist of his right hand while Assistant Sub-Inspector Shrinath Pandey sustained injury on the thumb of his right hand. The accused persons have thus created a terror over there and interrupted not only the Government work but have destroyed the glass window of the Police Station as well. The alleged incident took place owing to dispute at Mahapalli.

5. Based upon the aforesaid incident, a complaint was lodged immediately by the complainant Indrapal Singh while naming the respondents in his report, following which, a case has accordingly been registered in Police Station Chakradhar Nagar, District Raigarh in relation to the offences mentioned herein above in connection with Crime No.265/2008.

6. During trial, an application enumerated under Section 321 of the Cr.P.C. has been made by the Assistant District Public Prosecutor seeking withdrawal of the prosecution. It was, however, rejected by the trial Court vide its order dated 26.10.2012 observing, inter alia, that the manner in which the alleged incident took place, it cannot be held that the closure of prosecution as prayed for, would be in public interest. The rejection as such by the trial Court has been affirmed further by the Revisional Court vide order impugned dated 08.01.2013 in a revision preferred by the State. This is the order which has been impugned by way of this petition.

7. According to Shri Gupta, the Courts below while entertaining the said application, ought to have seen that whether the said application made by

the Assistant District Public Prosecutor was in good faith or not and, unless and, until the Court comes to the conclusion that while filing the said application he did not apply his mind bona fide, then only the application under the said provision could be rejected. According to his further submission, the provision prescribed under Section 321 of the Cr.P.C. nowhere provides that it could be made only if sufficient evidence is not available with the prosecution in order to convict the accused persons.

8. Before examining the propriety of the order impugned, it is necessary to examine the provision prescribed under Section 321 of the Cr.P.C., which reads as under:-

“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 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.

9. A bare perusal of the aforesaid provision makes it clear that at any time before the judgment is pronounced, the Public Prosecutor or the Assistant Public Prosecutor in charge of a case may, with the consent of the Court, 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 he shall be discharged and/or acquitted of such offence or offences, as per the provision enumerated in clauses (a) and (b) prescribed therein. The provision thus enables the Public Prosecutor or the Assistant Public Prosecutor 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 and for doing so the consent of the Court is necessary.

10. What is, therefore, reflected from the aforesaid provision is that the application for withdrawal of the prosecution could be made at any time before the pronouncement of the judgment but only with the consent of the Court and mere filing of an application seeking withdrawal from the prosecution by itself would not be sufficient for it. At this juncture, the principles laid down in the matter of ***Abdul Karim etc. etc. v. State of Karnataka and others etc. etc.*** reported in **AIR 2001 SC 116** are to be noted where it has been observed while interpreting the aforesaid provision at paragraphs 18 & 19 as under:

“18. The law as it stands today in relation to applications under Section 321 is laid down by the majority judgment delivered by Khalid, J. in the Constitution Bench decision of this Court in *Sheonandan Paswan v. State of Bihar*, (1987) (1) SCC 288 : (AIR 1987 SC 877 : 1987 Cri LJ 793). It is held therein that when an application under Section 321 is made, it is not necessary for the Court to assess the evidence to discover whether the case would end in conviction or acquittal. What the Court has to see is whether the application is made in god faith, in the interest of

public policy and justice and not to thwart or stifle the process of law. The Court, after considering the facts of the case, has to see whether the application suffers from such improprieties or illegalities as would cause manifest injustice if consent was given. When the Public Prosecutor makes an application for withdrawal after taking into consideration all the material before him, the Court must exercise its judicial discretion by considering such material and, on such consideration, must either give consent or decline consent. The section should not be construed to mean that the Court has to give a detailed reasoned order when it gives consent. If, on a reading of the order giving consent, a higher Court is satisfied that such consent was given on an over all consideration of the material available, the order giving consent has necessarily to be upheld. Section 321 contemplates consent by the Court in a supervisory and not an adjudicatory manner. What the Court must ensure is that the application for withdrawal has been properly made, after independent consideration by the Public Prosecutor and in furtherance of public interest. Section 321 enables the Public Prosecutor to withdraw from the prosecution of any accused. The discretion exercisable under Section 321 is fettered only by a consent from the Court on a consideration of the material before it. What is necessary to satisfy the section is to see that the Public Prosecutor has acted in good faith and the exercise of discretion by him is proper.

19. The law, therefore, is that though the Government may have ordered, directed or asked a Public Prosecutor to withdraw from a prosecution, it is for the Public Prosecutor to apply his mind to all the relevant material and, in good faith, to be satisfied thereon that the public interest will be served by his withdrawal from the prosecution. In turn, the Court has to be satisfied, after considering all that material, that the Public Prosecutor has applied his mind independently thereto, that the Public Prosecutor, acting in good faith, is of the opinion that his withdrawal from the prosecution is in the public interest, and that such withdrawal will not stifle or thwart the process of law or cause manifest injustice.”

11. It is, thus, settled principles of law that in order to satisfy this provision, the Public Prosecutor, before making an application under it, must act in good faith and exercise his discretion in a proper manner and the Court must ensure that the said application for withdrawal has been made properly after independent consideration by him in public interest.
12. The application under the said provision, therefore, as held in the aforesaid judgment, could be accepted only with the consent of the Court and has thus given the wider power to the Court either to accept or to reject it based upon the circumstances of the each case.

13. True it is, as contended by the learned counsel for the petitioner, that this provision nowhere provides with regard to the grounds for which the Public Prosecutor may move an application or the consideration on which the Court is to grant consent, however, the Court is required to exercise its judicial discretion before granting or refusing the application. At this stage, the letter dated 01.08.2012 issued by the Department of Law and Legislature, State of Chhattisgarh, addressed to the District Magistrate is to be examined which revealed that the Government has taken a decision for closure of the case and as such directed the District Magistrate to apprise sufficiently to the concerned Public Prosecutor. However, the District Magistrate, Raigarh, in turn, vide its letter dated 09.08.2012 has just forwarded it to the concerned District Public Prosecutor, Raigarh and requested to initiate the proceedings for its closure with the consent of the Court. It, however, nowhere suggests that the concerned Prosecutor was apprised sufficiently as directed by the Law and Legislature Department. Be that as it may, the Assistant District Public Prosecutor, based upon it, has submitted the said application under Section 321 of Cr.P.C. seeking for withdrawal of the prosecution, which reads as under:-

“न्यायालय, श्रीमती हिमांशु जैन न्यायिक दण्डाधिकारी प्रथम श्रेणी, जिला रायगढ़

छ.ग. शासन

अभियोजन

बनाम

दीपक डोरा वगैरह

अभियुक्त

अपराध क्रमांक 265/08

प्रकरण क्रमांक 786/09

नया प्रकरण क्रमांक 418/12

आवेदन अंतर्गत धारा 321 द0प्र0सं0

अभियोजन सादर निम्न निवेदन करता है –

1. यह कि प्रकरण माननीय न्यायालय के समक्ष दिनांक 25/09/2012 को आरोपीगण की उपस्थिति हेतु नियत है।
2. यह की प्रकरण में छ0ग0 शासन विधि एवं विधायी विभाग डी.के.एस. भवन मंत्रालय रायपुर के पत्र क्रमांक/12/2008/2012/6408/21-क (अभि)छ0ग0/2012, रायपुर दिनांक 01/08/2012 के द्वारा राज्य शासन ने आरोपीगण का धारा 147, 148, 149, 506बी 427, 332, 186, 363, 336 भा. द.वि. को वापस लिए जाने का निर्णय राज्य शासन ने लिया है। उक्त आदेश की प्रति संलग्न है।

3. यह की उक्त प्रकरण प्रकृति को देखते हुए वापस लिए जाने से समाज पर एवं लोक व्यवस्था के विपरित कोई प्रतिकूल असर पडने की संभावना नहीं है।
4. यह की अरोपीगण का प्रकरण लोकहित व न्याहित मे प्रत्याहरण किया जाना में आवश्यक है।

प्रार्थना

अतः माननीय न्यायालय से निवेदन है कि वह अभियोजन के उक्त आवेदन को स्वीकार कर प्रकरण वापस लिए जाने का आदेश देने की कृपा करें।

सही /— R.K.Mishra
सहा० जिला अभियोजन अधिकारी
जिला – रायगढ़ छ०ग०”

14. A bare perusal of the aforesaid application would show that it has been made by the Assistant District Public Prosecutor while referring to the decision taken by the State Government without applying his mind. The whole action initiated thereupon by the Prosecutor would, therefore, show that before moving the application for closure of the prosecution, he has not applied his mind before satisfying himself and has submitted the same merely on the basis of the order passed by the Government. As such, the reliance as placed upon the decision rendered in the matter of **Ramesh Kumar Sharma & Anr. vs. State of C.G. & Others** (supra) by the learned counsel for the petitioner is, thus, distinguishable from the facts involved in the present case, as in the said matter, the concerned Prosecutor, after applying his mind, had submitted a detailed application under Section 321 of Cr.P.C. by showing all the facts relevant to allow the said application. However, in the instant matter, the Assistant District Public Prosecutor, without applying his mind, has just submitted an application for withdrawal of the prosecution as evidenced by a mere perusal of the aforesaid application.

15. The application, as visualized herein above, has thus been made without meeting the requirements of Section 321 of the Cr.P.C. and, therefore, cannot be held to be sustainable in view of the principles laid down in the said matter of **Abdul Karim etc. etc. v. State of Karnataka and others etc.**

etc. (supra) wherein the Supreme Court has held at paragraph 22 as under:

“22. As this application has been filed by the learned Special Public Prosecutor on the basis of the Government Order referred above. Permission is granted to withdraw the TADA case against the accused Venkatesan alias Radio Venkatesan.....” The order, therefore, was not passed after meeting the requirements of section 321, and it is bad in law.”

16. In view of the foregoing discussions based upon the aforesaid principles and the manner in which the accused persons have attacked the concerned Police Station, I do not find any infirmity in the order impugned so as to call for interference by this Court. The order impugned, therefore, deserves to be and is hereby affirmed.

17. The petition is accordingly dismissed. No order as to costs.



Sd/-

**(Sanjay Agrawal)
Judge**