

*Before Paramjeet Singh, J.*

**PARKASH VEER—Petitioner**

*versus*

**STATE OF HARYANA AND OTHERS—Respondents**

**CRR No. 3228 of 2010**

August 17, 2012

*Indian Penal Code, 1860 - Ss. 148, 149, 323, 324, 285, 336 & 307/427 - Code of Criminal Procedure, 1973 - Ss. 173(8) & 321 - Challenge to the order whereby prosecutions' application u/s 321 CrPC to withdraw from prosecution pending against some respondents who are stated to be proclaimed offenders was allowed - Petition allowed - Reasons for withdrawal of prosecution discussed*

*Held*, that under Section 321 Cr.P.C., public prosecutor is invested with a general executive power to withdraw from prosecution subject to court's consent. It can only be done if the prosecutor takes a fair and independent step to withdraw from the case and also gives reasons for the same.

(Para 7)

*Further held*, that the power to withdraw from prosecution is always an exception, it must be exercised in the interest of administration of justice. Reasons for withdrawal must satisfy the judicial conscious of the court and mere government's order directing withdrawal without valid grounds is not enough to move an application by the public prosecutor and is also not enough to pass order of withdrawal by the court.

(Para 10)

*Further held*, that in the light of settled principles of law regarding withdrawal from criminal case, the function of the public prosecutor to withdraw from criminal cases relates to a public purpose. The public prosecutor is an officer of the court and his duty is to represent the public interest. The responsibility entrusted on him for so acting is only in the interest of administration of justice. The fairness, efficiency and accountability

are important objects of the prosecution system. These objects can be achieved by independent exercise of power by the public prosecutor. The public prosecutor is required to proceed in the criminal cases free from other inappropriate influences. The impugned order is based only on surmises and conjectures. The impugned order of the trial court is conspicuously silent about the cogent reasons and circumstances on which withdrawal has been allowed. Reasons and circumstances for withdrawal from prosecution case must satisfy the judicial conscience of the court, which are lacking in the impugned order.

(Para 12)

*Further held*, that it would be appropriate to mention here that before granting consent, it is the duty of the court to see that withdrawal is not being sought on the extraneous grounds, other than the interest of justice. The court should also take into account that offence against the State must be decided on merit, merely because the government has given direction to withdraw from the prosecution, consent should not be given.

(Para 13)

*Further held*, that Blackstone writes, "Justice is not derived from the king as his free gift but he is the steward of public to dispense it to whom it is due." In this case application has not been filed by the public prosecutor keeping in view the highest ethical and professional standard of his/her office being officer of the court. Public prosecutor has obligations of varying degree to the court, the public, victims, accused and witnesses. An erroneous decision not to prosecute tends to undermine the confidence of the public in criminal justice system.

(Para 14-15)

Petition allowed.

Vijay Kumar Jindal, Advocate, *for the petitioner*.

Sidharth Sarup, Deputy Advocate General, Haryana.

Ashok Kumar, Advocate for respondent No.2.

Maninder Kaur, Advocate for respondents No.3 to 7.

Arvind Singh, Advocate for respondents No.8 and 9.

**PARAMJEET SINGH, J.**

(1) The challenge in the present criminal revision is to the order dated 25.8.2010 whereby Additional Sessions Judge (Fast Track Court), Karnal has allowed the application moved by the prosecution to withdraw from prosecution pending against respondents No.2 to 9, and two more accused, namely, Goldi and Kukki who are stated to be proclaimed offenders, on an application under Section 321 Cr.P.C. moved by the learned Public Prosecutor.

(2) Brief facts of the case are that an FIR No.344 dated 23.6.2005 under Sections 148, 149, 323, 324, 285, 336, 307/427 IPC was registered at Police Station City Karnal against respondents No.2 to 9 and two other persons on the ground that they formed an unlawful assembly with a common object, committed the offence of rioting and caused injury to Parkash Veer and Rajender. The challan was presented in which present respondents No.2 to 9 were sent for facing trial and Goldi and Kukki were shown as proclaimed offenders. After consideration, the charge was framed on 26.9.2007 by the learned Additional Sessions Judge, Karnal. Thereafter, the case was fixed for prosecution evidence. When the trial was in progress, after more than two years, application dated 13.7.2009, (Annexure P-2) under Section 321 Cr.P.C. for withdrawal from the prosecution in respect of Vijay Kumar and other accused in the FIR in question was moved on the ground that offence under Section 307 IPC has been deleted in supplementary report submitted under Section 173 (8) Cr.P.C., long drawn litigation is pending between the parties, withdrawal will result in peace, harmony and brotherhood, there is no likelihood of success of the case, female members are also involved in the present case, and public prosecutor has received a letter from government through the District Magistrate along with some documents in which it is mentioned that the accused have been implicated on account of political and personal vendetta.

(3) The Learned Additional Sessions Judge (FTC), Karnal considered the application for withdrawal and rejected the same by recording the reason vide order dated 16.1.2010 (Annexure P-3) that withdrawal from the case will not meet out peace and harmony between both the parties and public prosecutor has not applied his mind as free agent uninfluenced by irrelevant extraneous considerations. Respondents No.2 to 9 approached

this Court for setting aside the order dated 16.1.2010. This Court vide order dated July 15, 2010 set aside the order dated 16.1.2010 on the ground that the matter has now been compromised between parties and directed the trial court to reconsider the application under Section 321 afresh in the light of the fresh circumstances. When this order came to the notice of the petitioner, the petitioner moved Crl. Misc. No.39595 of 2010 in the aforesaid revision petition and pointed out that there is no compromise between the parties. Ultimately, vide order dated 17.8.2010, this Court ordered as under:-

“... it is ordered that the line “that the matter has now been compromised”, is ordered to be deleted from the order dated July 15, 2010.”

(4) Thereafter, the matter has been decided afresh vide impugned order dated 25.8.2010 by the court of Additional Sessions Judge (FTC), Karnal whereby the application for withdrawal from the prosecution against the accused has been allowed. Hence, the instant petition.

(5) I have heard the learned counsel for the parties and perused the record with their able assistance.

(6) Learned counsel for the petitioner vehemently argued that the application dated 13.7.2009 (Annexure P-2) has been filed at the instance of government in pursuance to letter of the Financial Commissioner-cum-Principal Secretary to Government of Haryana vide Memo No.8/9/2009-3JJ(1) dated 15.6.2009 for withdrawal from the prosecution issued by the District Magistrate, Karnal. It clearly indicates that the application filed by the public prosecutor is without application of mind, and it is the result of political influence of Shri Tejinder Pal Singh Mann, ex-MLA, and the letter of the government. The learned counsel for the petitioner further submitted that withdrawal from the prosecution will not serve any public purpose nor will it bring peace and harmony between the parties as the matter has never been compromised between the parties. Even wrong averments were made before this Court that the parties have effected compromise which were subsequently corrected by the petitioner by moving an application in this Court.

(7) Under Section 321 Cr.P.C., public prosecutor is invested with a general executive power to withdraw from prosecution subject to court's consent. It can only be done if the prosecutor takes a fair and independent step to withdraw from the case and also gives reasons for the same. The prosecutor must satisfy the court with regard to the reasons and circumstances justifying the withdrawal from prosecution. Section 321 Cr.P.C. reads thus:-

*"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 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."*

(8) Learned counsel for the State and the counsel for the private respondents vehemently opposed the contention raised by the learned counsel for the petitioner and submitted that the public prosecutor can move an application for withdrawal from the prosecution as advised by the government and the District Magistrate as well as on his own accord if he feels satisfied that withdrawal from prosecution is in public interest, to maintain law and order and social harmony. This is the exclusive power of the public prosecutor and the court has rightly given the consent for withdrawal. Even the government as well as the District Magistrate has directed for withdrawal from the prosecution.

(9) I have given thoughtful consideration to the rival contentions of the parties.

(10) In Section 321 Cr.P.C. grounds are not mentioned on which public prosecutor may make application or the consideration on which the court is to give consent to withdraw from a case. The power to withdraw from prosecution is always an exception, it must be exercised in the interest of administration of justice. Reasons for withdrawal must satisfy the judicial conscious of the court and mere government's order directing withdrawal without valid grounds is not enough to move an application by the public prosecutor and is also not enough to pass order of withdrawal by the court.

(11) The Hon'ble Apex Court, in catena of judgments, has considered the circumstances under which public prosecutor can withdraw from the prosecution. Extracts from some of the relevant judgments are as under:-

In *Balwant Singh versus State of Bihar (1)*, Hon'ble Apex Court observed as under:

"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 master

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(1) (1977) 4 SCC 448

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.”

In *Abdul Karim versus State of Karnataka (2)*, relying on the earlier decision of the Constitution Bench in *Sheonandan Paswan versus State of Bihar (3)*, the Hon'ble Apex Court made the following observations regarding withdrawal from the case under Section 321, Code of Criminal Procedure:

“What 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 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 overall 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.”

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(2) (2000) 8 SCC 710

(3) (1987) 1 SCC 288

In *Rahul Aggarwal* versus *Rakesh Jain and another (4)*, the Hon'ble Apex Court held 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, 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.”

(12) In the light of settled principles of law regarding withdrawal from criminal case, the function of the public prosecutor to withdraw from criminal cases relates to a public purpose. The public prosecutor is an officer of the court and his duty is to represent the public interest. The responsibility entrusted on him for so acting is only in the interest of administration of justice. The fairness, efficiency and accountability are important objects of the prosecution system. These objects can be achieved by independent exercise of power by the public prosecutor. The public prosecutor is required to proceed in the criminal cases free from other inappropriate influences. In the instant case, neither in the application, nor in the arguments, such reasons and circumstances have been mentioned, nor have been brought to the notice of this court which may warrant withdrawal, may indicate how the peace and harmony will be maintained between the parties



when there is no compromise. Unilateral withdrawal from complaint is meaningless. Learned trial court has not taken into consideration order dated 17.08.2010 of this court whereby correction was made in the order dated 15.07.2010 observing that "... it is ordered that the line "that the matter has now been compromised", is ordered to be deleted from the order dated July 15, 2010." How the larger public interest will be served on withdrawal from the prosecution? The grounds mentioned in the impugned order on the basis of which consent has been given by the trial court are not supported by any cogent reasons. The impugned order is based only on surmises and conjectures. The impugned order of the trial court is conspicuously silent about the cogent reasons and circumstances on which withdrawal has been allowed. Reasons and circumstances for withdrawal from prosecution case must satisfy the judicial conscience of the court, which are lacking in the impugned order. As such the impugned order is not sustainable in the eyes of law.

(13) In the present case, another ground for withdrawal from the prosecution, as mentioned in the application, is that there is no likelihood of success of the prosecution case. In my opinion, this cannot be a ground for withdrawal specifically when the prosecution witnesses i.e petitioner and Rajender are injured witnesses. The presumption of the public prosecutor that case will not succeed is unfounded at this stage when not even a single prosecution witness has been examined. It would be appropriate to mention here that before granting consent, it is the duty of the court to see that withdrawal is not being sought on the extraneous grounds, other than the interest of justice. It appears that in the present case, the trial court has not taken into consideration these aspects before granting consent to withdraw from the prosecution case against the accused. The court should also take into account that offence against the State must be decided on merit, merely because the government has given direction to withdraw from the prosecution, consent should not be given. The application moved by the public prosecutor for withdrawal is not based on the independent appreciation of the facts and evidence collected by the investigation agency in the instant case.

(14) In the instant petition, application for withdrawal from criminal case moved by the public prosecutor does not appear to be free from outside influence such as letter of the government and the District Magistrate. **Blackstone** writes, "*Justice is not derived from the king as his free gift but he is the steward of public to dispense it to whom it is due.*" In this

case application has not been filed by the public prosecutor keeping in view the highest ethical and professional standard of his/her office being officer of the court. Public prosecutor has obligations of varying degree to the court, the public, victims, accused and witnesses.

(15) The reasons given by the learned Additional Sessions Judge (FTC) in the impugned order are also lacking in many aspects, as observed in foregoing paragraphs, when the case was at the stage of prosecution evidence and there were no cogent grounds to give consent to withdraw from criminal case, and as such consent should not have been given to the prosecution to withdraw from the prosecution. An erroneous decision not to prosecute, tends to undermine the confidence of the public in criminal justice system.

(16) In view of the above discussion, the impugned order dated 25.8.2010 is set aside, the case is remanded to Additional Sessions Judge (FTC), Karnal who shall restore the case to its original number and proceed in accordance with law and dispose of the same on merits at an early date as the matter is already lingering on since 2005.

(17) Accordingly, petition is allowed.

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