

Ram Naresh Singh Alias Ram Prakash And 3 ... vs State Of U.P. And Another on 1 May, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:68680

Court No. - 75

Case :- APPLICATION U/S 528 BNSS No. - 13955 of 2025

Applicant :- Ram Naresh Singh Alias Ram Prakash And 3 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Kapil Kumar Pandey,Virendra Singh

Counsel for Opposite Party :- G.A.

Hon'ble Arun Kumar Singh Deshwal,J.

1. Heard Sri Virendra Singh, learned counsel for the applicant and Sri Pankaj Saxena, learned AGA for the State.
2. The present application has been filed to quash the order dated 20.03.2025 passed by Additional Sessions Judge/Special Judge (D.A.A. Act), Mainpuri in Criminal Revision No. 137 of 2010, arising out of case crime no.70 of 1996, under Sections-147, 148, 149, 302, 364 IPC, Police Station-Kurra, District-Maipuri.
3. Contention of learned counsel for the applicants is that two cross cases were registered during election in the year 1996. One was lodged by the applicants side which was registered as case crime no.70A of 1996 while the case against the applicants was registered as a case crime no.70 of 1996, u/s 302, 147, 148, 149, 307, 364 IPC. Subsequently, the State Government found that both the criminal cases have been lodged due to political enmity, therefore, State Government decided to

withdraw both the criminal cases. For withdrawing the case crime no.70A of 1996 lodged by the applicants side, the State was permitted to withdraw by the sessions court on 23.08.2023 by the learned Additional Sessions Judge, Court No.1, Mainpuri. Subsequently, application seeking permission to withdraw the case crime no.70 of 1996 lodged against the applicants was also filed on behalf of the State before the CJM, Mainpuri, which was allowed by the CJM, Mainpuri on 20.05.2010. But that order was challenged by one of the witness before the revisional court on the ground that case has been pending before the sessions court/special court, therefore the court where the case has been pending can permit to withdraw the proceeding. This revision was allowed by the impugned order dated 20.03.2025 on the ground that a chargesheet was filed directly in the special court (Dacoity Affected Area), Mainpuri and the CJM was directed only to comply the Section 207 Cr.P.C. and commit the same to sessions. But the CJM erroneously entertained the application u/s 321 Cr.P.C. for granting permission to withdraw the criminal case in case crime no.70 of 1996. Learned counsel for the applicants has submitted that as the case was pending before the CJM, therefore, CJM was well within the right to pass the order dated 20.05.2010 directing to withdraw the proceeding of case crime no.70 of 1996.

4. However, learned AGA has submitted that as the proceeding was pending before the sessions court because the chargesheet was directly filed before the sessions court by the police and CJM was directed only to comply with Section 207 Cr.P.C., therefore, Magistrate cannot pass an order permitting to withdraw the prosecution. Therefore, there is no illegality in the order passed by the revisional court.

5. After hearing the submission of learned counsel for the parties and on perusal of record, it appears that it is not in dispute that cross cases were lodged by both the parties against each other and the case lodged by the applicants against the other side was already withdrawn with the permission of sessions court on 23.08.2023. However, application for withdrawal of the prosecution of case crime no.70 of 1996 was filed before the CJM during the proceeding when the CJM had to comply Section 207 Cr.P.C. in pursuance of direction of sessions court. Therefore, at this stage, Magistrate was only required to comply the direction of session court as the matter was pending before the session court. He cannot grant permission to withdraw the prosecution u/s 321 Cr.P.C. as the same could have been granted only by the session court where the case has been pending. Even otherwise the CJM instead of granting permission to withdraw case himself directed to withdraw the case which is not permissible beyond his jurisdiction. Section 321 Cr.P.C. is being quoted 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 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.?

6. From the bare perusal of the Section 321 Cr.P.C., it is clear that the court where the proceeding is pending can permit to withdraw the prosecution of the case.

7. Therefore, this court is of view that permission to withdraw the prosecution of case crime no.70 of 1996 can be granted by the sessions court/special court where the proceeding was pending and CJM has no jurisdiction to grant permission. Even otherwise the revisional court by its order has not rejected the application of the prosecution to withdraw the criminal case but simply remanded the matter to the CJM to pass appropriate order.

8. In such circumstances, court does not find any illegality in the impugned order passed by the revisional court. However, CJM, Mainpuri is directed to pass appropriate order in compliance of the impugned order by referring the same to the concerned court so that the order on the application seeking permission to withdraw the prosecution of case crime no.70 of 1996 could be passed.

9. With the aforesaid observations, present application is disposed of.

Order Date :- 1.5.2025 S.Chaurasia