

Bal Kumar Patel @ Raj Kumar vs State Of U.P. Thru. Addl. Chief Secy. ... on 30 May, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:33783

Court No. - 15

Case :- APPLICATION U/S 482 No. - 4643 of 2025

Applicant :- Bal Kumar Patel @ Raj Kumar

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Home Lko.

Counsel for Applicant :- Abhishek Mishra, Aniket Tripathi, Atma Ram Mishra, Rajesh Shanker

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Samanvay Dhar Dwivedi, the learned counsel for the petitioner, Sri Anurag Verma, the learned Additional Government Advocate-I appearing on behalf of the State and perused the records.

2. By means of the instant application filed under Section 482 Cr.P.C./528 BNSS, the petitioner has sought quashing of the entire proceedings of Criminal Case No.3075 of 2007, arising out of Case Crime No.653 of 2007, under Sections 420/467/468/471 I.P.C., Police Station Kotwali, District Raebareli, pending in the Court Additional Chief Judicial Magistrate-IV/Special Judge MP/MLA, Raebareli.

3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 12.06.2007 stating that the applicant had obtained several arms licenses and had procured a large quantity of ammunition

in violation of the provisions contained in the relevant Government Orders. He has obtained plural arms licenses on the basis of forged documents which is a punishable offence.

4. On 27.08.2014 the Public Prosecutor had filed an application under Section 321 Cr.P.C. stating that in public interest as well as in the interest of justice the government had decided to withdraw the prosecution and accordingly the Public Prosecutor prayed for withdrawal of prosecution.

5. The trial Court had heard submissions in support of the aforesaid application under Section 321 Cr.P.C. on 08.10.2021, on which date the trial court order that in view of the law laid down by Hon'ble Supreme Court in the case of Ashwini Kumar Upadhyay Vs. Union of India and another: (2021) 20 SCC 599, no prosecution against a sitting or former MP/MLA can be withdrawn without leave of the High Court. Accordingly, the trial court returned the application under Section 321 Cr.P.C. to the Public Prosecutor for seeking leave of this court for withdrawal of the prosecution against the applicant. Thereafter, no steps were taken for seeking leave of this court for withdrawal of the prosecution and the trial is proceeding and the prosecution witnesses are being examined by the trial court.

6. The learned counsel for the petitioner has placed reliance on the judgment in the case of Ashwini Kumar Upadhyay (Supra) and has submitted that since Hon'ble Supreme Court has held that no prosecution can be withdrawn against the sitting or former MP/MLA without seeking leave of the High Court and the application submitted by the Public Prosecutor for withdrawal of the prosecution was returned by the trial Court for seeking leave of this court, it was incumbent on the prosecution to have taken appropriate steps for obtaining leave of this court for withdrawal of the prosecution.

7. Per contra, Sri Anurag Verma, the learned A.G.A.-I has submitted that the accused person has no right to seek withdrawal of prosecution under Section 321 Cr.P.C. or to seek any steps being taken in this regard by the State. He has submitted that it is the prerogative of the Public Prosecutor alone to seek withdrawal of prosecution under Section 321 Cr.P.C. He has placed reliance on a judgment rendered by Division Bench of this Court in the case of Bhola Nath Gupta Vs. State of U.P. and others: (2020) ILR 12All 577.

8. Section 321 Cr.P.C. provides as follows: -

"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."

9. In *Rajender Kumar Jain v. State*: (1980) 3 SCC 435, the Hon'ble Supreme Court held that: -

"14. Thus, from the precedents of this Court, we gather:

"1. Under the scheme of the Code, prosecution of an offender for a serious offence is primarily the responsibility of the executive.

2. The withdrawal from the prosecution is an executive function of the Public Prosecutor.

3. The discretion to withdraw from the prosecution is that of the Public Prosecutor and none else, and so, he cannot surrender that discretion to someone else.

4. The Government may suggest to the Public Prosecutor that he may withdraw from the prosecution but none can compel him to do so.

5. The Public Prosecutor may withdraw from the prosecution not merely on the ground of paucity of evidence but on other relevant grounds as well in order to further the broad ends of public justice, public order and peace. The broad ends of public justice will certainly include appropriate social, economic and, we add, political purposes sans Tammany Hall enterprises.

6. The Public Prosecutor is an officer of the court and responsible to the court.

7. The court performs a supervisory function in granting its consent to the withdrawal.

8. The court's duty is not to re-appreciate 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, uninfluenced by irrelevant and extraneous considerations. The court has a special duty in this regard as it is the ultimate repository of legislative confidence in granting or withholding its consent to withdrawal from the prosecution."

15. We may add it shall be the duty of the Public Prosecutor to inform the court and it shall be the duty of the court to apprise itself of the reasons which prompt the Public Prosecutor to withdraw from the prosecution. The court has a responsibility and a stake in the administration of criminal justice and so has the Public Prosecutor, its "Minister of Justice". Both have a duty to protect the administration of criminal justice against possible abuse or misuse by the executive by resort to the provisions of Section 361 of the Criminal Procedure Code. The independence of the judiciary requires that once the case has travelled to the court, the court and its officers alone must have control over the case and decide what is to be done in each case.

(Emphasis added)

10. In the case of Abdul Wahab K. Vs. State of Kerala and others: (2018) 18 SCC 448, the Hon'ble Supreme Court considered the statutory mandate contained in Section 321 Cr.P.C. and referred to various judgments interpreting this section and concluded that the Public Prosecutor has an important role under the statutory scheme and is expected to act as an independent person. He/she has to apply his his/her own mind and consider the effect of withdrawal on the society in the event such permission is granted.

11. In State of Kerala Vs. K. Ajith: (2021) 17 SCC 318 the Hon'ble Supreme Court considered various precedents on the point and concluded that: -

"25. The principles which emerge from the decisions of this Court on the withdrawal of a prosecution under Section 321 of the CrPC can now be formulated:

25.1. Section 321 entrusts the decision to withdraw from a prosecution to the public prosecutor but the consent of the court is required for a withdrawal of the prosecution;

25.2. The public prosecutor may withdraw from a prosecution not merely on the ground of paucity of evidence but also to further the broad ends of public justice;

25.3. The public prosecutor must formulate an independent opinion before seeking the consent of the court to withdraw from the prosecution;

25.4 While the mere fact that the initiative has come from the government will not vitiate an application for withdrawal, the court must make an effort to elicit the reasons for withdrawal so as to ensure that the public prosecutor was satisfied that the withdrawal of the prosecution is necessary for good and relevant reasons;

25.5. In deciding whether to grant its consent to a withdrawal, the court exercises a judicial function but it has been described to be supervisory in nature. Before deciding whether to grant its consent the court must be satisfied that:

(a) The function of the public prosecutor has not been improperly exercised or that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes;

(b) The application has been made in good faith, in the interest of public policy and justice, and not to thwart or stifle the process of law;

(c) The application does not suffer from such improprieties or illegalities as would cause manifest injustice if consent were to be given;

(d) The grant of consent sub-serves the administration of justice; and

(e) The permission has not been sought with an ulterior purpose unconnected with the vindication of the law which the public prosecutor is duty bound to maintain;

25.6. While determining whether the withdrawal of the prosecution subserves the administration of justice, the court would be justified in scrutinizing the nature and gravity of the offence and its impact upon public life especially where matters involving public funds and the discharge of a public trust are implicated; and 25.7 In a situation where both the trial judge and the revisional court have concurred in granting or refusing consent, this Court while exercising its jurisdiction under Article 136 of the Constitution would exercise caution before disturbing concurrent findings. The Court may in exercise of the well settled principles attached to the exercise of this jurisdiction, interfere in a case where there has been a failure of the trial judge or of the High Court to apply the correct principles in deciding whether to grant or withhold consent."

(Emphasis added)

12. In Bhola Nath Gupta (Supra), a Division Bench of this Court held that: -

"7. From a bare perusal of Section 321 Cr.P.C., it is apparent that it is the Public Prosecutor or Assistant Public Prosecutor in charge of a case, who 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, before the judgment is pronounced.

8. Thus, it is clear that the application for withdrawal of prosecution under Section 321 Cr.P.C. cannot be moved on behalf of the accused himself and hence, the application/ representation filed under Section 321 Cr.P.C. at the instance of the petitioner on behalf of his son is not maintainable at all."

13. When we examine the application under Section 321 Cr.P.C. filed by the Public Prosecutor in the present case in the light of law laid down by Hon'ble Supreme Court in the above mentioned cases, it appears that the application has been filed by the Public Prosecutor without any application of his own mind. This application merely states that the State has decided to withdraw prosecution in public interest and in the interest of justice and the Governor has required him to file an application for withdrawal of prosecution.

14. This application filed by the Public Prosecutor for withdrawal of prosecution under Section 321 Cr.P.C. merely because the government had desired him to file an application and without recording any satisfaction of his own that it would be in the public interest and in the interest of administration of justice that the prosecution against the petitioner be withdrawn, does not make out a ground for withdrawal of prosecution as per the law laid down by Hon'ble Supreme Court in the above mentioned cases.

15. In such circumstances, if the State has chosen not to proceed to seek leave of this court for withdrawal of prosecution, the accused ? applicant has no right to seek issuance of a direction to the State to seek such leave from this Court. The fact that the prosecution is proceeding since after return of the application in the year 2021 and the prosecution is examining its witnesses, implies that the State has decided not to press for withdrawal of prosecution against the petitioner and has decided to prosecute the petitioner. I find no legal infirmity in the approach of the State warranting any interference of this court.

16. The applicant is an accused in another case bearing Criminal Case No.3072 of 2007 arising out of Case Crime No.656 of 2007, under Sections 25/27/30 of Arms Act, Police Station Kotwali, District Raebareli and he had filed an Application U/s 482 No.2959 of 2025 on similar set of facts and similar grounds, which was dismissed by means of an order dated 07.04.2025, passed by this court. The applicant has challenged the aforesaid order dated 07.04.2025 before Hon'ble the Supreme Court by filing Special Leave to Appeal (Crl.) No.6421 of 2025 and on 01.05.2025 the Hon'ble Supreme Court has issued notice to the respondent and has stayed further proceedings of Case No.3072 of 2007 (now renumbered as Criminal Case No.162 of 2022), arising out of Case Crime No.656 of 2007 pending before the trial court.

17. The Court requested the learned counsel for the petitioner to point out the error in the order dated 07.04.2025, passed by this court, which has been stayed by the Hon'ble Supreme Court but he stated that he cannot dispute the reasons recorded by this court in the order dated 07.04.2025 and in this order that the Public Prosecutor had filed an application for withdrawal of prosecution

without any application of his own mind and he had filed the same on the dictates of the government. In these circumstances, I find no reason to take a view different from the one taken in the order dated 07.04.2025, which has been reiterated in this order.

18. There appears to be no good ground to entertain this application. The application is accordingly dismissed.

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(Subhash Vidyarthi, J.) Order Date :- 30.5.2025 Ram.