



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No. 2615/2022

State Of Rajasthan, Through Government Advocate.

----Petitioner

Versus

1. Narendra Meghwal, MLA, Kota.
2. Om Birla, MLA, Kota
3. Chandrakanta Meghwal, MLA Ramganj Mandi Kota
4. Bhawani Singh Rajawat, MLA , Ladpura Kota
5. Anil Jain, Ex. MLA Shubahm City Behind Housing Board Colony, Jhalawar City, Jhalawar

----Respondents

For Petitioner(s) : Mr. Ghanshyam Singh Rathore, GA-
cum-AAG
For Respondent(s) : Mr. Naman Yadav

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Order

02/12/2023

1. By way of this Criminal Misc. Petition u/s 482 of the Code of Criminal Procedure, 1973, the petitioner who is a Government Advocate-cum-AAG has filed the misc. petition with the following prayer:-

"It is therefore most humbly prayed that the hon'ble court be pleased to grant leave to the petitioner to withdraw from prosecution in criminal case no.896/2018 currently pending before learned Judicial Magistrate, Ramganj Mandi, District Kota, registered pursuant to fir no.224/2012 at Police Station Morak, District Kota.



Any other order or relief, which this Hon'ble High court deems fit and proper, may also kindly be passed in favour of the petitioner."

2. Learned GA-cum-AAG Mr. G.S. Rathore, submits that public agitation was in the public interest and public at large including the accused-respondents were agitating for several public issues relating to the condition of roads, electricity, health, and etc. Shri Rathore further submits that the agitation was for a public cause and in the interest of public at large and the accused respondents had no personal interest in the agitation. Therefore, leave to withdraw the prosecution may be granted. He further submits that according to the F.I.R., 45 named persons and 100 other unknown persons had gathered around and were agitating for public cause. He also submits that only 48 persons have been charge-sheeted and vide order dated 11.07.2018, cognizance has been taken against 48 persons for the offences under Sections 143 and 283 I.P.C and Section 8(B) of National Highway Act. He contends that as per charge-sheet, there are omnibus allegations against the accused respondents. He further submits that it is not clear from the charge-sheet that what role was played by the accused persons. He also submits that offences u/s 143 and 283 of IPC are of petty nature, punishable with a maximum term of 6 months. So far as offence under Section 8(B) of the National Highway Act is concerned, same is not made out as there is no evidence available on record to attract the ingredients of Section 8(B) of the National Highway Act. It has also been submitted that alleged offences are not related to moral turpitude or corruption charges. Finally, he



prays that in the aforesaid facts and circumstances, permission for withdrawal of prosecution may be granted as by and large, prosecution requires to be withdrawn considering the fact that alleged cause of incident was entirely in the interest of public and accused persons have no personal interest in it. It has also been submitted that straightaway, no application of withdrawal of the prosecution can be filed before the trial court as Hon'ble Apex Court in the case of **Ashwini Kumar Upadhyay v Union of India and Anr. : MANU/SC/1231/2023**, has held as under:-

"In view of the law laid down by this Court, we deem it appropriate to direct that no prosecution against a sitting or former M.P./M.L.A. shall be withdrawn without the leave of the High Court in the respective suo-motu writ petitions registered in pursuance of our order dated 16.09.2020. The High Courts are requested to examine the withdrawals, whether pending or disposed of since 16.09.2020, in light of guidelines laid down by this Court."

3. Learned Counsel for the respondent has not opposed the submissions advanced by learned GA-cum-AAG. He submits that accused respondents are/were public representatives and they are under legal and social obligations to raise the demands of public before the state authorities. They were discharging their legal and social obligations and there was no intention at all to commit any offence or to cause any hindrances in law and order.

4. I have heard and considered the submissions advanced by the respective parties and have gone through the material placed on record.



5. To decide the issue involved in this matter, it would be appropriate for this court to refer and rely upon to provisions of Section 321 of The Code of Criminal Procedure and for sake of ready reference same are reproduced 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. The power and discretion to withdraw the prosecution is required to be utilised with utmost good faith to serve the larger public interest. Hon'ble Apex Court in case of **State of Kerela v K. Ajith : 2021 SCC Online SC Pg.510** has held as under-:

23. 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:

- (i) 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;
- (ii) 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;
- (iii) The public prosecutor must formulate an independent opinion before seeking the consent of the court to withdraw from the prosecution;
- (iv) 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;



(v) 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;

(vi) While determining whether the withdrawal of the prosecution sub-serves 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

(vii) 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."

7. I have also gone through the minutes of the meeting dated 21.09.2021 wherein it has been mentioned that the agitation was in the interest of public and the accused persons were raising demands of the public at large relating to the condition of roads, electricity, and health. In such circumstances prosecution may be withdrawn from the trial court. The minutes relating to the present matter are being reproduced as under:-

"6. प्रथम सूचना रिपोर्ट सूचना 224/2012 पुलिस थाना मोड़क, कोटा (ग्रामीण)

प्रकरण के संक्षिप्त में तथ्य इस प्रकार है कि दिनांक 08.10.2012 को तत्कालीन थानाधिकारी श्री गंगासहाय शर्मा ने इस आशय की एक रिपोर्ट दर्ज की, कि श्रीमती चन्द्रकान्ता मेघवाल, तत्कालीन विधायक, रामगंजमण्डी द्वारा प्रस्तावित चक्काजाम का आह्वान पर ढाबादेह राष्ट्रीय राजमार्ग के आह्वान की वजह से पुलिस कार्मिक की वहां ड्यूटी थी। लगभग 10:30 बजे श्रीमती चन्द्रकान्ता मेघवाल लगभग 50 कार्यकर्ताओं के साथ राष्ट्रीय राजमार्ग संख्या 12 पर आई और हाईवे तिराहा ढाबादेह पर फर्श पर बीछा कर कार्यकर्ताओं के साथ बैठ गई। यह लोग बिजली, स्वास्थ्य आदि समस्याओं को लेकर नारेबाजी करने लगे। कुछ देर पश्चात् कोटा (दक्षिण) के तत्कालीन विधायक श्री ओम बिरला, लाडपुर कोटा के तत्कालीन विधायक, श्री भवानी सिंह राजावत, खानपुर के तत्कालीन विधायक श्री अनिल जैन मौके पर आये। इन लोगों ने नारेबाजी की, लगभग 1:00 बजे सावर्जनिक निर्माण विभाग व विद्युत विभाग के अधिकारियों से वार्ता की, तत्पश्चात् धरना स्थल से उठ गये। पुलिस ने धारा 143, 283



भारतीय दण्ड संहिता में दर्ज कर अनुसंधान प्रारंभ किया व अनुसंधान उपरांत धारा 143, 283 भारतीय दण्ड संहिता में आरोप-पत्र पेश किया।

प्रकरण जन आन्दोलन से सम्बन्धित है। आन्दोलनकारी सड़क व विद्युत सम्बन्धित समस्याओं के निवारण को लेकर आन्दोलनरत थे, जो लोकहित से सम्बन्धित है। समिति की राय में उक्त प्रकरण लोक हित में न्यायालय से वापस लिया जा सकता है।

माननीय उच्चतम न्यायालय ने रिट पिटीशन सिविल 699/2016 अश्विनी कुमार उपाध्याय बनाम भारत संघ व अन्य में आदेश दिनांक 10.08.2021 के द्वारा यह आदेश पारित किया कि, "In view of the law laid down by this Court, we deem it appropriate to direct that no prosecution against a sitting or former M.P./M.L.A. shall be withdrawn without the leave of the High Court in the respective suo-motu writ petitions registered in pursuance of our order dated 16.09.2020, in light of guidelines laid down by this Court.

इस प्रकरण में जिन व्यक्तियों के विरुद्ध प्रकरण को वापस लिया जाना है, वे भूतपूर्व व वर्तमान एम.एल.ए./एम.पी. है।

अतः उक्त प्रकरण में माननीय उच्च न्यायालय, जयपुर में प्रार्थना पत्र पेश कर उक्त प्रकरण को न्यायालय से वापस लिये जाने की आज्ञा प्राप्त की जानी उचित रहेगी। "

8. Considering the entire facts and circumstances and submissions advanced by the counsels for the parties, and the law laid down by the Apex Court, it can be safely inferred that there was no personal interest of the accused respondents and they were simply raising the reasonable demands of the public at large and also considering the nature of the offence and the



circumstances wherein the alleged incident took place, this Court deems it just and proper to grant leave for withdrawal of prosecution. The Court has also considered that there are no specific allegations against the petitioners in the chargesheet. Further the possibility that accused respondents were trying to control the agitation cannot be ruled out. All citizens including the respondents are entitled to raise their reasonable demands and for this purpose they can agitate in peaceful manner. Accordingly, the petitioner State of Rajasthan is granted leave to file an application for withdrawal of prosecution before the court concerned. In the event of filing such application, the learned court below shall consider and decide the same in accordance with law. Any observation made hereinabove by this Court shall not affect or prejudice the decision on the application preferred by the petitioner State of Rajasthan for withdrawal of prosecution by the trial court.

9. The Misc. Petition is allowed accordingly.

(ANIL KUMAR UPMAN),J

Sudhir Asopa/16