

Reserved



2026:AHC-LKO:32177

**HIGH COURT OF JUDICATURE AT ALLAHABAD  
LUCKNOW**

**APPLICATION U/s 482 No. - 9838 of 2022**

Ram Chander Yadav

.....Applicant(s)

Versus

State of U.P. Thru. Prin. Secy. Home Deptt., Lko. and another

.....Opposite Party(s)

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Counsel for Applicant(s) : Salil Kumar Srivastava, Rahul  
Srivastava  
Counsel for Opposite Party(s) : G.A., Indu Prakash Singh

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**CRIMINAL REVISION No. - 367 of 2023**

State of U.P. Thru. Addl. Chief Secy. Home, Lucknow

.....Revisionist(s)

Versus

Ram Chandar Yadav

.....Opposite Party(s)

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Counsel for Revisionist(s) : G.A.,  
Counsel for Opposite Party(s) :

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**Court No. - 17**

**HON'BLE RAJEEV SINGH, J.**

1. Heard Sri Salil Kumar Srivastava, learned Senior Counsel assisted by Sri Kanishk Sinha, learned counsel for the applicant,

Sri V.K. Shahi, learned Additional Advocate General and Dr. V.K. Singh, learned Govt. Advocate appearing for the State and Sri I.P. Singh, learned Senior Counsel assisted by Sri Vijay Kumar Verma, learned counsel for the complainant.

2. The present application has been filed with the following prayer :-

"WHEREFORE, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to pass an order thereby quashing the order dated order dated 16.12.2022 passed by Special Judge (MP/MLA)/Additional District Judge, Court No. 3, Faizabad in S.T. No. 8032/2017 whereby the application U/s 321 Cr.P.C. for withdrawal of criminal prosecution has been rejected and non-bailable warrant of arrest against the present petitioner has been ordered to be issued pertaining to Case Crime No. 1015 of 2012 U/s 147, 148, 149, 307, 332, 333, 353, 336, 435, 504, 506, 120-B, 295 IPC & Section 7 of Criminal Law Amendment Act & Section 3/4 Prevention of Damage to Public Property Act, 1984, P.S. Rudauli, District Faizabad (now Ayodhya) and also to quash the impugned charge-sheet and the entire proceedings of the aforesaid case and/or any other appropriate order or direction which this Hon'ble court may deem just fit and proper under the circumstances of the case may also kindly be passed in order to meet the ends of Justice."

3. The Criminal Revision is also filed challenging the order dated 16.12.2022 passed in S.T. No.8032 of 2017.

4. Since, both the cases challenged the same order, therefore, both the cases are hereby decided by this common order.

5. As per the prosecution case, on 24.10.2012 at about 01:00 p.m., a number of tractors carrying the Idol for immersion were standing in front of gate of the Police Station, Rudauli, Ayodhya. A

rally of people was also proceeding for the immersion of Idols by playing music and beating drum, etc, which resulted into traffic congestion. At the same time, the S.H.O. of the area in question along with the police force reached on the spot and instructed the drivers of tractors to move forward, upon which, he was informed that the immersion process was not taking place at the village Albana and thereafter, the applicant, who was a Member of the Legislative Assembly of the area in question had informed them that they should halt there by keeping the Idols till he reached in front of the Police Station. Though the S.H.O., tried to convince them to move forward, but they denied for the same due to which huge crowd gathered there. Thereafter, at about 2:20 p.m., when the applicant reached there, he was also requested by the S.H.O., upon which, the applicant told that when the devotees were passing by a mosque, unfortunately, color was put on a boy belonging to other community, who started abusing and quarreling with the people who were in procession and in that incident an Idol was also broken at Village Albana.

It is further alleged in the F.I.R. that applicant also gave aggressive statements that "don't move until and unless the culprits are punished". However, later on, movement of tractors were started on the advice of the applicant with the instruction that they shall again create jam at Paudhshala. The S.H.O. along

with his companions and one Section of P.A.C. also started moving towards the Village Belsar and when they reached near Hindu Inter College, the information about the incident happened at Village Albana was given by the concerned Circle Officer and he was asked to reach there, on which, the S.H.O. (informant) alongwith force reached at village Albana at about 3:30 p.m. at Village Albana. There, the informant found that tractors, which were carrying the Idols were standing outside the village, and about 400 - 500 people were also there, out of which, 50 - 60 were female. The police officials were trying to convince them to move by saying that action would be taken against the erring persons.

It is also alleged therein that due to increase in crowd about 2000-3000 people were gathered there, who were informed that on the written complaint of one Pawan Kumar, an F.I.R. was lodged against Mohammad Imtiyaz alongwith 15 others. However, at the same time, at about 05:00 p.m., Krishna Dutt Pathak alongwith his associates who were armed with lathi and danda reached on the spot and started giving aggressive speech by saying that applicant instructed him that until he reached there, Idols should not be moved as some persons tried to demean the majesty of the Hindu Idols. Thereafter, on their provocation 250 - 300 persons, started to move towards the village belonging to

other community, on which, police personnel tried to convince them, but they did not pay heed and started stone pelting on the persons of other community and also attacked the police, in which, many police personnel received injuries.

On the basis of the incident reported by the police officer, F.I.R. of the case in question was lodged on 24.10.2012, in which, after investigation, charge sheet was submitted by the Investigating Officer. Later on, an order for withdrawal of prosecution in relation to F.I.R. No.1015 of 2012 was passed by the State Government on 08.06.2020, which was placed before the trial court, but the trial court rejected the application vide order dated 27.10.2021. The said order was challenged in Application U/S 482 No. 3008 of 2022, which was allowed vide order dated 20.7.2022 and the matter was remitted back for passing fresh order but the learned court below again rejected the said application vide impugned order dated 16.12.2022.

6. Learned counsel for the applicant has further submitted that applicant was also implicated in another case, i.e., F.I.R. No.254 of 2000, in which, charge sheet was submitted by the investigating officer, in which, the learned trial court acquitted the applicant vide order dated 20.10.2020. Thereafter, the applicant, who was an M.L.A. at that point of time, has been dragged in the

present case due to political rivalry merely on the basis of the confessional statement of the co-accused persons. Relying on the decision of the Hon'ble Supreme Court in the case of **Rahul Agrawal Vs. Rakesh Jain & Anr.** reported in **(2005) 2 SCC 377** learned counsel for the applicant vehemently submitted that withdrawal of the prosecution can be allowed only in the interest of justice, and if the withdrawal of the 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. He also submitted that learned court below rejected the application for withdrawal of the prosecution moved by learned Government Counsel in the mechanical manner by observing that Public Prosecutor has not expressed his view for withdrawal of the prosecution. Relying on the decisions of Hon'ble Supreme Court in the cases of **Bansi Lal Versus Chandan Lal and others (1976) 1 SCC 421**, **Balwant Singh and others Versus State of Bihar (1977) 4 SCC 448**, **Sheonandan Paswan Versus State of Bihar and others (1983) 1 SCC 438**, **State of Punjab Versus Union of India and others (1986) 4 SCC 335**, **Vijaykumar Baldev Mishra alias Sharma Versus State of Maharashtra (2007) 12 SCC 687**, **Rahul Agarwal Versus Rakesh Jain and Anr. (2005) 2 SCC 377**, learned counsel for the applicant submitted that the impugned proceedings are liable to be quashed. It has, thus, been submitted that indulgence of this Court is necessary.

7. Sri I.P. Singh, learned counsel for the respondent submitted that F.I.R. of the case in question was lodged by the complainant being the then police officer. He also submitted that contention which is mentioned in the F.I.R. is correct and the police officers were also assaulted by the crowd, therefore, learned court below has rightly rejected the application of the applicant. However, he does not dispute the State Government is willing to withdraw the case.

8. I have considered the submissions of learned counsel for the parties and gone through the pleadings as well as the record placed by the officer before this Court.

8.1. Section 321 Cr.P.C. as applicable in the State of U.P. reads as under:-

"321. Withdrawal from prosecution. The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, on the written permission of the State Government to that effect (which shall be filed in the Court), 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."

**8.2.** The scope of Section 321 Cr.P.C., ambit of power and manner in which it has to be exercised by the Public Prosecutor have been dealt with in several decisions by the Supreme Court. Only a few decisions rendered by the Supreme Court would be apt to quote here to throw light on the scope of Section 321 Cr.P.C. and ambit and manner of exercise of the power by the Public Prosecutor under the aforesaid section. Ultimate authority to allow withdrawal from prosecution vests with the Court and the guiding consideration must always be interest of administration of justice when deciding the question whether prosecution should be allowed to be withdrawn or not.

**8.3.** In **Bansi Lal Versus Chandan Lal and others (1976) 1 SCC 421**, the Supreme Court has held in para-5 which, on reproduction, reads as under:-

"5.....Therefore when the Additional Sessions Judge made the impugned order, there was no material before him to warrant the conclusion that sufficient evidence would not be forthcoming to sustain the charges or that there was any reliable subsequent information falsifying the prosecution case or any other circumstance justifying withdrawal of the case against the respondents. Consenting

to the withdrawal of the case on the view that the attitude displayed by the prosecution made it "futile" to refuse permission does not certainly serve the administration of justice. If the material before the Additional Sessions Judge was considered sufficient to enable him to frame the charges against the respondents, it is not possible to say that there was no evidence in support of the Prosecution case. The application for stay of the proceeding made before the committing Magistrate cannot also be said to falsify the prosecution case. If the prosecuting agency brings before the court sufficient material to indicate that the prosecution was based on false evidence, the court would be justified in consenting to the withdrawal of the prosecution, but on the record of the case, as it is, we do not find any such justification....."

#### **8.4. In *Balwant Singh and others Versus State of Bihar (1977) 4***

**SCC 448**, the Supreme Court, while considering the role of the Public Prosecutor while moving an application for withdrawal from prosecution, has dealt upon the consideration which must weigh for moving such an application. The Public Prosecutor must keep in mind the administration of justice inasmuch as he is discharging the statutory responsibility and while discharging the statutory responsibility the only factor, which should be considered, is administration of justice and nothing else.

Relevant portion of paragraph-2 is reproduced hereinbelow:-

"2. ....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 matter 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. As we have already explained, public justice may be a much wider conception than the justice in a particular case. Here, the Public Prosecutor is ordered to move for withdrawal....."

**8.5. In Sheonandan Paswan Versus State of Bihar and others (1983) 1 SCC 438**, the Supreme Court has held that before an application is moved under Section 321 Cr.P.C., the Public Prosecutor needs to apply his mind to the facts of the case independently, without being influenced by outside factors.

Relevant paragraphs, on reproduction, read as under:-

"85. In our opinion, the object of Section 321 Cr.P.C. appears to be to reserve power to the Executive Government to withdraw any criminal case on larger grounds of public policy such as inexpediency of prosecutions for reasons of State; broader public interest like maintenance of law and order; maintenance of public peace and harmony, social, economic and political; changed social and political situation; avoidance of destabilization of a stable government and the like. And such powers have been, in our opinion, rightly reserved for the Government; for, who but the Government is in the know of such conditions and situations prevailing in a State or in the country? The Court is not in a position to know such situations."

.....

134. The statutory responsibility for deciding upon withdrawal squarely rests upon the Public Prosecutor. It is non-negotiable and cannot be bartered away. The court's duty in dealing with the application under Section 321 is not to reappreciate 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 un-influenced by irrelevant and extraneous or oblique considerations as the court has a special duty in this regard inasmuch as it is the ultimate repository of legislative confidence in granting or withholding its consent to withdrawal from prosecution. The court's duty is to see in furtherance of justice that the permission is not sought on grounds extraneous to the interest of justice."

**8.6.** The Supreme Court has also dealt with in a catena of decisions the manner in which an application for withdrawal from prosecution moved by the Public Prosecutor needs to be considered by the Court.

**8.7. In State of Punjab Versus Union of India and others (1986) 4 SCC 335**, the Supreme Court has held that while granting

permission to the Public Prosecutor for withdrawal from prosecution, the Court needs to be satisfied itself that the Public Prosecutor has properly exercised statutory function and has not attempted to interfere with the normal course of justice for ulterior purposes. The administration of criminal justice should be the touchstone on which the application under Section 321 Cr.P.C. needs to be decided. Relevant portion of paragraph-1, on reproduction, reads as under:-

"1. .... The ultimate guiding consideration while granting a permission to withdraw from the prosecution must always be the interest of administration of justice and that is the touchstone on which the question must be determined whether the prosecution should be allowed to withdraw. The Public Prosecutor may withdraw from the prosecution of a case not merely on the ground of paucity of evidence but also in order to further the broad ends of public justice, and such broad ends of public justice may well include appropriate social, economic and political purposes."

**8.8.** Similar views have been reiterated in **Sheonandan Paswan Versus State of Bihar and others (1987) 1 SCC 288** by the Supreme Court. Paragraph-73, on reproduction, reads as under:-

"73. Section 321 gives the Public Prosecutor the power for withdrawal of any case at any stage before judgment is pronounced. This presupposes the fact that the entire evidence may have been adduced in the case, before the application is made. When an application under Section 321 Cr.P.C. is made, it is not necessary for the court to assess the evidence to discover whether the case would end in conviction or acquittal. To contend that the court when it exercises its limited power of giving consent under Section 321 has to assess the evidence and find out whether the case would end in acquittal or conviction, would be to rewrite Section 321 Cr.P.C. and would be to concede to the court a power which the scheme of Section 321 does not contemplate. The acquittal or discharge order under Section 321 are not the same as the normal final orders in criminal cases. The conclusion will not be backed by a detailed discussion of the evidence in the case of acquittal or absence of prima facie case or groundlessness in the case of discharge. All that 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 these facets of the case, will have to see whether the application suffers from such improprieties or illegalities as to cause manifest injustice if consent is given. In this case, on a reading of the application for withdrawal, the order of consent and the other attendant circumstances, I have no hesitation to hold that the application for withdrawal and the order giving consent were proper and strictly within the confines of Section 321 Cr.P.C."

**8.9. In S.K. Shukla and others Versus State of U.P. and others (2006) 1 SCC 314**, the Supreme Court has held that the Public Prosecutor cannot work like a post box. He needs to act objectively being an officer of the Court and it is always open to the Court to reject the prayer if it is not guided in the interest of administration of justice. Relevant portion of paragraph-32, on reproduction, reads as under:-

"32. ....The Public Prosecutor cannot act like a postbox or act on the dictates of the State Government. He has to act objectively as he is also an officer of the court. At the same time the court is also not bound by that. The courts are also free to assess whether a prima face case is made or not. The court, if satisfied, can also reject the prayer."

**8.10. In Vijaykumar Baldev Mishra alias Sharma Versus State of Maharashtra (2007) 12 SCC 687** the Supreme Court has held as under:-

"12. Section 321 of the Criminal Procedure Code, 1973 provides for withdrawal from prosecution at the instance of the public prosecutor or Assistant public prosecutor. Indisputably therefor the consent of the Court is necessary. Application of mind on the part of the Court, therefore, is necessary in regard to the grounds for withdrawal from the prosecution in respect of any one or more of the offences for which the appellant is tried. The provisions of TADA could be attracted only in the event of one or the other of the four 'things' specified in Nalini (supra) is found applicable and not otherwise. The Review Committee made recommendations upon consideration of all relevant facts. It came to its opinion upon considering the materials on record. Its recommendations were based also upon the legality of the charges

under TADA in the fact situation obtaining in each case. It came to the conclusion that in committing the purported offence, the appellant inter alia had no intention to strike terror in people or any section of the people and in fact the murder has been committed only in view of group rivalry and because the parties intended to take revenge, the provisions of the TADA should not have been invoked.

13. The Public Prosecutor in terms of the statutory scheme laid down under the Code of Criminal Procedure plays an important role. He is supposed to be an independent person. While filing such an application, the public prosecutor also is required to apply his own mind and the effect thereof on the society in the event such permission is granted."

#### **8.11. In *Rahul Agarwal Versus Rakesh Jain and another* (2005) 2**

**SCC 377**, the Supreme Court has held that while considering an application moved under Section 321 Cr.P.C., the Court should consider all relevant circumstances and find out whether the withdrawal from prosecution advances the cause of justice. The withdrawal can be permitted only when the case is likely to end in an acquittal and continuance of the case would only cause severe harassment to the accused. Relevant para-10 is extracted hereunder:-

"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."

**8.12.** This Court vide judgment and order dated 12th December, 2013 passed in writ petition bearing Writ Petition No. 4683 (M/B) of 2013 "Ms. Ranjana Agnihotri and others Versus Union of India" while dealing the scope, power and ambit under Section 321 Cr.P.C. has held in paras-116 and 117 which, on reproduction, read as under :-

"116. In view of above, the Public Prosecutor is the final authority to apply mind and take a decision whether an application for withdrawal of a criminal case is to be moved or not. For that, option is open to him to receive necessary instructions or information from the Government to make up mind on the basis of material made available. The Public Prosecutor cannot act like post box or at the dictate of the State Government. He has to act objectively as he is also an officer of the court. It is also open for the appropriate Government to issue appropriate instruction to him but he has to act objectively with regard to the withdrawal of cases. But the instruction sent by the government shall not be binding and it is the Public Prosecutor who has to take a decision independently without any political favour or party pressure or like concerns. The sole object of the Public Prosecutor is the interest of administration of justice. Power conferred on Public Prosecutor to take independent decision for the interest of administration of justice is not negotiable and cannot be bartered away in favour of those who may be above him on administrative side. He is stood to be guided by letter and spirit of Code of Criminal Procedure only and not otherwise. Neither the Public Prosecutor nor the Magistrate can surrender their discretion while exercising power at their end.

117. Similarly, the Court has duty to protect the administration of criminal justice against possible abuse or misuse by the executive by resort of the provisions contained in Section 321 Cr.P.C. The court has to record a finding that the application moved by Public Prosecutor is in the interest of administration of justice and there is no abuse or misuse of power by the Public Prosecutor or the Government. In case an application is allowed, it must be recorded by the Court that the application has been moved in good faith to secure the ends of justice and not in political or vested interest. The court has final say in the matter and the decision should be free and fair with independent exercise of mind in the interest of public policy and justice. It must ensure that the application is not moved to thwart or stifle the process of law or suffers from such improprieties or illegalities as to cause manifest injustice if consent is given."

9. In the present case, from bare reading of the application, it appears that Public Prosecutor had filed the application under Section 321 Cr.P.C. in good faith after careful consideration of the material available on record.

10. As the original record placed before this Court reveals that applicant's involvement was found merely on the basis of the statement of the accused persons. Further, as per the allegations, on the date of alleged incident, the immersion process of Idol was going on, but due to some disturbance created by a person belonging to other community, people were got agitated. The record also reveals that opinion for withdrawal of the prosecution was given on the basis of material provided to the Advocate General of State of U.P., therefore, it cannot be said that opinion was not taken and, therefore, court below wrongly presumed that opinion of the public prosecutor was not obtained.

11. In view of above, the present application under Section 482 Cr.P.C. as well as Criminal Revision are **allowed**. The impugned order dated order dated 16.12.2022 passed by Special Judge (MP/ MLA)/Additional District Judge, Court No. 3, Faizabad in S.T. No. 8032/2017 is hereby **set aside**. The application for withdrawal from prosecution is **allowed**.

**12.** The Bench Secretary of this Court is directed to handover the record to the Officer of Law Department in the presence of Dr. V.K. Singh, Govt. Advocate for Government of UP.

**Rajeev Singh,J.)**

**May 4, 2026.**

Gaurav