

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

MAIN CASE No. W.P(PIL). No.24 of 2024

PROCEEDING SHEET

Sl. No	DATE	ORDER	OFFICE NOTE
01.	31.01.2024	<p>Sri Jada Sravan Kumar, learned counsel for the petitioner, is present.</p> <p>2. Learned Government Pleader for Home appearing for respondent Nos.1, 2, 4 and 5 and learned Government Pleader for Revenue appearing for respondent No.3 are present.</p> <p>3. The present petition has been filed purportedly in public interest questioning the Government Order <i>vide</i> G.O.Rt.No.1566, HOME (LEGAL.II) DEPARTMENT, dated 20.12.2023 whereby, a decision has been taken to withdraw the prosecution in as many as six cases registered against the accused in Amalapuram Town Police Station and Amalapuram Taluka Police Station and directions have been issued to the Director General of Police, Andhra Pradesh to instruct the Public Prosecutor/Assistant Public Prosecutor concerned to file a petition under Section 321 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C.") for withdrawal of prosecution of the said six cases.</p>	

		<p>4. Learned counsel for the petitioner would submit that the power to withdraw lies exclusively with the Public Prosecutor in terms of Section 321 Cr.P.C. and that no Government's interference in that power is either envisaged or warranted. It is also stated that the Government, by issuing the G.O. impugned, has sought to influence the independence of the Public Prosecutor in deciding whether a particular case is fit for seeking a withdrawal by exercising the powers vested in the Public Prosecutor under Section 321 Cr.P.C.</p> <p>5. Reference in this regard is made to the judgment of the Apex Court in Balwant Singh vs. State of Bihar [1977 (4) SCC page 448] to emphasize the point that the Public Prosecutor cannot be commanded or ordered to move an application under Section 321 Cr.P.C. for withdrawal of prosecution and that it may be open to the authorities like the District Magistrate to bring to the notice of the Public Prosecutor material and suggest to him to consider whether the prosecution should be withdrawn or not.</p> <p>6. Learned Government Pleader for Home, on the other hand, states that only because the Government has issued a G.O. directing the withdrawal of the proceedings against the</p>	
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accused does not vitiate the power which is otherwise exercisable by the Public Prosecutor under Section 321 Cr.P.C.

7. Reference in this regard is made to the judgment rendered by the Apex Court in the case of **Rajender Kumar Jain vs. State [1980 (3) SCC 435]** as also recent judgment of the Apex Court rendered in **State of Kerala vs. K. Ajith and others [2021 Law Suit (SC) 384]**.

8. The principles that have been crystallized in the case of K. Ajith are reproduced herein:-

“(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 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

(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.”

9. Be that as it may, as an interim measure, we direct that while the Public

Prosecutor is vested with the power to move an application under Section 321 Cr.P.C., yet, notwithstanding the fact that the G.O. has been issued, the principles laid down by the Apex Court and reproduced hereinabove would be followed and the Public Prosecutor would be entitled to take an independent decision as to whether the prosecution has to be withdrawn or not.

10. List on 14.02.2024.

DHIRAJ SINGH THAKUR, CJ R.RAGHUNANDAN RAO, J

AMD