

# THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Revisional Jurisdiction)

DATED : 24<sup>th</sup> MAY, 2022

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SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

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Crl.Rev.P. No.04 of 2021

**Petitioners** : Chandra Singh Rai & Another

**versus**

**Respondent** : State of Sikkim

An application under Section 397 and 401 of the  
Code of Criminal Procedure, 1973

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**Appearance**

Mr. N. Rai, Senior Advocate with Mr. Yozan Rai, Advocate for the  
Petitioners.

Dr. Doma T. Bhutia, Public Prosecutor with Mr. S. K. Chettri,  
Additional Public Prosecutor for the State-Respondent.

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## **ORDER (ORAL)**

Meenakshi Madan Rai, J.

**1.** The Petitioners herein assail the Order of the Learned  
Special Judge (PC Act, 1988), in Sessions Trial (Vigilance) Case  
No.01 of 2020, dated 20-04-2021 by which the Learned Trial Court  
declined to accord consent for withdrawal from Prosecution and  
rejected the application filed under Section 321 of the Code of  
Criminal Procedure, 1973 (in short "Cr.P.C") by the Special Public  
Prosecutor (Vigilance), hence this Revision Petition.

**2(i).** Learned Senior Counsel for the Petitioners advancing  
his arguments briefly led this Court through the facts of the case. It  
was contended that on 02-06-2009, a Current Account was opened  
by the Sikkim Scheduled Castes, Scheduled Tribe and Other  
Backward Classes Development Corporation Limited (SABCCO) in  
the Canara Bank wherein an amount of Rs.31,78,658/- (Rupees

thirty one lakhs, seventy eight thousand, six hundred and fifty eight) only, was deposited. Through the period 03-06-2009 to 14-12-2009, 10 (ten) numbers of cheques were issued, signed by both the Petitioners, employees of the SABCCO, the Petitioner No.1 being the Deputy General Manager (Finance & Accounts) of SABCCO and Petitioner No.2 being the Managing Director of SABCCO, withdrawing a total amount of Rs.31,78,658/-(Rupees thirty one lakhs, seventy eight thousand, six hundred and fifty eight) only, from the said account. That later, on 17-09-2012, Rs.29,50,000/- (Rupees twenty nine lakhs and fifty thousand) only, was deposited in the Savings Bank Account of SABCCO in the Axis Bank and on 15-11-2013, an amount of Rs.2,29,044/- (Rupees two lakhs, twenty nine thousand and forty four) only, was also deposited. That, the Prosecution case is that loss of approximately Rs.13,00,000/- (Rupees thirteen lakhs) only, was caused to the State Exchequer on account of the loss of interest in the intervening three years from 03-06-2009 to 16-09-2012 due to withdrawal of the entire amount, allegedly by the Petitioners. It was urged that the Learned Trial Court in the impugned Order has considered the merits of the case while rejecting the Petition under Section 321 of the Cr.P.C instead of only examining whether the Learned Public Prosecutor had applied his independent mind while filing the Petition seeking withdrawal. That the merits of the matter cannot be considered by the Court in a petition seeking withdrawal from Prosecution and the Learned Trial Court failed to consider the law laid down by the Hon'ble Supreme Court on this aspect. To buttress his submissions on this count succour was drawn from the

ratio in **Name Dasrath vs. State of Andhra Pradesh**<sup>1</sup>. That there are no ingredients to *prima facie* make out a case against the Petitioner under the Sections that the Charge-Sheet has been filed under for which reliance was placed on **N. Raghavender vs. State of Andhra Pradesh, CBI**<sup>2</sup>.

**(ii)** In the next leg of his argument it was urged that there is no sanction to prosecute the Petitioners as required under the provisions of Section 19 of Prevention of Corruption Act, 1988 (in short "PC Act") and Section 197 of the Cr.P.C. That, before launching Prosecution against the Petitioners who were public servants and were alleged to have committed the offence in the discharge of their official duty, there ought to have been proper sanction. Hence, on this ground itself the Prosecution case has no legs to stand. To augment his submissions reliance was placed on **D. Devaraja vs. Owais Sabeer Hussain**<sup>3</sup> and **State of Maharashtra vs. Dr Budhikota Subbarao**<sup>4</sup>.

**3.** Learned Public Prosecutor for the State-Respondent advancing her arguments supported the stand of Learned Senior Counsel for the Petitioners and sought to convince this Court that in the impugned Order all that the Learned Trial Court was to consider was whether there was proper application of mind by the Public Prosecutor when the Petition under 321 of the Cr.P.C was filed and whether there was public interest in filing of such Petition but the Learned Trial Court went beyond the call of duty in holding that *prima facie* materials existed in the records against the Petitioners, hence the order be set aside and the Petition is allowed.

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<sup>1</sup> (2014) 10 SCC 395

<sup>2</sup> AIR 2022 SC 826

<sup>3</sup> (2020) 7 SCC 695

<sup>4</sup> (1993) 3 SCC 339

**4.** I have given due consideration to the submissions put forth before me. I have also perused the impugned Order and the documents placed before me.

**5.** The Petition under Section 321 of the Cr.P.C filed by the Public Prosecutor dated 04-03-2021 records that the Sikkim Vigilance Police Station registered a case against the Petitioner Nos. 1 and 2 vide Sikkim Vigilance Police Station Case No. RC 04/2014 dated 04-06-2014. On completion of investigation, Charge-Sheet was submitted against the Petitioners on 21-10-2020 under Sections 120B/409/477A of the IPC read with Section 13(1)(c) and 13(2) of the PC Act. Thereafter, the facts as narrated by the Learned Senior Counsel for the Petitioner have been detailed including those pertaining to the withdrawal of the amount from the Canara Bank. That, the Manager, Canara Bank on enquiry by the Sikkim Police, Vigilance Department had informed that had the amount of Rs.31,78,658/- (Rupees thirty one lakhs, seventy eight thousand six hundred and fifty eight) only, not been withdrawn but continued to be kept in the Bank account till 17-09-2012, it would have fetched an interest amount of Rs.13,41,651.46/- (Rupees thirteen lakhs, forty one thousand, six hundred, fifty one and forty six paisa) only, to SABCCO. Hence, the Charge-Sheet against the Petitioners for causing pecuniary loss to SABCCO with dishonest and fraudulent intention and thereby commission of offences punishable under Section 120B/409/477A of the IPC read with Section 13(1)(c) and 13(2) of the PC Act. That, the Public Prosecutor was however of the considered opinion after scrupulously and meticulously examining the case papers that the nature and quality of the evidence was poor and there was every

likelihood that the case would end in an acquittal considering the short-comings therein and going into trial would thereby cause undue harassment to the Petitioners. Hence, the Petition under Section 321 of the Cr.P.C which the Learned Trial Court rejected.

**6.** The provisions of Section 321 of the Cr.P.C clothes the Court with wide discretion, which goes without saying, has to be exercised judiciously. The Prosecutor in-charge of the case may file an application under Section 321 of the Cr.P.C seeking withdrawal from Prosecution but such an application requires the consent of the Court, which, while exercising judicial discretion must be satisfied that the withdrawal is primarily for the broad ends of public interest, in the interest of administration of justice and satisfies the judicial conscience. Withdrawal from Prosecution is to be supported with valid reasons [*Rahul Agarwal vs. Rakesh Jain & Anr.*<sup>5</sup>]. That apart, the Court while granting or declining such a Petition has to consider whether the Public Prosecutor has applied his mind to all the relevant materials and in good faith was satisfied that public interest would be served by his withdrawal from the Prosecution.

**7.** In the first instance I deem it unnecessary to consider the arguments advanced by the Learned Senior Counsel for the Petitioners pertaining to Section 19 of the PC Act, 1988 and Section 197 of the Cr.P.C, as also the argument that the ingredients of the offences which the Petitioners are charged with would remain unfulfilled, as, that would be delving into the merits of the case, which is not what this Court is required to consider while taking up a Petition under Section 321 of the Cr.P.C. Infact it may be pointed

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<sup>5</sup> AIR 2005 SC 910

out that the Learned Senior Counsel had urged that the Learned Trial Court had examined the merits of the case in its Order which was not envisaged in a Petition under Section 321 of the Cr.P.C while at the same time taking a stand before this Court not only with regard to lack of sanction to launch Prosecution against the Petitioners by also that the ingredients of the offences they are charged with would go unfulfilled.

**8.** On consideration of the application filed by the Public Prosecutor there are no reasons given as to how public interest, or the interest of the administration of justice would be served by withdrawal of the case where a Charge-Sheet has been filed by the Prosecution under Sections 120B/409/477A of the IPC read with Section 13(1)(c) and 13(2) of the PC Act. The Public Prosecutor on filing the Petition has to satisfy the Court that he has exercised his function correctly and it is not an attempt to interfere with the normal course of justice.

**9.** In view of the facts and circumstances *supra* and in consideration of the materials placed before me I am loathe to allow the Petition under Section 321 of the Cr.P.C which fails to enumerate any ground that would serve public interest or the administration of justice by such withdrawal.

**10.** Resultant, Criminal Revision Petition No. 04 of 2021 therefore fails and stands dismissed.

**11.** Copy of this Order be transmitted to the Learned Trial Court for information.

**( Meenakshi Madan Rai )**  
**Judge**  
24-05-2022

Approved for reporting : **Yes**