

Reserved Judgment

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc. Application No. 1016 of 2015

State of Uttarakhand Petitioner

Vs.

Bhuwan Chandra Joshi and others Respondents

Mr. S.N. Babulkar, Advocate General assisted by Mr. V.K. Jemini, Deputy Advocate General for the State/petitioner.

Mr. R.S. Sammal, Advocate for the respondent nos. 1 to 6

Mr. Lokendra Dobhal, Advocate for the respondent no 7.

With

Criminal Revision No.145 of 2015

Bhuwan Chandra Joshi and others Revisionists

Vs.

State of Uttarakhand and others Respondents

Mr. R.S. Sammal, Advocate for the revisionists.

Mr. S.N. Babulkar, Advocate General assisted by Mr. V.K. Jemini, Deputy Advocate General for the State.

Mr. Lokendra Dobhal, Advocate for the respondent no.2.

Hon'ble Ravindra Maithani, J.

Common question of law and facts are involved in both these matters, therefore, same are being taken up together and decided by this common judgment.

2. These proceedings arise out from order dated 15.05.2015, passed in Criminal Appeal No. 125 of 2012, Balwant Singh Chuphal and others Vs. State, by the court of learned 1st Additional District and Sessions Judge, Haldwani, District Nainital (for short "the appeal"). By the impugned order, an application filed

under Section 321 of the Code of Criminal Procedure, 1973 (for short “the Code”) for withdrawal from the prosecution has been rejected.

3. In Criminal Misc. Application No. 1016 of 2015, State has challenged the impugned order and in Criminal Revision No. 145 of 2015, the appellants of the appeal have preferred the revision.

4. In this judgment, the petitioner and respondents shall be referred to in their relation to Criminal Misc. Case No. 1016 of 2015.

5. Facts necessary for deciding the controversy briefly stated are that an FIR was filed by respondent no. 7 under Sections 380, 454, 506 IPC. Investigation was carried out and charge sheet was submitted. The trial proceeded in the Court of learned Additional Chief Judicial Magistrate, Haldwani, District Nainital. By the judgment dated 03.12.2012, respondent nos. 1 to 6 have been convicted for the charge under Sections 380 and 454 IPC and sentenced thereunder. Respondent nos. 1 to 6 preferred Criminal Appeal No. 125 of 2012, in which, an application under Section 321 of the Code was moved, which was rejected by the impugned order, *inter-alia*, on the ground that the in-charge Prosecutor did not take his independent decision for withdrawal from the prosecution. He filed the application for withdrawal merely on the basis of instructions received from the Government.

6. This matter was once heard on 09.01.2020, when this Court observed as hereunder:

“5. On behalf of respondent, learned counsel would argue that on an application moved by the respondent no.2, the State Government sought comments from the Public Prosecutor. Thereafter, the Public Prosecutor moved an application which ought to have been allowed by the Court. It is argued that the Court could have got further details from the Public Prosecutor with regard to the comments of the Public Prosecutor, which was not done. According to learned counsel, the State Government considered the comments submitted by the Public Prosecutor and after due consideration, took a decision in public interest to withdraw from the prosecution. Therefore, the application deserves to be allowed.

6. Learned State counsel adopts the arguments advanced on behalf of the learned counsel for the respondent no.2.

7. Learned counsel appearing for respondent no.7 would submit that the State cannot withdraw from the prosecution under Section 321 of the Code. It can be done by the Public Prosecutor independently with the consent of the Court. It is argued that in the instant case, the process allegedly was initiated by the State Government, which is not permissible under law. Therefore, learned court below rightly rejected the application and no interference is warranted.

8. In support of his contention, learned counsel for respondent no.7 placed reliance upon the principles of law as laid down in the case of Bairam Muralidhar Vs. State of Andhra Pradesh, (2014) 10 SCC 380. In the case of Bairam (supra), Hon’ble Supreme Court has considered the law on the point as laid down in the case of Sheonandan Paswan Vs. State of Bihar, (1987) 1 SCC 288 and Abdul Karim Vs. State of Karnataka, (2000) 8 SCC 710.

9. In the case of Bairam Muralidhar (supra), the Hon’ble Court held as hereunder:-

“18. The central question is whether the Public Prosecutor has really applied his mind to all the relevant materials on record and satisfied himself that the withdrawal from the prosecution would subserve the cause of public interest or not. Be it stated, it is the obligation of the Public Prosecutor to state what material he has considered. It has to be set out in brief. The Court as has been held in Abdul Karim case¹, is required to give an informed consent. It is obligatory on the part of the court to satisfy itself that from the material it can reasonably be held that the withdrawal of the prosecution would serve the public interest. It is not within the domain of the court to weigh the material. However, it is necessary on the part of the court to see whether the grant of consent would thwart or stifle the course of law or cause manifest injustice. A court while giving consent under Section 321 of the Code is required to exercise its judicial discretion, and judicial discretion, as settled in law, is not to be exercised in a mechanical manner. The court cannot give such consent on a mere asking. It is expected of the court to consider the material on record to see that the application had been filed in good faith and it is in the interest of public interest and justice.

1- Abdul Karim v. State of Karnataka, (2000) 8 SCC 710

Another aspect the court is obliged to see whether such withdrawal would advance the cause of justice. It requires exercise of careful and concerned discretion because certain crimes are against the State and the society as a collective demands justice to be done. That maintains the law and order situation in the society. **The Public Prosecutor cannot act like the post office on behalf of the State Government. He is required to act in good faith, peruse the materials on record and form an independent opinion that the withdrawal of the case would really subserve the public interest at large. An order of the Government on the Public Prosecutor in this regard is not binding.** He cannot remain oblivious to his lawful obligations under the Code. He is required to constantly remember his duty to the court as well as his duty to the collective.”

(emphasis supplied)

10. The record reveals that on 08.08.2014, a communication was made by the Joint Secretary, Government of Uttarakhand to the District Magistrate, Nainital conveying the decision of the State Government to withdraw from the prosecution and directing the Public Prosecutor, Incharge of the appeal to withdraw from the prosecution with the consent of the Court (Annexure No. 3). Pursuant to it, it appears that the Assistant District Government Counsel (Criminal) moved an application on 01.09.2014 with a request that in view of Government's directions, the appeal may be withdrawn (Annexure No.4).

11. Learned court below, inter alia, observed that the Public Prosecutor did not give his independent opinion as to why it is necessary to withdraw from the prosecution and rejected the application.

12. The application filed by the Public Prosecutor does not reveal that any comments were given by him or any material was considered by him before filing the application under Section 321 of the Code. Neither the petitioner nor any of the respondents has filed any material which was considered by the Public Prosecutor before forming an opinion to withdraw from the prosecution. Petitioner is the State, it could have filed such material, but it has not been done.

13. In the case of Abdul Karim (supra), the Hon'ble Court while referring to the judgment in the case of Sheonandan Paswan (supra) observed as hereunder:-

“18. The law as it stands today in relation to applications under Section 321 is laid down by the majority judgment delivered by Khalid, J. in the Constitution Bench decision of this Court in Sheonandan Paswan v. State of Bihar². It is held therein that when an application under Section 321 is made, it is not necessary for the court to assess the evidence to discover whether the case would end in conviction or acquittal. What 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 the facts of the case, has to see whether the application suffers from such improprieties or illegalities as would cause manifest injustice if consent was given. When the Public Prosecutor makes an application for withdrawal after taking into consideration all the material before him, the court must

exercise its judicial discretion by considering such material and, on such consideration, must either give consent or decline consent. The section should not be construed to mean that the court has to give a detailed reasoned order when it gives consent. If, on a reading of the order giving consent, a higher court is satisfied that such consent was given on an over all consideration of the material available, the order giving consent has necessarily to be upheld. Section 321 contemplates consent by the court in a supervisory and not an adjudicatory manner. What the court must ensure is that the application for withdrawal has been properly made, after independent consideration by the Public Prosecutor and in furtherance of public interest. Section 321 enables the Public Prosecutor to withdraw from the prosecution of any accused. The discretion exercisable under Section 321 is fettered only by a consent from the court on a consideration of the material before it. What is necessary to satisfy the section is to see that the Public Prosecutor has acted in good faith and the exercise of discretion by him is proper.”

14. Section 321 of the Code is as hereunder:-

“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.”

15. A bare perusal of it, reveals that it is the Public Prosecutor or Assistant Prosecutor, In-charge of the case, who may, with the consent of the court withdraw from the prosecution. Law is settled that the Public Prosecutor has to form his independent opinion upon the material placed before him. The Court has to consider the material while deciding an application

under Section 321 of the Code. In the instant case, such material is not before the Court.

16. In view of the above, this Court is of the view that before making any decision on the issue, directions may be given to the Public Prosecutor as well as to the State Government to place before this Court, the materials, which were considered by the Public Prosecutor or the State Government before directing withdrawal from the case. Therefore, the following directions:-

- (i) Mr. Naveen Chandra Joshi, Assistant District Government Counsel, District Nainital, who moved the application under Section 321 of the Code in the case or his successor in Office shall file an affidavit before this Court, categorically stating, as to what material was considered by him before moving the application under Section 321 of the Code, in Criminal Appeal No. 125 of 2012, in the court of learned 1st Additional District and Sessions Judge, Haldwani, District Nainital on 01.09.2014. (if any material is considered to be sensitive, that may separately be placed in a sealed envelope).
- (ii) Mr. Subhash Chandra, Joint Secretary, Government of Uttarakhand, who made a communication No. 838/XX3-2014-8 (76)2013, Home Department-3, dated 08.08.2014 to the District Magistrate, Nainital conveying the decision of the Government to withdraw from the prosecution and directed the Public Prosecutor, In-charge to withdraw from the prosecution with the consent of the Court or his successor in Office shall file an affidavit, categorically stating, as to what material was considered by the State Government before taking this decision. Entire file (with all the communications relating to it) alongwith the office notings shall also be placed before the Court in a sealed cover.
- (iii) The above affidavits/materials shall be filed on or before 12.02.2020.”

7. The Assistant District Government Counsel, who moved the application under Section 321 of the Code, filed an affidavit before this Court, in which, he categorically deposed that his comments were sought on withdrawal application and **he had not given any opinion/consent for withdrawal from the prosecution.**

8. Mr. Subhash Chandra, Additional Secretary, Forest and Environment, Government of Uttarakhand also filed an affidavit. The relevant paragraph is as hereunder:-

“5. That in compliance of the judgment and order dated 9/1/2020 the deponent respectfully submits that the legal opinion was called from the concerned State Counsel by which they had opined that the withdrawal of the case would not be appropriate since the Trial Court has already convicted the respondent (Balwant Singh Chuphal). However, on subsequent dates again i.e. 31/7/2014 the then Hon’ble Chief Minister had directed for withdrawal of the case. In this regard photocopies of the entire note sheets are being filed in sealed cover for the perusal of this Hon’ble Court (Annexure No.1) and based on the direction of the then Hon’ble Chief Minister the matter was referred to the Home Department and on 8/8/2014 the deponent had forwarded the entire file to the concerned authority and the concerned authority had thereafter, consented for withdrawal of the case and on 23/7/2015 it was further resolved that the Criminal Misc. Application under Section 482 Cr.P.C. should be filed against the impugned order dated 15/5/2015 before the Hon’ble High Court.”
(emphasis supplied)

9. The Court also requested the learned State counsel to place before the Court the entire file notings relating to withdrawal from the prosecution. The file notings have also been received. They reveal very alarming facts which will be discussed in a short while.

10. Learned State counsel would fairly concede that in view of the facts now revealed, there is no merit in the petition under Section 482 of the Code filed by the State Government.

11. On behalf of the respondent nos. 1 to 6, it is argued that in view of the State Amendment in Section 321 of the Code the State has some role in the process of withdrawal from the prosecution.

12. In the instant case the Senior Superintendent of Police, Nainital and the District Magistrate, Nainital gave their views that

since respondent nos. 1 to 6 have already been convicted, prosecution should not be withdrawn. The Principal Secretary, Department of Home, State of Uttarakhand also opined that the prosecution should not be withdrawn. The Law Department, Government of Uttarakhand also opined that withdrawal from the prosecution would not be in the interest of justice. But, the then Chief Minister ordered withdrawal from the prosecution.

13. In view of what is stated above, the Court also requested learned Advocate General of the State of Uttarakhand to assist the Court, as to what mechanism could be devised, so that it may be ensured that the procedure mandated under Section 321 of the Code is followed in letter and spirit.

14. Learned Advocate General would submit that any procedure that may be devised by the Court would be merely an ad-hoc mechanism. Therefore, according to learned Advocate General, the Court may caution the stake holders to adhere to the procedure given in the Code.

15. It is a case arising out from proceedings under Section 321 of the Code. What is being argued is that in view of State Amendment, State Government also has a role in the matter. It may be noted that the learned court below did reject the application under Section 321 of the Code on the ground that the in-charge Prosecutor

did not take independent decision to withdraw from the prosecution. The scope of Section 321 of the Code may be discussed a little further.

16. Section 321 of the Code, State Amendment read as hereunder:-

“In Section 321 after the words “in charge of a case may” the words “on the written permission of the State Government to that effect (which shall be filed in Court)”, shall be inserted- U.P. Act 18 of 1991. S. 3 (w.e.f. 16-2-1991).”

17. The effect of State Amendment is that the Public Prosecutor or the Assistant Public Prosecutor, in-charge of the case, on his own, cannot move the application for withdrawal. He has to seek written permission of the State Government, which shall be filed in the court. The State Amendment merely restricts the singular right of the in-charge Public Prosecutor to move the application for withdrawal. It mandates that before filing the application for withdrawal, the in-charge Prosecutor, should seek written permission from the State Government and file it in the court. But, in one way or the other, in whatever way, Section 321 of the Code is read, it is amply clear that it is the in-charge Prosecutor, who has to form an opinion, seek permission from the State Government and move the application.

18. From the settled legal position, it flows that application under Section 321 of the Code may be filed by the Public Prosecutor, after having applied his mind, to all the relevant materials and in

good faith having been satisfied that public interest will be served by withdrawal from the prosecution.

19. Undoubtedly, the State Government may also ask the Public Prosecutor to withdraw from the prosecution, but then if the State Government has some material that has to be provided to the Public Prosecutor, in-charge of the case to consider and form his independent opinion about the exigency of withdrawal from the prosecution. The Public Prosecutor, in-charge of the case cannot just act like a messenger of the State Government, like a post office to forward the letter received from the State Government to the Court.

20. In the instant case initially, when arguments were advanced on behalf of the respondent nos.1 to 6, it was argued that the learned court below could have called a report from the Public Prosecutor as to whether he had opined for withdrawal from the prosecution or not. Now, it has been done and it is abundantly clear that the Prosecutor, in-charge had denied for withdrawal from the prosecution. He has not formed any opinion to withdraw. In fact, his opinion was against it. Now, the question this Court would like to see further is as to what has gone wrong.

21. The record, which has been received in a sealed cover from the State Government reveals that a Union Minister, wrote a letter to the then Chief Minister of the State of Uttarakhand on

11.07.2013, recommending that the prosecution should be withdrawn against the respondent nos. 1 to 6. It appears that thereafter report was sought on it. The reports/opinions are as hereunder:-

- 1) The in-charge Prosecutor on 04.10.2013 opined that the prosecution should not be withdrawn as the respondent nos. 1 to 6 had already been convicted by the trial court and appeal was pending.
- 2) The Senior Superintendent of Police, Nainital on 20.11.2013 opined that the prosecution should not be withdrawn.
- 3) The District Magistrate, Nainital on 26.11.2013 opined that the prosecution should not be withdrawn.
- 4) On 30.01.2014, the Principal Secretary, Department of Home, Government of Uttarakhand opined that there is no justification to withdraw from the prosecution and the matter was closed then.

22. It appears from the record, that thereafter a letter was received from General Secretary of a political party requesting the Chief Minister to summon the file and withdraw from the prosecution. On this letter, the file was again moved. Again, the Department of Home, referred the matter to the Law Department, Government of Uttarakhand. The Department of Law on 02.07.2014 recommended that it is not justified to withdraw from the

prosecution. The Department of Home, endorsed this opinion of the Law Department.

23. It appears from the record that meanwhile the same Union Minister, who had recommended for withdrawal from the prosecution by writing a letter on 11.07.2013, to the then Chief Minister of the State of Uttarakhand, became Chief Minister of the State. When these file notings were placed before him on 31.07.2014, he endorsed “**case should be withdrawn**” and the case was withdrawn.

24. Subsequent to the endorsement of the Chief Minister, which was against the opinion of the in-charge Prosecutor, the Senior Superintendent of Police, Nainital, District Magistrate Nainital, Department of Home and Department of Law, Government of Uttarakhand a letter was written from the Government to withdraw from the prosecution. The in-charge Prosecutor just complied with the direction of State Government, did not form his independent opinion. He filed the application for withdrawal, but the learned court below rejected the application.

25. The above procedure adopted for withdrawal from the prosecution speaks in volume. The guidelines laid down under Section 321 of the Code by the Hon’ble Supreme Court were violated with impunity. The Chief Minister on 31.07.2014 ordered for withdrawal from the prosecution against opinion of all, as stated

hereinbefore (right from in-charge Prosecutor to the Department of Law and Department of Home opined that prosecution should not be withdrawn). It is the Chief Minister, who while holding the office of Union Minister on 11.07.2013, recommended to the then Chief Minister of the State of Uttarakhand to withdraw from the prosecution. Subsequently, when he became Chief Minister on 31.07.2014, he took a decision himself to withdraw from the prosecution. Law did not permit withdrawal. The role and responsibility of the Chief Minister are also defined under the Constitution. A Chief Minister cannot be above law. He has to take oath before he enters upon his office in accordance with Schedule III to the Constitution, which *inter alia* speaks that “and that I will do right to all manner of people in accordance with the Constitution and the law without fear and favour, affection or ill will.”

(emphasis supplied)

26. The court would have ventured further to examine the role, responsibility or liability (if any) of the Chief Minister in the instant case. Especially, to ascertain as to how he could order “withdrawal from prosecution”, when he was advised that it may not be justified. Even if rule of any business in the government permit the Chief Minister to take a decision contrary to opinion submitted to him, such rule would have also been discussed, but this court refrain to do so for the following reasons.

- (i) Before role, responsibility or liability of the Chief Minister is discussed, he is required to be given an

opportunity of hearing but since the Chief Minister, who ordered withdrawal from the prosecution is not incumbent, Chief Minister now, it would not be expedient in the interest of justice to go into that controversy in the instant case. But this court is of the definite view that whenever situation warrants Chief Minister/Minister should be personally called to explain the deed committed by them in violation of law. After all in a constitutional democracy, rule of law has to be respected and in case it is violated, the court should not shy away to enforce it and held the erring person, whosoever he may be, responsible.

- (ii) In the instant case, the Law Department, Government of Uttarakhand did not give detailed opinion with the provisions of law as well the case laws. The opinion of law department should be based on statute, precedents, rule and regulations. In the instant case no statute or case law has been cited. Had it been done, the Chief Minister would have been called to explain as to how can he defy the Statute or law laid down by the court.

27. Chief Minister cannot be a law unto himself. Justice cannot be denied to those who could not reach to the political leaders.

Political leaders cannot interfere with the course of justice. It may be a challenge to the independence of judiciary. In the instant case, no one formed the opinion that prosecution should be withdrawn except the Chief Minister. The in-charge Prosecutor had opined against withdrawal from the prosecution. The decision of the Chief Minister is not based on any law. Neither the State (Except Chief Minister) nor the in-charge Prosecutor formed any opinion to withdraw from the prosecution. Having considered all the facts, the Court is of the view that the learned court below rightly rejected the application under Section 321 of the Code and no interference is warranted in the matter. Accordingly, both, the petition under Section 482 of the Code and the revision deserve to be dismissed.

28. In view of the foregoing discussion Criminal Misc. Application No. 1016 of 2015 & Criminal Revision No. 145 of 2015 are dismissed.

29. Before parting with the case, the Court now considers the feasibility of issuing directions in matters pertaining to Section 321 of the Code.

30. During the course of hearing, the Court posed a question to the learned counsel for the State on as to why did they challenge the impugned order when they had all the information that the in-charge Prosecutor has never formed any opinion to withdraw from

the prosecution? There has been no reply. It is really sad state of affairs. It establishes that the State knowingly that there is no ground to challenge the impugned order preferred a petition under Section 482 of the Code. Why did they do so? Government in this country is the largest litigant. State filed a petition under Section 482 of the Code knowingly that it has no merits. They simply took a chance. It would have been better for the administration of justice if the person, who accorded the permission to file petition is held responsible. Since this Court is not exploring the role of Chief Minister in the instant case, this Court also does not agitate this aspect either.

31. Having considered the facts of this case, the Court requested learned Advocate General to assist the Court so as to devise a procedure for ensuring that the provisions of Section 321 of the Code are followed strictly. Learned Advocate General argued that any procedure that may be devised by this Court may only be ad-hoc. Therefore, according to him the stakeholders may be cautioned to adhere to the provisions of Section 321 of the Code. (Paragraph 13 and 14 as above)

32. There may not be any question of ad-hoc procedure, if this Court issues directions in consonance with the provisions of the Code. Such directions shall have a binding effect. In the case of *Social Action Forum for Manav Adhikar v. Union of India, Ministry of Law and Justice* [(2018) 10 SCC 443], the Hon'ble Supreme Court assessed the legality of the directions issued in the case of Rajesh

Sharma v. State of U.P. [(2018) 10 SCC 472] and observed as hereunder: -

“37.On a perusal of the directions, we find that the Court has directed constitution of the Family Welfare Committees by the District Legal Services Authorities and prescribed the duties of the Committees. The prescription of duties of the Committees and further action therefor, as we find, are beyond the Code and the same does not really flow from any provision of the Code. There can be no denial that there has to be just, fair and reasonable working of a provision. The legislature in its wisdom has made the offence under Section 498-A IPC cognizable and non-bailable. The fault lies with the investigating agency which sometimes jumps into action without application of mind. The directions issued in *Arnesh Kumar* [*Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449] are in consonance with the provisions contained in Section 41 CrPC and Section 41-A CrPC. Similarly, the guidelines stated in *Joginder Kumar* [*Joginder Kumar v. State of U.P.*, (1994) 4 SCC 260 : 1994 SCC (Cri) 1172] and *D.K. Basu* [*D.K. Basu v. State of W.B.*, (1997) 1 SCC 416 : 1997 SCC (Cri) 92] are within the framework of the Code and the power of superintendence of the authorities in the hierarchical system of the investigating agency. The purpose has been to see that the investigating agency does not abuse the power and arrest people at its whim and fancy.”

33. In the case of Social Action Forum for Manav Adhikar (supra), the Court further issued directions that the investigating officers be careful and guided by the principles stated in the cases of *Joginder Kumar v. State of U.P.* [(1994) 4 SCC 260], *D.K. Basu v. State of W.B.*, [(1997) 1 SCC 416], *Lalita Kumari v. State of U.P.*, [(2014) 2 SCC 1] and *Arnesh Kumar v. State of Bihar*, [(2014) 8 SCC 273].

34. In view of the settled legal position, this Court is of the view that directions may be issued for streamlining the procedure for withdrawal from the prosecution. It will also help to maintain independence of the in-charge Prosecutor as well as the independence of judiciary. Therefore, the court issues the following directions: -

- (i) Whenever State Government directs for withdrawal from the prosecution under Section

321 of the Code, entire material on the basis of which, such decision has been taken (which includes, letter of recommendation for withdrawal, any report from intelligence agency, etc.) should also be forwarded to the in-charge Prosecutor.

- (ii) The Department of Law, Government of Uttarakhand, while giving opinion on any matter pertaining to Section 321 of the Code, shall categorically cite the statutory provisions as well as the principles laid down by the Courts on the subject. Department of Law shall base the opinion on statute and/or precedents.
- (iii) The in-charge Prosecutor shall form his **INDEPENDENT OPINION** on the basis of material supplied to him by the State Government. He shall file application under Section 321 of the Code only when he is satisfied that the withdrawal from the prosecution would subserve the cause of public interest.
- (iv) The in-charge Prosecutor shall submit to the Court entire material received by him from the State Government alongwith his **OPINION** for withdrawal from the prosecution. In his

application he shall also set out in brief as to what material did he consider to form his OPINION.

- (v) In case, the in-charge Prosecutor, after collecting the material supplied to him by the State Government, is of the opinion that the withdrawal from the prosecution is not in public interest, he will return the material to the State Government alongwith his OPINION.
- (vi) In case, the in-charge Prosecutor himself considers that the prosecution should be withdrawn, he will submit his report to the State Government seeking permission to withdraw from the prosecution. He shall also submit entire material that has been handed over to him officially, on the basis of which, he had formed such opinion. Once permission is accorded by the State Government, the in-charge Prosecutor shall move application under Section 321 of the Code to the Court alongwith entire material as well as the permission of the State Government.
- (vii) The Court while deciding an application under Section 321 of the Code, shall also consider the material placed before it by the in-charge Prosecutor, to examine as to whether the application has been filed in good faith and it is in

the public interest and justice. The Court must also consider the material to see whether the withdrawal would advance the cause of justice and not to thwart or stifle the process of law.

(viii) In case the in-charge Prosecutor moves an application under Section 321 of the Code, without following the above guidelines, such application shall not be entertained by the Court and it shall be rejected summarily.

35. Let a copy of the judgment be sent to the Principal Secretary, Home and Principal Secretary, Law, Government of Uttarakhand.

36. Let a copy of this judgment be also forwarded to the learned appellate court with a request to decide the Criminal Appeal No. 125 of 2012, as expeditiously as possible. If convenient, it may be heard on day-to-day basis.

(Ravindra Maithani, J.)

27.05.2020
Jitendra