

**Court No. - 11**

**Case :-** APPLICATION U/S 482 No. - 666 of 2023

**Applicant :-** Prem Narayan Pandey

**Opposite Party :-** State Of U.P. Thru. Prin. Secy. Home Lko.  
And Another

**Counsel for Applicant :-** Rajendra Prasad Mishra

**Counsel for Opposite Party :-** G.A.

**Hon'ble Rajesh Singh Chauhan,J.**

1. Heard Sri Rajendra Prasad Mishra along with Sri Pradeep Kumar Shukla, learned counsels for the applicant and Sri Alok Saran with Sri Rajesh Kumar Singh, learned Additional Government Advocates for the State.

2. Sri Rajendra Prasad Mishra, learned counsel for the applicant has filed supplementary affidavit, today in the Court, the same is taken on record.

3. By means of this application/petition filed under Section 482 Cr.P.C., the applicant has prayed for the following reliefs:-

*"(i) to quash the impugned judgment and order dated 04.11.2020, passed by the learned Additional Session Judge, Court No.3/ Special Judge (M.P./M.L.A.), Gonda in Crl. Case No.100 of 2019; State vs. Prem Narayan Pandey, arising out of Case Crime No.109 of 2003, under Section 60/72 of Excise Act, Police Station-Tarabganj, District-Gonda.*

*(ii) to allow the application filed by the Public Prosecutor under Section 321 Cr.P.C. bearing Application No.26Ka.*

*(iii) to quash the entire criminal proceedings of Crl. Case No.100 of 2019; State vs. Prem Narayan Pandey, arising out of Case Crime No.109 of 2003, under Section 60/72 of Excise Act, Police Station-Tarabganj, District-Gonda pendng in the Court of learned Addl. Chief Judicial Magistrate, Court No.1/ Special Judge M.P./M.L.A., Gonda."*

4. At the very outset, learned counsel for the applicant has drawn attention of this Court towards the order dated 04.02.2023 passed by the learned trial court rejecting the discharge application of the petitioner which was filed pursuant to the order dated 01.12.2022 passed by this Hon'ble Court in Crl. Misc. Application (U/S 482 Cr.P.C.) No.8615 of 2022

marked as 57Kha, as the order has been enclosed as Annexure No.SA-1 to the supplementary affidavit filed on 09.02.2023.

5. Learned counsel for the applicant has stated that a letter dated 14.11.2019 has been preferred from the office of the District Magistrate, Gonda addressing to the Joint Director, Prosecution, Gonda referring a letter dated 01.11.2019 for withdrawal of the prosecution against the present applicant (Annexure No.3). Pursuant thereof an application under Section 321 Cr.P.C. was filed on 23.11.2019 before the learned trial court concerned by the Assistant Public Prosecutor (Criminal).

6. Learned counsel for the applicant has stated that the learned trial court refused to allow the application filed under Section 321 Cr.P.C. only on the ground that no documentary material has been put forth demonstrating that such withdrawal is in the interest of public justice.

7. Learned counsel for the applicant has further stated that Section 321 Cr.P.C. clothes the Public Prosecutor to withdraw from prosecution of any person accused of an offence, both when no evidence was taken or even if entire evidence has been taken. The outer limit for the exercise of this power at any time before the judgment is pronounced. The caveat for moving the application under Section 321 Cr.P.C. is the Public Prosecutor has to make out some ground which would advance or further the cause of public justice. If the Public Prosecutor shows that he may not be able to produce sufficient evidence so sustained the charge, an application for withdrawal from prosecution may be legitimately made by him, as held in the case of ***Sheonandan Paswan vs. State of Bihar (1987) 1 SCC 288.***

8. Learned counsel for the applicant has further stated that the nature of the case which is sought to be withdrawn would not affect the society at large, thus, such withdrawal would not be against the public justice.

9. Learned counsel for the applicant has stated that in the case of State of ***Punjab vs. Union of India (1986) 4 SCC 335***, it has been held that 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, which may include social, economic and political purpose. The ultimate guiding consideration while granting a permission to withdraw from the prosecution must always be the interest of administration of justice.

10. Learned counsel for the applicant has also submitted that the Apex Court in the case of ***Rajendra Kumar Jain vs. State***

**(1980) 3 SCC 435** has summarized the legal position for withdrawal of prosecution and has held that the Public Prosecutor may withdraw from prosecution not merely on the ground of paucity of evidence but on other relevant ground as well as in order to further the broad ends of public justice, public order and peace. The broad ends of public justice will certainly include appropriate social, economic and political purpose.

**11.** Learned counsel for the applicant has also submitted that though after framing of the charge, the evidence of the witnesses of fact by prosecution has been examined but the application for withdrawal can be allowed at any stage before pronouncement of judgment, thus, even at this stage there is no prohibition for allowed application under Section 321 Cr.P.C.

**12.** Learned counsel for the applicant has stated that due to Covid-19 Pandemic period he could not challenge the order dated 04.11.2020 immediately after passing the said order. However, the Apex Court has extended the time in sou motu writ petition bearing Writ (Civil) No.03 of 2020 for challenging the orders which have been passed during Covid-19 Pandemic period.

**13.** Per contra, learned Additional Government Advocates, Sri Alok Saran and Sri Rajesh Kumar Singh, have submitted that pursuant to the directions being issued by this Court the applicant filed the discharge application and the same has been rejected by the learned trial court.

**14.** However, on being confronted the learned Additional Government Advocates as to whether the impugned order dated 04.11.2020 has been passed within the four corners of law as settled by the Apex Court, the learned Additional Government Advocates have fairly submitted that the learned trial court has erred in passing the impugned order by indicating that the prosecution could not file any document/ material to convince the court to withdraw the prosecution against the present applicant. They have further submitted that as per the settled law even after framing of the charges the application for withdrawal of the prosecution can be allowed at that stage, therefore, any appropriate order may be passed.

**15.** Having heard learned counsel for the parties and having perused the material available on record, I am of the considered opinion that if the Public Prosecutor is able to show that he may not be able to produce sufficient evidence sustaining the charges, an application for withdrawal from the prosecution may be legitimately filed by him.

**16.** In the recent judgment of the Apex Court in para-26 rendered in the case in re: **State of Kerala vs. K. Ajith and others** reported in **(2021) SCC OnLine SC 510** observed as under:-

*"26. 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 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."*

**17.** Besides, the Apex Court in catena of cases, some of them have been referred by the learned counsel for the applicant, held that the Public Prosecutor may withdraw from a prosecution not merely on the ground of paucity of evidence but also in order to further the broad ends of public justice which may include the social, economic and political purpose. The ultimate guiding consideration while granting the permission to withdraw from a prosecution must always be the interest of administration of justice. The learned trial court may not examine the purpose for what the application for withdrawal of the prosecution has been filed inasmuch as the withdrawal from a prosecution is an executive function of the Public Prosecutor. The discretion to withdraw from the prosecution is solely that of the Public Prosecutor and so he cannot surrender that discretion to someone else. Admittedly, the Public Prosecutor is an Officer of the Court and therefore, responsible to the Court. The court performs a supervisory function and has a special duty in granting its consent to the withdrawal. The courts duty is not to reappreciate the grounds which led the Public Prosecutor to request the withdrawal from the prosecution but to consider whether the Public Prosecutor applied his mind as a free agent. The Court has a special duty in this regard as it is the ultimate repository of legislative confidence in granting or withholding its consent to withdrawal from the prosecution.

**18.** Considering the settled legal position on the subject by the Apex Court and the facts and circumstances of the present case, I find that the impugned order dated 04.11.2020 suffers from apparent illegality and perversity so the same is liable to be set

aside. Further, I find that it would be a futile exercise if the matter is remanded back to the learned trial court to pass appropriate order when the application filed under Section 321 Cr.P.C. fulfills all the required conditions.

**19.** Thus, the present petition is ***allowed*** and the impugned judgment and order dated 04.11.2020 (Annexure No.1), passed by the learned Additional Session Judge, Court No.3/ Special Judge (M.P./M.L.A.), Gonda in Crl. Case No.100 of 2019; State vs. Prem Narayan Pandey, arising out of Case Crime No.109 of 2003, under Section 60/72 of Excise Act, Police Station-Tarabganj, District-Gonda is hereby set aside and the application filed by the learned Public Prosecutor under Section 321 Cr.P.C. for withdrawal from the prosecution is hereby allowed.

**20.** Consequences to follow.

**Order Date :- 14.2.2023**  
Suresh/

**[Rajesh Singh Chauhan,J.]**