

THE HIGH COURT OF SIKKIM : GANGTOK
(Criminal Revisional Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

Crl. Rev. P. No. 3 of 2020

State of Sikkim
Through Vigilance Department Revisionist

Versus

1. Asal Kumar Thapa,
The then Director,
Food Security & Agriculture Development Department,
Government of Sikkim,
Gangtok,
East Sikkim.
2. Kiran Kumar Pradhan,
The then Additional Director,
Food Security & Agriculture Development Department,
Government of Sikkim,
Gangtok,
East Sikkim.
3. Jagdish Pradhan,
The then Additional Director,
Food Security & Agriculture Development Department,
Government of Sikkim,
Gangtok,
East Sikkim. Respondents/Accused Persons

**Application for revision petition under section 397/401
of the Code of Criminal Procedure, 1973.**

Appearance:

Dr. Doma T. Bhutia, Public Prosecutor with Mr. S.K. Chettri,
Additional Public Prosecutor, for the Revisionist.
Mr. Ajay Rathi, Advocate, for the Respondents.

Date of hearing : 15.10.2020
Date of order : 06.11.2020

J U D G M E N T

Bhaskar Raj Pradhan, J.

1. The State of Sikkim has preferred the revision petition seeking to invoke the powers of this court under sections 397 and 401

of the Code of Criminal Procedure, 1973 (Cr.P.C.) against the order dated 13.12.2019, passed by the learned Special Judge (PC Act, 1988), East Sikkim at Gangtok, in Sessions Trial (Vigilance) Case No. 01 of 2019 [*State of Sikkim (Through Vigilance Department) vs. Asal Kumar Thapa & Others*].

2. On 15.11.2016, a First Information Report (FIR) was lodged at the Sikkim Vigilance Police Station, Gangtok, against respondent no.1, the then Director, Food Security & Agriculture Development Department (FS & ADD); respondent no.2, the then Additional Director, FS & ADD; respondent no.3, Joint Director/IPM/INM, FS & ADD and Ringzing Doma Bhutia, Senior Accounts Officer-cum-D&DO, FS & ADD; Lily Bhutia, Manager, Srijanasil Labour Women Cooperative Society; Pasangkit Lepcha, President, Srijanasil Labour Women Cooperative Society and others unknown, for commission of offences under section 13(1)(d) read with section 13(2) of the Prevention of Corruption Act, 1988 (PC Act, 1988). A Regular Case No. R.C. 14 of 2016 was registered and taken up for investigation.

3. Charge-sheet no. 1/SUPS/19 dated 29.07.2019 was filed against the three respondents for commission of offences punishable under sections 120B, 420, 468, 471 of the Indian Penal Code, 1860 (IPC) and under section 13(1)(d) read with section 13(2) of the PC Act, 1988. According to the charge-sheet, as no evidence could be found to attribute criminality to the acts of Rinzing Doma Bhutia, Pasangkit Lepcha and Lily Bhutia, a prayer was made for their discharge. It was further prayed that Pasangkit Lepcha and Lily Bhutia may be taken as

approvers in the case. Amongst the 59 persons listed as prosecution witnesses, Rinzing Doma Bhutia, Lily Bhutia and Pasangkit Lepcha were also listed. The statements recorded under section 161 Cr.P.C. were also part of the charge-sheet. 59 documentary evidence formed the list of documents filed along with it. According to the learned Public Prosecutor, charges are yet to be framed.

4. The charge-sheet alleged that the above dishonest and fraudulent acts of the respondents had caused undue wrongful, pecuniary loss of Rs.8,48,675/- to the Government of Sikkim and corresponding undue pecuniary gain to themselves.

5. A petition under section 321 Cr.P.C. (the petition) was filed by the learned Special Public Prosecutor on 27.11.2019 before the learned Special Judge, P.C. Act, 1988, East Sikkim at Gangtok, for consent to withdraw the case from prosecution. A copy of the instructions of the State Government dated 22.10.2019, was also annexed thereto. The petition was heard by the learned Special Judge and vide the impugned order dated 13.12.2019, it was held that the court was not inclined to accord consent for withdrawal from prosecution and the petition was rejected. While doing so, after hearing the learned counsel for the parties, the learned Special Judge referred to the judgment of the Supreme Court in **Bairam Muralalidhar vs. State of Andhra Pradesh**¹ and **Niranjan Hemchandra Sashittal & Anr. vs. State of Maharashtra**² and of the High Court of Himachal Pradesh in **Capt. Ram Singh vs. State of Himachal Pradesh & Ors.**³. The learned

¹ (2014) 10 SCC 380

² (2013) 4 SCC 642

³ 2016 Cri. L.J 4469 (HP)

Special Judge held that no case for according consent for withdrawal from prosecution had been made out by the learned Special Public Prosecutor. The learned Special Judge further held that although it was urged that the quality of evidence was poor, the records would, at least at this stage, indicate otherwise. The learned Special Judge held that the statements of witnesses like Tshering Ongmu Wangchuk, Laxmi Rai, Bina Gurung, Sanjit Tamang, Pabel Majumdar (In-charge, CIPMC) and Lily Bhutia would give altogether different picture than sought to be projected. The learned Special Judge refrained from making any further observation lest it may affect the merits of the case.

6. Heard Dr. Doma T. Bhutia, learned Public Prosecutor for the Revisionist and Mr. Ajay Rathi, learned counsel for the respondents.

7. The learned Public Prosecutor submitted that a perusal of the impugned order would reveal that the learned Special Judge had failed to consider whether the learned Special Public Prosecutor applied his independent application of mind and acted in good faith and in public interest, which is a *sine qua non* of section 321 Cr.P.C. Dr. Doma further submitted that the learned Special Judge ought to have considered that the petition was also supported by the instructions from the Secretary (Protocol), Home Department, that the State Government had taken a decision to withdraw the case in accordance with section 321 Cr.P.C. It was urged that the learned Special Public Prosecutor had opined that it would be expedient to withdraw from prosecution as the materials placed on record by the

investigation would not lead to successful trial causing wastage of the court's precious time as well as unnecessary sufferings of the accused persons. Thus, it was contended that the impugned order was unreasonable and unsustainable in law and deserved to be set aside in the interest of justice and in public interest. It was the case of the learned Public Prosecutor that saving the precious time of the court could also be considered public policy or public interest. Dr. Doma referred to and relied upon the judgment of the Supreme Court in ***Sheonandan Paswan vs. State of Bihar & Ors.***⁴, in which it was held that 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.

8. Mr. Ajay Rathi, to supplement the arguments made by the learned Public Prosecutor, placed the judgment of the Supreme Court in ***Abdul Karim & Others vs. State of Karnataka & Others***⁵, where the Supreme Court explained the principle underlying section 321 Cr.P.C.

9. Section 397 Cr.P.C. mandates that the High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior criminal court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, - recorded or passed, and as to the regularity of any proceedings of such inferior court. It is settled that the scope of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in the proceedings.

⁴ (1987) 1 SCC 288

⁵ (2000) 8 SCC 710

10. Section 321 Cr.P.C provides, thus:

“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.”

11. A perusal of section 321 Cr.P.C. reflects that the consent of the court is mandatory before the public prosecutor in charge of a case withdraws from the prosecution of any person either generally or in respect of anyone or more of the offences for which he is tried.

12. The Constitutional Bench of the Supreme Court in ***Sheonandan Paswan*** (supra) examined, *inter alia*, the provision of section 321 Cr.P.C. The majority dismissed the appeal preferred by Sheonandan Paswan. It was held that section 321 Cr.P.C. needs three requisites to make an order under it valid: (1) the application should be filed by a public prosecutor or assistant public prosecutor who is competent to make an application for withdrawal, (2) he must be in charge of the case and (3) the application should get the consent of the court before which the case is pending. A perusal of the impugned order leads one to conclude that it was only the third requisite, i.e., the consent of the court before which the case was pending, which was not fulfilled.

13. The Supreme Court also held that the impugned order giving consent under section 321 Cr.P.C. was a revisable order and that the revisional court considers the materials only to satisfy itself about the correctness, legality and propriety of the findings, sentence or order and refrains from substituting its own conclusion on an elaborate consideration of evidence. It was further held that since section 321 Cr.P.C. does not give any guidelines, the grounds on which a withdrawal application can be made, such guidelines have to be ascertained with reference to decided cases under the section as well as its predecessor's section 494. It was held that ***State of Bihar vs. Ram Naresh Pandey***⁶ is a landmark case which has laid down the law on the point with precision and certainty. In the said judgment, while discussing the role of the court, the Supreme Court observed:

⁶ AIR 1957 SC 389

“92.

His discretion in such matters has necessarily to be exercised with reference to such material as is by then available and it is not a prima facie judicial determination of any specific issue. The Magistrate's functions in these matters are not only supplementary, at a higher level, to those of the executive but are intended to prevent abuse. Section 494 requiring the consent of the court for withdrawal by the Public Prosecutor is more in line with this scheme, than with the provisions of the Code relating to inquiries and trials by court. It cannot be taken to place on the court the responsibility for a prima facie determination of a triable issue. For instance the discharge that results therefrom need not always conform to the standard of 'no prima facie case' under Sections 209(1) and 253(1) or of 'groundlessness' under Sections 209(2) and 253(2). This is not to say that a consent is to be lightly given on the application of the Public Prosecutor, without a careful and proper scrutiny of the grounds on which the application for consent is made.”

14. In *Abdul Karim* (supra), the Supreme Court held:

“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 Bihar [(1987) 1 SCC 288 : 1987 SCC (Cri) 82]. 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 overall 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.

19. *The law, therefore, is that though the Government may have ordered, directed or asked a Public Prosecutor to withdraw from a prosecution, it is for the Public Prosecutor to apply his mind to all the relevant material and, in good faith, to be satisfied thereon that the public interest will be served by his withdrawal from the prosecution. In turn, the court has to be satisfied, after considering all that material, that the Public Prosecutor has applied his mind independently thereto, that the Public Prosecutor, acting in good faith, is of the opinion that his withdrawal from the prosecution is in the public interest, and that such withdrawal will not stifle or thwart the process of law or cause manifest injustice.*

20. *It must follow that the application under Section 321 must aver that the Public Prosecutor is, in good faith, satisfied, on consideration of all relevant material, that his withdrawal from the prosecution is in the public interest and it will not stifle or thwart the process of law or cause injustice. The material that the Public Prosecutor has considered must be set out, briefly but concisely, in the application or in an affidavit annexed to the application or, in a given case, placed before the court, with its permission, in a sealed envelope. The court has to give an informed consent. It must be satisfied that this material can reasonably lead to the conclusion that the withdrawal of the Public Prosecutor from the prosecution will serve the public interest; but it is not for the court to weigh the material. The court must be satisfied that the Public Prosecutor has considered the material and, in good faith, reached the conclusion that his withdrawal from the prosecution will serve the public interest. The court must also consider whether the grant of consent may thwart or stifle the course of law or result in manifest injustice. If, upon such consideration, the court accords consent, it must make such order on the application as will indicate to a higher court that it has done all that the law requires it to do before granting consent.”*

15. On the touchstone of the laws so well established, this Court shall now examine the petition as well as the impugned order refusing to grant consent to be satisfied as to its correctness, legality or propriety. The said petition reads:

“

1. That the aforementioned case is at its initial stage of trial before this Hon'ble Court.

2. That while going through the case papers relating to this case including the charge sheet and the evidences relied on by the investigating agency in the case, it has been noticed that the nature and quality of evidences placed on record by the investigating agency in support of the case are such that the trial of the case, if allowed to continue, is likely to end in discharge/acquittal of the accused broadly for the reasons hereinunder enumerated.

- (a) The star Prosecution witnesses in the case, namely Smt. Rinzing Doma, Smt. Passangkit Lepcha and Smt. Lily Bhutia who were themselves partners in the offence and co-accused in the case, have been impleaded as, Prosecution witnesses in this case without following the procedure laid down in Section 306 Cr.P.C.
- (b) This defect in investigation, renders the testimony of such witnesses inadmissible in evidence.
- (c) The questioned documents including the questioned writings and signatures of the accused therein, relied on by the investigating agency in support of the case, have been examined by the Government Examination of Questioned Documents (GEQD) of Regional Forensic Science Laboratory (RFSL), Saramsa, which is under the Department of Police, Govt. of Sikkim and hence not an independent body like the Central Forensic Science Laboratory (CFSL). More over RFSL Saramsa does not appear to have been accredited as a Forensic Laboratory by the National Accreditation Board for testing and Calibration Laboratories (NABL) which is the competent authority to accredit (sic, 'accredit') Forensic Science Laboratories in the country.
- (d) For the reason at (c) above, the certain vital documents relied on by the investigating agency in support of the case, are likely to be rendered inadmissible in evidence to the detriment of the Prosecution case.
- (e) The instant prosecution case also suffers from the vice of withholding important witnesses whose evidence is vital for success of the case.
- (f) In order to come to a just and proper finding on the guilt of the accused persons in this case, it is necessary to examine, whether the CIPMC training programme initiated and organized by the accused persons, in the instant case, was technically identical or different from the one earlier organized by the CIPMC, Govt. of India. The accused persons would be proved to be guilty only if

there are evidences on record to prove similarity in the two training programmes. The investigation report in the case, lacks these particulars, thereby leaving a lacuna in the Prosecution case, benefit of which will ultimately go to the accused persons.

3. *That in view of the above defects in the prosecution case, the trial of the accused in the case is likely (sic, 'to') end in their discharge / acquittal.*

4. *That in view of the above, the entire legal proceedings in the matter, if allowed to continue, is likely to be a futile exercise at the cost of harassment to the accused persons and witnesses, consumption of precious time of this Hon'ble Court and loss of other men (sic, 'man') hours and therefore not likely to serve the interest of administration of justice.*

5. *That the State Government of Sikkim, has also desired this case to be withdrawn from Prosecution in the interest of administration of Justice. A letter to his (sic, 'this') effect received by the undersigned Special Public Prosecutor from Secretary (Protocol), Home Department, Government of Sikkim, is filed as an Annexure herewith.*

In the circumstances, this Hon'ble Court may be placed (sic, 'pleased') to allow the State to withdraw this case from Prosecution, in the interest of fair and just, administration of justice.

.....”

16. On a perusal of the petition, it is noticed that the learned Special Public Prosecutor desired to withdraw the case from prosecution on the ground that the case papers produced were such that if the trial of the case was allowed to continue was likely to end in discharge/acquittal of the respondents. It was also asserted that therefore it was likely to be “*a futile exercise at the cost of harassment to the accused persons and witnesses, consumption of precious time of this honourable court and loss of other men-hours (sic, man-hours) and therefore, not likely to serve the interest of administration of justice*”. Besides, the learned Special Public Prosecutor also stated that the Government of Sikkim had also desired the case to be withdrawn in the interest of administration of justice.

17. The letter of the Secretary (Protocol), Home Department, Government of Sikkim, dated 22.10.2019, addressed to the learned Special Public Prosecutor, is quoted hereinbelow:

**“GOVERNMENT OF SIKKIM
HOME DEPARTMENT
GANGTOK**

No. 10/528/LD/2019/777

Date: 22/10/19

To

Shri N.P. Sharma,
Special Public Prosecutor,
District & Sessions Court,
Sichey, East Sikkim at Gangtok.

Subject: Withdrawal of Sessions Trial (Vigilance) Case No. 01 of 2019.

Sir,

I am directed to inform you that the State Government has taken a decision to withdraw the above mentioned case from prosecution in accordance with the provisions under Section 321 of the Code of Criminal Procedure, 1973.

Therefore, I am directed to request you to kindly convey the decision of the State Government to the Hon'ble Court and withdraw the case from prosecution against all the accused and also submit a report in the matter to this office.

This is for your kind information and necessary action.

Yours sincerely,

(Sd/-)

Secretary (Protocol)

Home Department

Government of Sikkim,

Fax No. 03592-202721

Email: hd.confdlsection@gmail.com”

18. The instructions dated 22.10.2019 by the Secretary (Protocol), Home Department, Government of Sikkim, to the learned Special Public Prosecutor, conveys only the decision of the State Government to withdraw the case from prosecution with a further direction to convey that decision to the court and after doing so to submit a report. The said instructions does not reflect the reasons for directing the learned Special Public Prosecutor to do so.

19. The petition under section 321 Cr.P.C. has not averred that the learned Special Public Prosecutor is, in good faith, satisfied,

on consideration of all relevant material that his withdrawal from the prosecution is in the public interest and it will not stifle or thwart the process of law or cause injustice. The Supreme Court in ***Abdul Karim*** (supra) had held that the application under section 321 Cr.P.C. must aver so.

20. The learned Special Public Prosecutor has enumerated the relevant material examined by him. It was, therefore, vital for the learned Special Judge to examine the reasons enumerated by the learned Special Public Prosecutor in the petition and come to a conclusion, whether or not to grant consent. For the said purpose, the learned Special Judge was required to satisfy himself that the material placed by the learned Special Public Prosecutor could reasonably lead to the conclusion that his withdrawal from prosecution would serve public interest. The learned Special Judge was also to consider whether the grant of consent may thwart or stifle the courts of law or result in manifest injustice.

21. The first ground taken by the learned Special Public Prosecutor was that the star prosecution witnesses, namely, Rinzing Doma Bhutia and Lily Bhutia, who were themselves partners and co-accused in the case had been impleaded as prosecution witnesses without following the procedure laid down in section 306 Cr.P.C. and this defect in investigation renders the testimony of such witnesses inadmissible in evidence.

22. At this point, it is relevant to note that as per the learned Public Prosecutor, the case is at its initial stage and charges are yet to

be framed. The charge-sheet filed by the Investigating Officer prays for making Pasangkit Lepcha and Lily Bhutia approvers in the case. This prayer is yet to be considered by the learned Special Judge.

23. Section 306 Cr.P.C. provides that with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which the section applies, the court at any stage of the investigation or inquiry into, or the trial of, the offence may tender a pardon to such person on certain conditions enumerated therein.

24. Thus, it is seen that the anxiety of the learned Special Public Prosecutor that testimonies of the said witnesses would be rendered inadmissible as the procedure laid down in section 306 Cr.P.C. had not been followed, was premature. The law itself mandates that the offenders could be tendered pardon even at the stage of trial, which trial had not even begun.

25. The next ground taken by the learned Special Public Prosecutor was that the questioned documents including the questioned writings and signatures of the respondents herein had been examined by the Government Examination of Questioned Documents (GEQD) of Regional Forensic Science Laboratory (RFSL), Saramsa, which is under the Department of Police, Government of Sikkim and hence, not an independent body like the Central Forensic Science Laboratory (CFSL). The learned Special Public Prosecutor also submitted that the RFSL, Saramsa did not “*appear*” to have been accredited as a Forensic Laboratory by the National Accreditation

Board for Testing and Calibration Laboratories and for this reason, “*certain vital documents relied on by the investigating agency in support of the case, are likely to be rendered inadmissible for evidence to the detriment of the prosecution case*”. The pleadings make it clear that RFSL, Saramsa had been established by the Government of Sikkim. No further material seemed to have been placed before the learned Special Judge on the issue of non-accreditation of RFSL, Saramsa. No such material has been placed before this court as well and no indications have been given as to which are those “*certain vital documents*” that would be rendered inadmissible. This court is, thus, of the view that the ground does not reasonably lead to the conclusion that withdrawal would serve public interest.

26. The third ground taken by the learned Special Public Prosecutor is that of withholding of important witnesses whose evidence was vital. Besides this statement, there was no further elaboration. If the learned Special Public Prosecutor found that vital witnesses were withheld, section 311 Cr.P.C. would aid the court in summoning and examining them if their evidence appear to be essential to the just decision of the case. This ground, in any case, is too vague to give it any deeper consideration. It is, however, definite that the ground does not satisfy the rationale for grant of consent.

27. The fourth ground taken by the learned Special Public Prosecutor was that in his opinion, it was necessary, in the facts of the present case, to examine whether the Central Integrated Pest Management Centre (CIPMC) training programme initiated and organised by the respondents was technically identical or different

from the earlier ones organised and that they would be proved guilty only if the evidences on record proved similarity in the two programmes. It was his opinion that the investigation report lacked these particulars, thereby leaving a lacuna in the prosecution case. If the learned Special Public Prosecutor was of the opinion that there was certain evidence lacking, section 173(8) Cr.P.C. would have come to the rescue of the investigating agency. This ground again fall short of the requirement mandated by section 321 Cr.P.C.

28. The last ground taken was that the State Government desired that the present case be withdrawn. In *Abdul Karim* (supra), it has been clearly held that the law is, though the government may have ordered, directed or asked the public prosecutor to withdraw from prosecution, it is for the public prosecutor to apply his mind to all the relevant material and, in good faith, to be satisfied thereon that public interest will be served by his withdrawal from the prosecution. The petition filed by the learned public prosecutor does not record the satisfaction of the learned Special Public Prosecutor having examined the relevant material and in good faith, being satisfied that a public interest would be served by his withdrawal from the prosecution. The petition filed by the learned Special Public Prosecutor records only his opinion that because of certain lacunae, the prosecution would be rendered futile. The materials placed do not even remotely indicate to this Court that the petition under section 321 Cr.P.C. was made in good faith or in the interest of public policy and justice. The learned Special Judge has examined the materials and opined that the statement of witnesses recorded by the prosecution gives an altogether

different picture than what was suggested by the learned Special Public Prosecutor and in such circumstances, has declined to grant consent. The facts reveal that after an elaborate investigation, charge-sheet had been filed against the public servants for criminal misconduct and other offences. The purpose for the enactment of the PC Act, 1988 is to eradicate corruption and provide deterrent punishment when criminal culpability is proven. That is the paramount public interest in corruption cases. In **Niranjan Hemchandra Sashittal** (supra), it has been held by the Supreme Court that an attitude to abuse the official position is an anathema to the basic tenets of democracy, for it erodes the faith of the people in the system and creates an incurable concavity in the rule of law. Sans the mandatory averment of the learned Special Public Prosecutor as required under section 321 Cr.P.C. and as held above, it is difficult to hold that the proposed withdrawal by the learned Special Public Prosecutor would not stifle or thwart the process of law or cause manifest injustice. In **Sheonandan Paswan** (supra), the Supreme Court held that the power of the public prosecutor to withdraw from prosecution under section 321 Cr.P.C. is not absolute and unrestricted and that it has to be controlled and guided power or else it will fall foul of Article 14 of the Constitution of India. It was further held that once prosecution is launched, its relentless course only be halted on sound consideration germane to public justice and it is not left to the sweet will of the state or the public prosecutor to withdraw from prosecution. In the present case, the learned Special Judge was of the view that manifest injustice would be caused if consent was given. This court, on thorough examination of the material placed, is of the view that the

grounds taken in the petition was in pursuance to the direction of the Government to withdraw from prosecution without properly determining if the withdrawal from prosecution would be in public interest. The impugned order passed by the learned Special Judge refusing to grant consent is correct, legal and proper. None of the grounds enumerated in the petition individually or collectively permits this court to express an opinion that the withdrawal was sought for in public interest and it was not to stifle or thwart the process of law or cause manifest injustice.

29. The Criminal Revision Petition therefore fails and is dismissed.

30. Consequently, I.A. No. 1 of 2020 stands disposed.

**BHASKAR
RAJ
PRADHAN**  Digitally signed by
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PRADHAN
Date: 2020.11.06
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**(Bhaskar Raj Pradhan)
Judge**

Approved for reporting : **Yes**
Internet : **Yes**

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