**SUPREME COURT OF INDIA**

V.L.S.Finance Ltd.

Vs.

S.P.Gupta & Anr.

Crl.A.No.99 of 2016

(Dipak Mishra and N.V.Ramana,JJ.)

05.02.2015

**JUDGMENT**

**Dipak Mishra. J.**

(@ Special Leave Petition (Criminal) No. 801 of 2016) (@ Criminal M.P. No. 16992 of 2015)

1. Leave granted.

2. The obtaining factual matrix encompasses a scenario which covers quite a span of time, and the chronology of events projects horrendous picture, as Mr. Dushyant A. Dave and Ms. Indu Malhotra, learned senior counsel would submit with stirred vehemence and expressive concern on the formulation that exploitation of legal system, seemingly looking innocent, has, in fact, cultivated the path of deviation that has led to pathetic miscarriage of justice, for there has been real abuse of the process of law at every stage. Learned counsel for the appellants put the blame on the respondents, as they have visited the superior courts on many an occasion seeking intervention possibly harbouring the idea that it is a routine exercise. In such an exploration, they have not felt any desperation despite being unsuccessful, for the desire was not mitigation of the grievance but consumption of time which, by itself, is beneficial because the consequences of the litigation has been deferred. However, the last visit to the High Court has yielded some benefit which has pained the appellants to severely criticize the order impugned on many a ground apart from the submission that cause of justice has been vexed, for in such a situation besides the prosecution and the accused, there is a third party, the victim of the crime, who eagerly waits for the progress of the case, as mandated in law. The said stalling has impelled the informant to prefer appeals by special leave.

3. Presently to the facts. In the present case, the facts fresco a labyrinthine that has the potentiality to divert the mind. Hence, it is imperative to exposit facts after due filtration. The appellant set the criminal law in motion by filing an FIR No. 90 of 2000 at Police Station Connaught Place which came to be registered under Sections 406, 409, 420, 424, 467, 468,

471, 477-A and 120B of the Indian Penal Code (IPC). After the investigation by the Economic Offences Wing, Crime Branch, Delhi Police, a charge-sheet was filed on 18.01.2003. One of the charges levelled against the accused persons pertained to the fraudulent transactions of certain amount of money. Learned Magistrate vide order dated 18.01.2003, appreciating the material on record, took cognizance of the offences in question and summoned the accused persons fixing the date of appearance on 04.09.2003. The order of issuing summons was assailed before the High Court of Delhi in Crl.M.C. No. 911 of 2003 along with the prayer for quashment of the FIR and an order came to be passed on 04.03.2003. As the factual score would reveal, the matter was pending before the High Court of Delhi and it carried on for days and, as alleged, an effort was made to derail the proceedings by filing an application for recusal of the learned Judge who had substantially heard the matter. The said application came to be dismissed and the order of dismissal was called in question before this Court in a special leave petition with no success. Thereafter, the accused persons challenged the order of summoning before the trial court which was not entertained as is evident from the order dated 27.04.2010. The said order was attacked in Crl.M.C. No. 2040 of 2010 which came to be dismissed on 04.06.2010. In the said case, the learned single Judge had taken note of the earlier cases being Criminal M.C. Nos. 911 of 2003, 1992 of 2006, 2142 of 2007, 2229 of 2007, 1988 of 2008 and 64 of 2006 and Writ Petition (Criminal) Nos. 498 of 2005, 208 of 2006, 1191 of 2006 and 1210 of 2006 challenging the summoning order which remained pending before the High Court till 04.03.2010. On 04.03.2010 the High Court noted that the learned counsel for the petitioners therein did not want the matter to be disposed of on merits and sought liberty to raise all the points which have been raised before this Court in the trial Court at an appropriate stage/at the stage of hearing arguments on charge. After so noting, the High Court observed that:-

> "Taking all these facts into consideration including the factum of pendency of the case for a period of more than five years and taking into consideration that ultimately it is for the trial Court to decide as to whether a charge is to be framed or not in the aforesaid case against the petitioner and to further decide whether the case should proceed or not in view of some of the objections raised on behalf of the petitioner about the propriety of issuance of summoning order etc., it would be appropriate to grant liberty to the petitioners to raise all the issues which have been raised in this petition before this Court at the appropriate stage/stage of framing of charge before the concerned Court."

4. As is evident, the learned single Judge had opined that the petitioners gave up their right to challenge the summoning order in the said petition with liberty to raise all points and issues at any appropriate stage/at the stage of hearing arguments on charge. When the issue was raised before the learned Magistrate, he held that it was not possible to accept the contention of the petitioner that appropriate stage meant that the trial court had to re-examine the summoning order itself. The words "at an appropriate stage" was interpreted to mean the stage as permitted and allowed as per law and as per the earlier decision, for it was not the intention of the Court and that apart no liberty was given to the petitioner to challenge the summoning order before the trial court. The learned Magistrate referred to the decision in *Adalat Prasad v. Rooplal Jindal & others*[1] to arrive at the conclusion that he does not have

the authority to recall the summoning order. The said order was assailed before the High Court and while rejecting the plea of the learned counsel for the petitioner, the High Court noticed that the summoning order was earlier challenged in petitions which had remained pending from 2003/2006/2007 till 04.03.2010 and thereafter the petitioner had abandoned the challenge. The High Court dismissed the petition holding that it would not be proper to allow the petitioner to raise the same questions after they had withdrawn the petitions, which had remained pending in the High Court for 3-6 years.

5. The said order came to be assailed in Special Leave Petition (Criminal) No. 6336 of 2010 which was dismissed.

6. It may be noted here that an application preferred under Section 173(8) of the Code of Criminal Procedure (Cr.P.C.) seeking re-investigation of FIR No. 90 of 2000 by the accused persons met with the fate of dismissal solely on the ground that there was ample evidence on record to bring home the charge and the re-investigation would not subserve any purpose. The futility of endeavour constrained the accused persons to file an application on 24.09.2010 for stay of the proceedings arising out of FIR No. 90 of 2000 before the Chief Metropolitan Magistrate along with other FIRs but the effort became an exercise in futility.

7. What ensued next, as Mr. Dushyant A. Dave, learned senior counsel would put it, has a sad and shocking projection. A committee was constituted on 03.06.2011 which consisted of S/Shri Arvind Ray (Principal Secretary (Home)-In Chair), S.P. Garg (Principal Secretary (Law), B.S. Joon (Director of Prosecution), Sandeep Goel (Joint C.P. (Crime) and B.M. Jain (Dy. Secretary (Home) Member Secretary). The Committee considered 60 cases for withdrawal and after some discussion, sent its recommendation in each of the case. On 11.07.2011, the Under Secretary to the Government of India, Ministry of Home Affairs wrote to respondent No. 1 herein - S.P. Gupta, Chairman, Sun Air Hotels Pvt. Ltd., Bangla Sahib Road, New Delhi and informed that his request for closing the FIR Nos. 90/2000, 99/2002 and 148/2002 had been examined in detail in consultation with the Ministry of Law & Justice and their advice for withdrawal of prosecution under Section 321 of Cr.P.C. in respect of FIR No. 90/2000, 99/2002 and 148/2002 had already been conveyed to the Home Department, Government of NCT of Delhi for necessary action at their end and as far as FIR No. 315/2005 was concerned, more information was awaited from Delhi Police for taking a decision in the matter.

8. On 13.09.2011, the said Screening Committee while dealing with the case of the respondent in respect of first FIR being FIR No. 90 of 2000 recommended for withdrawal of the case. We think it appropriate to reproduce the said recommendation:-

"**RECOMMENDATIONS OF THE COMMITTEE**

> The Committee observed that the withdrawal of case Fir No. 90/2000 from prosecution was considered by the Committee in its previous meeting held on 3.6.2011 and the matter was deferred for want of the relevant record of the case.

> However the details/records received from Police Department and Director of Prosecution were viewed by the Committee and it was observed that Ministry of Home Affairs has already examined the case in consultation with the Department of Legal Affairs, Law and Justice who with the approval of Union Home Minister, has directed the Home Department to urgently scrutinise the above case for taking action u/s 321 Cr.P.C. for withdrawal of Prosecution immediately. In view of the above the Committee decided to recommend the case for withdrawal from Prosecution."

9. In respect of FIR No. 99 of 2002 and other cases, similar recommendations were made for withdrawal from prosecution. The Lt. Governor of Delhi perused the recommendations of Screening Committee for withdrawal of cases from prosecution and ordered the following cases to be withdrawn after following prescribed procedure:-

> "1. FIR No. 46/11 Police Station - Civil Lines registered against Govt. School Teachers Association u/s Act/Section 188 IPC.
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> 2. FIR No. 148/2002 Police Station- Defence Colony registered against accused Sh. S.P. Gupta & ors. U/s./Act/Section 384/406/409/421/422/465/ 467/468/120- B IPC.
>
> 3. FIR No. 90/2000 Police Station, Connaught Place, registered against accused Sh. S.P. Gupta & ors. U/s/Act/Section 120B/406/409/420/ 467/468/471/477-A IPC.
>
> 4. FIR No. 99/2002 Police Station - Connaught Place, registered against accused Shr. S.P. Gupta & ors. U/s/Act/Section 120-B, 406, 420, 424, 467, 468, 471/477-A IPC. Additionally, FIR No. 677/01 PS Sultanpuri u/s 332/341 IPC is also withdrawn."

The present appeals are relatable to the last three cases in the aforementioned list.

10. After the recommendation, the Government of National Capital Territory of Delhi, Home Department, in exercise of power conferred under Section 32 of the Cr.P.C. read with the Government of India, Ministry of Home Affairs Notification No. U-11011/2/74-UTL(I) dated 20.03.1974 regarding the withdrawal of Prosecution proceedings granted approval of the withdrawal from prosecution and directed that the Assistant Public Prosecutor concerned may be asked to move the application in the court of competent jurisdiction for withdrawal of the above mentioned cases.

11. After the Government issued the orders, the Assistant Public Prosecutor filed an application on 24.11.2011 under Section 321 Cr.P.C for withdrawal of the prosecution in respect of FIR No. 90 of 2000 before the concerned Magistrate stating, inter alia, that he had gone through the investigation conducted and nature of allegation levelled in the charge sheet against the accused persons and facts of the case clearly showed that it was in fact a commercial transaction between the parties, but the same had been culminated into criminal offences and further that even taking into consideration the entire facts and circumstances of the case, nature of the allegation and material available on record, there was no likelihood of

conviction, and hence, there should be withdrawal of the cases in public interest. Similar applications were filed in respect of other cases relating to the accused persons.

12. When the matter stood thus, Mr. B.S. Joon, Director of Prosecution, Delhi vide letter dated 13.12.2011 wrote to the Principal Secretary (Home), Home (Police) Department, Govt. of NCT of Delhi for withdrawal from the prosecution in cases of FIR Nos. 90/2000, 99/2002 and 148/2002 titled as 'State vs. S.P. Gupta and others", Police Stations Connaught Place and Defence Colony stating that after perusal of the charge sheets of the aforesaid cases, it had been revealed that there was sufficient material on record against the accused persons and there was every likelihood, that the concerned court may not allow the application of the State moved under Section 321 which is a pre-requisite condition for withdrawal from the prosecution of any case, and accordingly sought instructions as to whether the concerned APP should press the aforesaid applications or not.

13. Mr. Arvind Ray, who was a member of the Screening Committee gave a note. The relevant part is to the following effect:-

> "In the light of the facts which emerged from the through checking of the charge sheet by the Directorate of Prosecution, GNCT of Delhi and the department subsequently and considering the request of the Directorate of Prosecution to issue necessary directions whether the concerned APP has the press applications for withdrawal of the above said cases filed by him before the Court of Sh. Sunil Chaudhary, Ld.ACMM, Tis Hazari Court, on the next date of hearing i.e. 17.12.2011 or not. It is proposed that recommendation of withdrawal of prosecution approved earlier in respect of the above said cases may be placed before the competent authority i.e. Hon'ble Lt. Governor of Delhi for appropriate orders."

14. The Lt. Governor on 15.12.2011 on the basis of the recommendations passed the following order:-

> "I have considered the communication of Director of Prosecution dated 13.12.2011 and the note of the Principal Secretary (Home) dated 14.12.2011 and agree with the proposal that the earlier recommendation of withdrawal of the above cases which are awaiting trial may not be pressed before the competent court and the trial may be allowed to proceed on merits."

15. The order of the Lt. Governor dated 15.12.2011 agreeing with the proposal not to press the applications for withdrawal of the cases was assailed before the learned Single Judge in Writ Petition (C) No. 3470 of 2012 and connected matters. The learned single Judge adverted to the various aspects of the law and came to hold that there was no basis for the petitioners to contend that the decision of the learned Assistant Public Prosecutor to file an application under Section 321 Cr.P.C. was taken independently by him, whereas the subsequent decision after pursuing application under section 321 Cr.P.C. was under the dictates of the respondent. The learned single Judge thereafter observed thus:-

> "It is not disputed by the petitioners that, in the meantime, the learned M.M. has permitted the withdrawal of the application under Section 321 Cr.P.C. vide order dated 07.01.2012. It is not disputed by the petitioners that they opposed the withdrawal of the said applications under Section 321 Cr.P.C. and that they were heard by the learned M.M. on the said applications. It is also not in dispute that the petitioners have already preferred the remedy available to them in respect of the orders passed by the learned M.M. permitting the withdrawal of the applications under Section 321 Cr.P.C. Therefore, the petitioners have not only had the occasion to raise all the issues raised before this Court, before the learned M.M., but still have the right to pursue the matter further and to raise all the issues available to them in appropriate proceedings."

16. On the basis of the directions given by the Lt. Governor, the Assistant Public Prosecutor filed an application for withdrawal of the earlier application for withdrawal of the prosecution. The application for withdrawal clearly states that after thorough examination of case file and evidence on record, he found that there is sufficient evidence for proceeding against the accused persons and hence, the earlier application was to dispose of as not pressed.

17. Being of this view, the High Court declined to exercise the discretionary jurisdiction under Article 226 of the Constitution. The said order became the subject matter of intra-court appeals. The Division Bench of the High Court adverting to many a facet dismissed the appeals as not maintainable as well as barred by limitation. The legal propriety of the order passed by the Division Bench of the High Court was called in question before this Court in a Special Leave Petition (C) CC Nos. 7447-7448 of 2014 which were dismissed vide order dated 09.05.2014.

18. In the meantime, the order passed on 07.01.2012 by the learned Magistrate in various cases pertaining to the accused persons was called in question in a number of revisions before the revisional court. The learned special Judge, Patiala House Courts while dealing with the revision petition, narrated the facts in entirety, noted the contentions advanced by the learned counsel for the parties and opined that any party who has a right to file an application/petition before a court of a Magistrate, has an inherent right to withdraw the same and as a corollary thereof the court of a Magistrate will have the jurisdiction to allow the application seeking withdrawal of application for withdrawal from the prosecution. He distinguished between the two concepts, namely, withdrawal of the order taking congnizance and grant of permission to withdrawal an application for withdrawal from the prosecution. Being of this view, he dismissed the revision applications vide order dated 15.11.2014.

19. The accused respondents remaining embedded to their indefatigable propensity preferred series of petitions before the High Court of Delhi which on 15.05.2015 passed the following order:-

> "Mr. Navin Sharma, learned Additional Public Prosecutor, accepts notice for respondent-State and Mr. Harish Pandey, Advocate, accepts notice on behalf of the

> complainant/first informant of the FIR in question. With the consent of learned counsel for the parties, the abovecaptioned three petitions are taken up together for final hearing today. The hearing is concluded by both the sides. Let both sides file short synopsis of not more than 5-7 pages with relevant case laws, if any, within a week from today, after exchanging the same. Put up for orders on 29th May, 2015. In the meanwhile, let trial court fix a date after the date fixed in these petitions."

20. On 22.05.2015 an application was filed on behalf of the appellant to initiate proceedings under Section 340 Cr.P.C. read with Section 195(1) Cr.P.C. or to initiate contempt proceedings against the accused persons. On 22.05.2015 a preliminary common written synopsis of the appellant was filed seeking dismissal of Crl. M.C. No. 2055 of 2015. On 29.05.2015, the High Court directed for listing the petition for clarification. As the facts would reveal, on 15.07.2015 the High Court directed to file short synopsis within a week. The said order was complied with.

21. In the course of hearing, it was contended by the learned counsel for the petitioner before the High Court that there is no provision under which an application preferred under Section 321 Cr.P.C. can be withdrawn. Reliance was placed on *Patel Narshi Thakershi & Ors. v. Pradyuman Singh Ji Arjun Singh Ji*[2] , *R.R. Verma & Ors. v. Union of India & Ors.*[3] and *Subhash Chander v. State (Chandigarh Administration) & Ors*[4]. to contend that the power of review having not been specifically provided, the same cannot be exercised by the Magistrate. It was also urged that when there was no change in circumstances, the application for withdrawal from the prosecution was misconceived and the courts below had erred in law in permitting the withdrawal of the application without application of mind. That apart, it was propounded that both the courts below had gravely erred in understanding the law laid down by the Apex Court, especially, *Sheonandan Paswan v. State of Bihar & others.*[5] and that the learned Magistrate as well as the Special Court fell into error by not holding that application for withdrawal of application preferred under Section 321 Cr.P.C. was wholly unjustified. The learned counsel for the State supported the action taken by the Government and the order passed by the courts below.

22. Considering the submissions raised by the learned counsel for the parties, the learned single Judge after referring to the authorities and the role of the Public Prosecutor under Section 321 Cr.P.C. opined thus:-

> "... indisputably it is the Public Prosecutor who has to take the call and not the Government or the Lieutenant Governor. So, dismissal of writ petition against grant of consent by Lieutenant Governor to the withdrawal of application under Section 321 of Cr.P.C. has been erroneously relied upon by the courts below, particularly when right to pursue remedies before the criminal courts was preserved while deciding the writ petition. ... "

23. Being of this view, the High Court directed as follows:-

> "Consequentially, impugned orders are quashed with direction to the trial court to decide within four weeks the second application of 16th December, 2011 (Annexure P-13) i.e. the one for withdrawal of application under Section 321 of the Cr.P.C. in the light of the legal position as highlighted above and after taking it into consideration, the document(s) filed by the petitioner along with application under Section 91of Cr.P.C."

24. After the High Court passed the order, the learned Magistrate took up the applications seeking withdrawal of the applications preferred earlier under Section 321 of Cr.P.C. The learned Magistrate has, by order dated 22.09.2015, declined to accept the prayer for withdrawal of the application.

25. The appellant in these appeals had basically challenged the order passed by the learned Single Judge by which he had set aside the order granting withdrawal of the application under Section 321 Cr.P.C. and directing the trial court to decide the application for withdrawal afresh after taking into consideration the documents filed by the informant along with the application filed under Section 91 Cr.P.C. After the remit, the learned Magistrate has passed the order declining permission to withdraw the application. The said order is also assailed before this Court.

26. We have heard Mr. Dushyant A. Dave, learned senior counsel and Ms. Indu Malhotra, learned senior counsel for the appellant and Mr. Sushil Kumar, learned senior counsel for the accused.

27. We have already narrated the chronology of events. The sequence of events as depicted is quite disturbing. Long time has elapsed since the day summons were issued. Despite the non-entertainment of the petitions challenging the order issuing summons by the superior courts, the matter remains today, where it was in 2003. In all possibility the criminal proceedings would have continued in accordance with law after this court had declined to interfere with the order of issuing summons, but the order passed by the screening committee recommending for withdrawal of the prosecution of the aforesaid cases on 13.09.2011made the difference. The said recommendation was approved by the Lt. Governor on 18.11.2011. On the basis of the order passed by the Lt. Governor, the application was filed seeking withdrawal of the cases. The Assistant Public Prosecutor filed an application averring that the facts of the case clearly showed that it was indicating a commercial transaction between parties but the same had culminated into a criminal offence. It was also mentioned that it was a case relating to civil transaction as well as breach of promises. The Assistant Public Prosecutor was of the view that there was no likelihood of conviction in the case and accordingly had sought withdrawal of the case in public interest. Thereafter the controversy took the centre stage when on 13.12.2011 the Director of the Prosecution communicated to the Principal Secretary, Home Ministry, stating that on a further perusal of the charge-sheet in the aforesaid case it was found that there was sufficient evidence on record to establish the charges against the accused persons and the public prosecutor should be requested accordingly. The Lt. Governor, as mentioned earlier, accepted the same and issued a letter.

28. The communication made by the Director of the prosecution in that regard, came to be assailed by the son of the 1st respondent, in Writ Petition (C) No. 3470 of 2012. The Learned Single Judge, as has been stated earlier, dismissed the writ petition. Aggrieved by the aforesaid letter, L.P.A. No. 548 of 2013 was preferred which was dismissed and assail in this court did not yield any fruitful result.

29. At this juncture, we are compelled to sit in a time machine. The application for withdrawal of the application preferred under Section 321 Cr.P.C. was taken up by the learned Magistrate who vide order on 07.01.2012 opined that nothing precluded the prosecution from filing such an application and no right had accrued to the defence on that score, for it was the duty of the Court to deal with such an application as per the established parameters of law. Be it stated, the learned Magistrate further opined that the application preferred by the accused persons under Section 91 Cr.P.C. did not warrant any consideration and accordingly allowed the prayer. Thereafter, the matter was adjourned to another date for consideration of charge.

30. The aforesaid order was assailed before the learned Special Judge, NDPS, Patiala House Courts, Delhi in a series of Criminal Revision Petition Nos. 12 of 2013 to 16 of 2013. The revisional court by common order dated 15.11.2014 affirmed the order passed by the learned Magistrate. That led to filing of applications under Section 482 Cr.P.C. wherein the impugned order dated 30.7.2015 has been passed. It is apt to note here that the revisional court has placed reliance on order dated 14.06.2012 passed by the High Court in Writ Petition (C) No. 3470 of 2012 titled Vipul Gupta v. State and others and connected matters. The learned Single Judge reproduced a passage from the order passed by a co-ordinate Bench in the writ petition, referred to certain judgments relating to the duty of the court while dealing with an application under Section 321 Cr.P.C. and passed the order which we have reproduced earlier.

31. It is imperative to state here that the factual narration depicts a sorrowful and simultaneously, a puzzling one. It is not easy to spend twelve years of time, "a yuga", in the non-classical sense unless the personalities engaged in spending time have contrived intelligence to constantly play the "Snake and Ladder Game". Such kind of litigations clearly show that there are certain people who possess adamantine attitude to procrastinate the proceeding in a court of law on the base that each order is assailable and each step is challengeable before the superior courts. It is not to be understood that a litigant is not entitled in law to challenge the orders, but the legal process cannot be allowed to be abused. In the case at hand the process has definitely been abused.

32. Having said so, we shall now proceed to delve into the legal aspects from which our observations be clear as noon day. We may repeat at the cost of repetition that we are not at all concerned with the allegations made in the case. The said aspect has been put to rest when this court had declined to interfere with the order of the High Court whereby the High court had dismissed the petitions filed for quashing of the FIRs. The issues that arise for consideration are (i) whether the Assistant Public Prosecutor is entitled under law to file an application for withdrawal of the application for withdrawal of the application preferred

under Section 321 of the Cr.P.C. and not to press an application for withdrawal, (ii) whether the Magistrate is disabled in law or lacks jurisdiction to allow the prosecution from preferring the application for withdrawal, (iii) whether the accused has any say at that stage of the proceeding and (iv) whether in the obtaining factual matrix this Court should decline to deal with the order passed by the learned Magistrate in exercise of jurisdiction under Article 136 of the Constitution of India.

33. To appreciate the controversy, we may refer to Section 321 of Cr.P.C. which reads as follows:-

> **"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 pro¬nounced, 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, -¬
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> (a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;
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> (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 of¬fences: Provided that where such offence-
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> (i) was against any law relating to a matter to which the executive power of the Union extends, or
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> (ii) was investigated by the Delhi Special Police Establishment under the Delhi Special Police Es¬tablishment Act, 1946 (25 of 1946 ), or
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> (iii) involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or
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> (iv) was committed by a person in the service of the Central Government while acting or purport¬ing 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 permis¬sion granted by the Central Government to with¬draw from the prosecution."

34. Regard being had to the language employed in Section 321 Cr.P.C., we may refer to the Constitution Bench deci¬sion in *Sheon.an.dan Paswan v. State of Bihar and oth¬ers*[6] wherein the Court referred to Section 333 of the old Code and after taking note of the language employed under Section 321 of the present Code came to hold that Section 321 enables the Public Prosecutor, in charge of the case to withdraw from the prosecution of any

person at any time before the judgment is pronounced, but the application for withdrawal has to get the consent of the court and if the court gives consent for such withdrawal the accused will be discharged if no charge has been framed or acquitted if charge has been framed or where no such charge is required to be framed. It clothes the Public Prosecutor to withdraw from the prosecution of any person, accused of an offence, both when no evidence is taken or even if entire evidence has been taken. The outer limit for the exercise of this power is 'at any time before the judgment is pronounced'. It has also been observed that the judicial function implicit in the exercise of the judicial discretion for granting the con-sent would normally mean that the court has to satisfy itself that the executive function of the Public Prosecutor has not been improperly exercised, or that it is not an attempt to in¬terfere with the normal course of justice for illegitimate rea¬sons or purposes. The Constitution Bench after referring to the authorities in *Bansi Lal v. Chandan Lal and others*[7] , *Balwant Singh v. State of Bihar*[8]* , *Subhash Chander v. State (Chandigarh Admn.)*[9] , *Rajender Kumar Jain v. State*[10] and the principles stated in *State of Bihar v. Ram Naresh Pandey* [11] came to hold thus:-

> "99. All the above decisions have followed the rea¬soning of Ram Naresh Pandey case (supra) and the principles settled in that decision were not doubted.
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> 100. It is in the light of these decisions that the case on hand has to be considered. I find the ap¬plication for withdrawal by the Public Prosecutor has been made in good faith after careful consid¬eration of the materials placed before him and the order of consent given by the Magistrate was also after due consideration of various details, as indicated above. It would be improper for this Court, keeping in view the scheme of Section 321, to embark upon a detailed enquiry into the facts and evidence of the case or to direct retrial for that would be destructive of the object and in¬tent of the section."

35. In this context, a reference to a three-Judge Bench de¬cision in *V.S. Achuthanandan v. R. Balakrishna Pillai*[12] and others is pertinent. In the said case, the Court after referring to the principles stated by the Constitution Bench in Sheonandan Paswan (supra) while upholding the view of the learned Special Judge in rejecting the application filed by the Assistant Public Prosecutor under Section 321 Cr.P.C. adverted to the question as it arose therein whether it was legally permissible for the High Court and it was jus¬tified in setting aside the order of the learned Special Judge declining to give consent for withdrawal of prosecution of the accused. The Court did not agree with the view of the High Court by holding the High Court's order did not at all deal with the only ground on which the application was made by the Special Public Prosecutor and which was found non-existent by the learned Special Judge in his order that was challenged before the High Court in revision. The High Court embarked upon a roving inquiry in an extraneous field totally ignoring the fact that if the ground urged for withdrawal of the prosecution was non-existent and there was prima facie material, if believed, to sup¬port the prosecution then the motive for launching the pros¬ecution by itself may be of no avail. The Court also opined that the High Court missed the true import of the scope of the matter, for it went into grounds which were not even urged by the Special Public Prosecutor in his application made under Section 321 Cr.P.C. or otherwise before the Special Judge. Exception was taken to the fact that the High Court delved into administrative

files of the State which did not form part of the record of the case and ac¬cepted anything which was suggested on behalf of the State Government overlooking the fact that for the purpose of Sec¬tion 321 Cr.P.C. it is the opinion of the Public Prosecutor alone which is material and the ground on which he seeks permission of the court for withdrawal of the prosecution alone has to be examined.

36. In *Rahul Agarwal v. Rakesh Jain and another*[13], the Court while dealing with the application under Section 321 Cr.P.C. referred to certain decisions wherein the earlier decision of the Constitution Bench in Sheonandan Paswan (supra) was appreciated, and thereafter ruled thus:-

> "From these decisions as well as other decisions on the same question, the law is very clear that the withdrawal of prosecution can be allowed only in the interest of justice. Even if the Govern¬ment directs the Public Prosecutor to withdraw the prosecution and an application is filed to that effect, the court must consider all relevant cir¬cumstances and find out whether the withdrawal of prosecution would advance the cause of jus¬tice. If the case is likely to end in an acquittal and the continuance of the case is only causing se¬vere harassment to the accused, the court may permit withdrawal of the prosecution. If the with¬drawal of prosecution is likely to bury the dispute and bring about harmony between the parties and it would be in the best interest of justice, the court may allow the withdrawal of prosecution. The discretion under Section 321, Code of Crimi¬nal Procedure is to be carefully exercised by the court having due regard to all the relevant facts and shall not be exercised to stifle the prosecu¬tion which is being done at the instance of the aggrieved parties or the State for redressing their grievance. Every crime is an offence against the society and if the accused committed an offence, society demands that he should be punished. Punishing the person who perpetrated the crime is an essential requirement for the maintenance of law and order and peace in the society. There¬fore, the withdrawal of the prosecution shall be permitted only when valid reasons are made out for the same."

37. In *Bairam Muralidhar v. State of A.P*[14]. , while dealing with the said provision it has been laid down that:-

> " ... 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 case* [15], is required to give an in¬formed 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 ex¬ercise its judicial discretion, and judicial discre¬tion, 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 jus¬tice. Another aspect the court is obliged to see is 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 collec¬tive 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 Govern¬ment 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."

38. In this context, reference to a two-Judge Bench deci¬sion in *Vijaykumar Baldev Mishra alias Sharma v. State of Maharashtra*[16] would be fruitful. In the said case, the Court held that Section 321 Cr.P.C. provides for withdrawal from prosecution at the instance of the Public Prosecutor or Assistant Public Prosecutor. Indisputably therefore the consent of the Court is necessary. Application of mind on the part of the Court, therefore, is necessary in regard to the grounds for withdrawal from the prosecution in respect of any one or more of the offences for which the appellant is tried. The Public Prosecutor in terms of the statutory scheme laid down under the Cr.P.C. plays an im¬portant role. He is supposed to be an independent person. While filing such an application, the Public Prosecutor also is required to apply his own mind and the effect thereof on the society in the event such permission is granted.

39. We have enumerated the principles pertaining to the jurisdiction of the Court while dealing with an application preferred under Section 321 Cr.P.C. and also highlighted the role of the Public Prosecutor who is required to act in good faith, peruse the materials on record and form an in¬dependent opinion that the withdrawal from the prosecu¬tion would really subserve the public interest at large. The authorities referred to hereinabove clearly spell out that Public Prosecutor is not supposed to act as a post office and he is expected to remember his duty to the Court as well as his duty to the collective.

40. In the case at hand, when the order passed by the Lt. Governor was assailed in Writ Petition (C) No. 3470 of 2012 and connected matters, the learned single Judge analyzing the communication and other facts referred to all the deci¬sions earlier taken by the Committee and its recommenda¬tions made for withdrawal from the prosecution in the cases. Thereafter, the learned single Judge scrutinized the minutes of the meeting and took note of the fact that the Screening Committee on 13.09.2011 had apparently not ap¬ply its own mind or made a thorough scrutiny of the charge- sheets filed in the cases but heavily relied upon the exami¬nation of the cases by the Ministry of Home Affairs, Depart¬ment of Legal Affairs, Law and Justice with the approval of the Union Home Minister. The learned single Judge further opined that the observations of the Ministry of Home Affairs did not demonstrate any specific consideration of the charge-sheet either by the Department of Legal Affairs, Min¬istry of Law and Justice or by the Ministry of Home Affairs. The High Court

further took note of the fact that certain ex-ercises were undertaken by the Screening Committee held on 13.09.2011 and thereafter proceeded to state as follows:-

> "24. ... The screening committee is not shown to be a statutory creation. The screening committee was formed only to aid and assist the Hon'ble Lt. Governor. He was not bound by any recommen¬dation of the screening committee. Therefore, the failure to reconvene the screening committee to reconsider the proposal mooted by Shri B.S. Joon cannot be said to be illegal. Mr. B.S. Joon, Direc¬tor of Prosecution, was also not precluded from moving the proposal that he moved on 13.12.2011 after studying the charge- sheets in these cases, merely because he was part of the screening committee which had earlier recom¬mended withdrawal from prosecution on 13.09.2011.
>
> x x x x x
>
> 26. The contention of the petitioners that the ear¬lier decisions to move the applications under Sec¬tion 321 Cr.P.C., in these cases, were taken in¬dependently by the learned Public Prosecutor though on the suggestion of the Director of Prose¬cution, whereas the decisions not to press the ap¬plications for withdrawal of prosecution was im¬posed or thrust upon the Additional Public Prose¬cutor, has no merit.
>
> x x x x x
>
> 30. There is no basis for the petitioners to con¬tend that the decision of the learned APP to file an application under section 321 Cr.P.C. was taken independently by him, whereas the subse- quent decision after pursuing application under section 321 Cr.P.C. was under the dictates of the respondent. It could also be argued that the ear¬lier decision to move applications under Section 321 Cr.P.C. was a binding instruction to the APP, whereas, the subsequent instruction given to him was to act according to his own judgment/conscience and decide whether or not to press the applications under section 321 Cr.P.C."

41. Be it stated, the learned single Judge has observed that the accused persons who were the petitioners in the Writ Petitions had already opposed the withdrawal of the application preferred under Section 321 Cr.P.C. but still they had a right to pursue the matter further and to raise all the issues available to them in appropriate proceedings. On a perusal of the aforesaid judgment, it becomes clear as crystal that the Writ Court had not found any fault with the instructions given by the Government not to press the ap¬plication for withdrawal. The Writ Court had not opined with regard to the role of the Public Prosecutor in not press¬ing the application. It had only observed that it was not disputed that the petitioners had already taken recourse to the remedy in respect of the order of the learned Metropoli¬tan Magistrate permitting the withdrawal of the application under Section 321 Cr.P.C.

42. In the impugned order herein, the learned single Judge has observed that no doubt the withdrawal from prosecution is an executive and non-judicial act but there is a wide discretion with the court, which ought to be exercised judicially on well established principles. That is to say, the court has to be satisfied that the executive function of the Public Prosecutor has not been improperly exercised or that it is not an attempt to interfere with the course of justice for illegitimate purposes. It is within these parameters, the judicial discretion is to be exercised. There¬after, the High Court has referred to the dictum of the three-Judge Bench decision in Sheonandan Paswan (supra) and opined that it is the duty of the Public Prosecu¬tor to apply his mind as a free agent uninfluenced by irrele¬vant or extraneous instructions. Understanding the said principle, the High Court has ruled that the Public Prosecu¬tor has shirked the bounden responsibility by abruptly ap¬plying withdrawing the application under Section 321 Cr.P.C. after a few days, particularly when in the applica¬tion under Section 321 Cr.P.C., Public Prosecutor had as-serted in no uncertain terms that a commercial transaction in between the parties was sought to be given a criminal colour and there was no likelihood of conviction on the ba¬sis of charge-sheet filed for the offence of criminal misap¬propriation, etc.

43. Before we proceed to dwell upon the power of the Magistrate to grant permission for not pressing the application, we think it necessary to delve into legality of the direction issued by the High Court to the Magistrate to consider the documents filed by the accused persons along with the application preferred under Section 91 Cr.P.C. Section 91 Cr.P.C. reads as follows:-

> "**Section 91. Summons to produce document or other thing**.- (1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any in¬vestigation, inquiry, trial or other proceeding un¬der this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose posses¬sion or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.
>
> (2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be pro¬duced instead of attending personally to produce the same.
>
> (3) Nothing in this section shall be deemed-
>
> (a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872 ), or the Bankers' Books Evidence Act, 1891 (13 of 1891 ) or
>
> (b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority."

44. The scope and ambit of the said provision was considered in *State of Orissa v. Debendra Nath Padhi*[17], wherein this Court has held thus:-

> "The first and foremost requirement of the section is about the document being necessary or desir¬able. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the ac¬cused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investi¬gation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. Inso-far as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the sec¬tion talks of the document being necessary and desirable, it is implicit that necessity and desir¬ability is to be examined considering the stage when such a prayer for summoning and produc¬tion is made and the party who makes it, whether police or accused. If under Section 227, what is necessary and relevant is only the record pro-duced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his in¬nocence. Under Section 91 summons for produc¬tion of document can be issued by court and un¬der a written order an officer in charge of a police station can also direct production thereof. Sec¬tion 91 does not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof."

The aforesaid enunciation of law clearly states about the scope of Section 91 Cr.P.C. and we are in respectful agreement with the same.

45. In the case at hand, the learned Magistrate was di¬rected by the High Court to consider the application filed by the Assistant Public Prosecutor seeking withdrawal of the application earlier preferred under Section 321 Cr.P.C. In such a situation, it is difficult to appreciate how Section 91 of Cr.P.C. can be taken aid of by the accused persons. In view of the same, we have no shadow of doubt that the High Court has fallen into error by permitting the accused per¬sons to file an application Section 91 Cr.P.C.

46. Having said so, we have to address whether the High Court was justified in remitting the matter to the learned Magistrate for reconsideration of the application seeking withdrawal of the earlier application filed under Section 321 Cr.P.C. Needless to say, if the order of the High Court is set aside, the consequential order by learned Magistrate has to pave the path of extinction. The High Court on earlier occasion while disposing of Writ Petition (C) No. 3470 of 2012 and connected matters had clearly opined that the de¬cision by the Lt. Governor directing to withdraw the applica¬tion was justified. The said order had attained finality after the special leave petitions assailing the same stood dis¬missed. The High Court on the earlier occasion had only observed that the accused persons had the right to pursue the matter

further and to raise all the issues available to them in appropriate proceedings. By the impugned order, the learned single Judge by placing reliance on certain au¬thorities has held that decidedly it is the Public Prosecutor who has to take the decision and not the Government or the Lt. Governor and so that dismissal of the writ petition against grant of consent by Lt. Governor to the withdrawal of application under Section 321 of Cr.P.C. had been erro¬neously relied upon by the courts below, particularly when right to pursue remedies before the criminal courts was pre¬served while deciding the writ petition.

47. We need not advert to the width of liberty granted to the accused persons by the writ court. The heart of the mat¬ter is whether the approach by the learned single Judge in passing the impugned order is legally correct. There can be no cavil over the proposition that when an application of withdrawal from the prosecution under Section 321 Cr.P.C. is filed by the Public Prosecutor, he has the sole responsibil¬ity and the law casts an obligation that he should be satis¬fied on the basis of materials on record keeping in view cer¬tain legal parameters. The Public Prosecutor having been satisfied, as the application would show, had filed the appli¬cation. The said application was not taken up for hearing. The learned Magistrate had not passed any order granting consent for withdrawal, as he could not have without hear¬ing the Assistant Public Prosecutor. At this juncture, the authority decided regard being had to the fact situation that the Assistant Public Prosecutor should withdraw the appli¬cation and not press the same. After such a decision had been taken, as the application would show, the Assistant Public Prosecutor has re-appreciated the facts, applied his mind to the totality of facts and filed the application for not pressing the application preferred earlier under Section 321 Cr.P.C. The filing of application not to press the application cannot be compared with any kind of review of an order passed by the court. Question of review can arise when an order has been passed by a court. Section 362 Cr.P.C. bars the Court from altering or reviewing when it has signed the judgment or final order disposing of a case except to correct a clerical or arithmetical error. The said provision cannot remotely be attracted. The filing of the application for seeking withdrawal from prosecution and application not to press the application earlier filed are both within the domain of Public Prosecutor. He has to be satisfied. He has to definitely act independently and as has been held by the Constitution Bench in Sheonandan Paswan (supra), for he is not a post office. In the present case, as the facts would graphically show, the Public Prosecutor had not moved the application under Section 321 Cr.P.C. but only filed. He could have orally prayed before the court that he did not in¬tend to press the application. We are inclined to think, the court could not have compelled him to assist it for obtaining consent. The court has a role when the Public Prosecutor moves the application seeking the consent for withdrawing from the prosecution. At that stage, the court is required to see whether there has been independent application of mind by the Public Prosecutor and whether other ingredients are satisfied to grant the consent. Prior to the application being taken up being moved by the Public Prosecutor, the court has no role. If the Public Prosecutor intends to withdraw or not press the application, he is entitled to do so. The court cannot say that the Public Prosecutor has no legal authority to file the application for not pressing the earlier applica¬tion. It needs no special emphasis to state that the accused persons cannot be allowed to contest such an application. We fail to fathom, how the accused persons can contest the application and also file documents and take recourse to Section 91 Cr.P.C. The kind of liberty granted to the

ac¬cused persons is absolutely not in consonance with the Code of Criminal Procedure. If anyone is aggrieved in such a situation, it is the victim, for the case instituted against the accused persons on his FIR is sought to be withdrawn. The accused persons have no role and, therefore, the High Court could not have quashed the orders permitting the prosecution to withdraw the application and granting such liberty to the accused persons. The principle stating that the Public Prosecutor should apply his mind and take an in¬dependent decision about filing an application under Sec¬tion 321 Cr.P.C. cannot be faulted but stretching the said principle to say that he is to convince the court that he has filed an application for not pressing the earlier application would not be appropriate. We are disposed to think so as the learned Magistrate had not dealt with the earlier appli¬cation. Therefore, the impugned order dated 30.07.2015 passed by the High Court is set aside. As the impugned or¬der is set aside, consequentially the order passed by the learned Magistrate on 22.09.2015 has to pave the path of extinction and we so direct. The learned Magistrate is di¬rected to proceed with the cases in accordance with law. We may hasten to add that we have not expressed any opinion on the merits of the case. All our observations and the find¬ings are to be restricted for the purpose of adjudication of the controversy raised.

48. Before parting with the case, we recapitulate what we have stated in the beginning and also about the indefatiga¬ble spirit of the respondents. In that context, a passage from *Subrata Roy Sahara v. Union of India and oth¬ers*[18], being relevant, is extracted below:-

> "The Indian judicial system is grossly afflicted with frivolous litigation. Ways and means need to be evolved to deter litigants from their compulsive obsession towards senseless and ill-considered claims. One needs to keep in mind that in the process of litigation, there is an innocent sufferer on the other side of every irresponsible and senseless claim. He suffers long-drawn anxious periods of nervousness and restlessness, whilst the litigation is pending without any fault on his part. ..."

We have quoted the aforesaid passage as we respect¬fully share the said concern, and reiterate keeping in view the factual expose' of the instant case.

49. The appeals are allowed in above terms.

Judgment Referred.

[1] (2004) 7 SCC 0338
[2] AIR 1970 SC 1273
[3] (1980) 3 SCC 0402
[4] AIR 1980 SC 0423
[5] AIR 1983 SC 0194: (1983) 1 SCC 0438
[6] (1987) 1 SCC 0288
[7] (1976) 1 SCC 0421: AIR 1976 SC 370
[8] (1977) 4 SCC 0448: (1978) 1 SCR 604
[9] (1980) 2 SCC 0155: (1980) 2 SCR 44
[10] (1980) 3 SCC 0435: AIR 1980 SC 1510
[11] (1957) Cri LJ 0567: AIR 1957 SC 389
[12] (1994) 4 SCC 0299

[13] (2005) 2 SCC 0377
[14] (2014) 10 SCC 0380
[15](2000) 8 SCC 0710
[16] (2007) 12 SCC 0687
[17] (2005) 1 SCC 0568
[18](2014) 8 SCC 0470