

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD**

*** * * ***

HONOURABLE SRI JUSTICE E.V.VENUGOPAL

Criminal Revision Case No.1226 of 2008

Between:

Bitra Venkateswara Rao & Another

...Petitioners

v.

The State Anti Corruption Bureau,
Hyderabad Range,
Rep. by Special Public Prosecutor

...Respondent

JUDGMENT PRONOUNCED ON: 03.07.2023

THE HON'BLE SRI JUSTICE E.V.VENUGOPAL

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : **Yes**

E.V.VENUGOPAL, J

*** THE HON'BLE SRI JUSTICE E.V.VENUGOPAL**

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The State Anti Corruption Bureau,
Hyderabad Range,
Rep. by Special Public Prosecutor

...Respondent

! Counsel for Petitioner : Sri T.Pradyumna Kumar Reddy
Learned senior counsel

^ Counsel for the respondents : Sri Vidya Sagar Rao Chitneni
(Spl. P.P. for ACB)

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> HEAD NOTE:

? Cases referred

¹ AIR 2001 SC 116

² 2003 CrI.L.J.1896

³ AIR 1970 Kerala 158 (FB)

⁴ 1982 CrI.L.J. 243 MP

⁵ AIR 1977 SC 2265

⁶ AIR 1957 SC 389

⁷ AIR 1972 SC 496

⁸ AIR 1976 SC 370

⁹ 1987 SCC (Cri) 82

¹⁰ (2015) 14 SCC 186

¹¹ (2020) 7 SCC 695

¹² 2017 (3) ALT (CrI.) 75 (A.P)

¹³ (1996) 1 SCC 478

¹⁴ (2004) 8 SCC 40

¹⁵ AIR 1955 SC 287

¹⁶ (2000) 8 SCC 710

¹⁷ (1980) 3 SCC 435

¹⁸ (2014) 10 SCC 380

¹⁹ AIR 2021 SC 3954

THE HON'BLE SRI JUSTICE E.V.VENUGOPAL
CRIMINAL REVISION CASE No.1226 OF 2008

ORDER:

1 Challenge in this criminal revision case is to the legality of the order dated 08.08.2008 passed by learned Principal Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad in CrI.M.P.No.696 of 2008 in CC No.41 of 2004 declining to give consent to the Public Prosecutor to withdraw the prosecution against the petitioners herein.

2 The material facts may now be briefly stated. The complainant by name Mr.C.V.Krishna Reddy, Assistant Accounts Officer, office of the Directorate of Animal Husbandry, Hyderabad, while working as Junior Accounts Officer on deputation in the commissionerate of Social Welfare, he was transferred on certain fictitious allegation with a direction to report before the Director of Treasuries and Accounts for posting. The Director of Treasuries and Accounts, Hyderabad, after obtaining permission from the Government transferred him and posted him as Junior Accounts Officer in the Directorate of Animal Husbandry and accordingly he reported to duty as such

in the directorate on 20.11.2001 and requested the Director of Treasuries and Accounts to treat the period from 31.05.2001 to 19.11.2001 as compulsory wait as he was kept waiting for posting for no fault of him. Thereupon, the Director of Treasuries and Accounts referred the matter to the Government, Finance department for sanction. When the complainant approached the petitioners who are Section Officer and Assistant Section Officer respectively during the relevant period for processing his file and issuing sanction orders (G.O) to enable him to get his salary, the petitioners demanded bribe of Rs.2,000/- and Rs.1,000/- respectively for processing the file. Since the complainant did not pay the bribe amount demanded by the petitioners, they did not settle the matter for two years. As such the complainant preferred a complaint against the petitioners with the in-charge Deputy Superintendent of Police, ACB, City Range II, Hyderabad. In that connection a case in Cr.No.15/ACB-CR/99 under Section 7 of P.C.Act, 1988 was registered on 25.07.2003. The ACB officials, after following the due procedure, laid a trap at Shanbagh hotel, Basheerbagh, Hyderabad where the petitioners accepted the bribe amount from the complainant as a motive or reward for showing official

favour to handover copy of the G.O.Rt.No.17871, Finance Department dated 19.07.2003 for sanction of compulsory wait period of the complainant. The phenolphthalein test conducted on the right hand fingers of both the petitioners and shirt left side pocket inner portion of the first petitioner and right front side pant pocket inner portion of the second petitioner yielded positive results and the tainted amount was recovered from the petitioners in the presence of the mediators. The competent authority accorded sanction to prosecute the petitioners in the Court of Law vide G.O.Ms.No.509 and 510, dated 11.06.2004 respectively. After completion of investigation the ACB officials filed charge sheet against the petitioners for the offence punishable under Section 7 and 13 (1) (d) r/w Section 13 (2) of Prevention of Corruption Act, 1988 r/w Section 34 IPC.

3 The case was taken on file as C.C.No.41 of 2004 on 11.10.2004. Charges were framed against the petitioners and P.Ws.1 to 5 were examined and Exs.P.1 to P.17 were got marked.

4 At that juncture, the learned Special Public Prosecutor filed a petition on 28.07.2008 under Section 321 Cr.P.C. to withdraw the prosecution against the petitioners as the Government

issued order vide G.O.Ms.No.150, Finance (OP.1) Department, dated 07.06.2008 to drop the case against the petitioners and entrust the case to the Tribunal for Disciplinary Proceedings, Hyderabad for conducting regular enquiry due to the deceitful character of the complainant.

5 The trial Court, relying on the decisions rendered in **Abdul Karime vs. State of Karnataka¹**, **M.Veeraiah Chowdary vs. The State of Andhra Pradesh²**, **Deputy Accountant General Vs. State³**, **Purushottam Vijay Vs. State⁴**, **Balwant Singh Vs. State of Bihar⁵**, **State of Bihar Vs. Ram Naresh⁶**, **M.N.Sankaranarayana Nair vs. P.V.Balakrishnan⁷** and **Bansi Lal Vs. Chandan Lal and Balwant Singh⁸**, by order dated 08.08.2008, dismissed the petition filed by the learned Public Prosecutor. As stated supra, aggrieved thereby, the accused filed the present criminal revision case.

6 The learned counsel for the petitioners submitted that the learned Special Public Prosecutor has set out briefly and

¹ AIR 2001 SC 116

² 2003 CrL.L.J.1896

³ AIR 1970 Kerala 158 (FB)

⁴ 1982 CrL.L.J. 243 MP

⁵ AIR 1977 SC 2265

⁶ AIR 1957 SC 389

⁷ AIR 1972 SC 496

⁸ AIR 1976 SC 370

consciously the material justifying his prayer for withdrawal of prosecution with reference to the contents of the G.O. dated 07.06.2008 in para No.2 thereof. It is his further contention that the ACB officials have given a report to the Government that there are no disproportionate assets in the bank account of the petitioners and basing on that report the court below directed in its order dated 26.09.2003 to return all the documents and items seized by the ACB from the possession of the petitioners. The learned counsel for the petitioners further submitted that the conduct and character of the complainant is deceitful and that he was arrested and remanded to judicial custody in a criminal case registered against him for the acts of misappropriation of public money, therefore, the contents of the complaint are doubtful and are not worth credence. The learned counsel for the petitioners further submitted that the trial Court erred in observing that there were no reasons assigned in the order of the Government for withdrawing prosecution against the petitioners. It is his predominant contention that the view expressed by the Court below in regard to demand and acceptance of bribe by the petitioners herein during the pendency of the trial itself shows that the Court below has

predetermined in regard to the guilt of the petitioners, and hence prayed to set aside the impugned order by allowing this criminal revision case.

7 The learned counsel for the petitioner relied on the following decisions viz., **Sheo Nandan Paswan Vs. State of Bihar**⁹, **Nanjappa Vs. .State of Karnataka**¹⁰, **D.Devaraja Vs. Owais Sabeer Hussain**¹¹, **K.Ratna Prabha Vs. State of Telangana**¹², **R.Balakrishna Pillai Vs. State of Kerala**¹³, **State of Orissa through Kumar Raghavendra Singh Vs. Ganesh Chandra Jew**¹⁴ and **Shreekantiah Ramayya Munipalli Vs. State of Bombay**¹⁵ in support of the above contentions.

8 The learned senior counsel Sri Pradyumna Kumar Reddy appearing for the petitioners further relied on the order dated 05.03.2010 passed by the erstwhile High Court of Andhra Pradesh in CrI.P.No.5496 of 2007, on the order dated 17.11.2021 in CrI.R.C.No.1296 & 1297 of 2009 of this High

⁹ 1987 SCC (Cri) 82

¹⁰ (2015) 14 SCC 186

¹¹ (2020) 7 SCC 695

¹² 2017 (3) ALT (CrI.) 75 (A.P)

¹³ (1996) 1 SCC 478

¹⁴ (2004) 8 SCC 40

¹⁵ AIR 1955 SC 287

Court and also on the order dated 23.02.2023 in Crl.R.C.No.2173 of 2013.

9 Having heard the learned counsel for the petitioner and the learned Public Prosecutor for the State, this Court deems it apposite to extract Section 321 of the Code of Criminal Procedure, which reads as under:

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.

10 In the light of the above section of law and in view of the submissions made by the learned counsel for the revision petitioners the point that arises for consideration in this criminal revision case is “whether the court below is justified in not granting permission to the learned Public Prosecutor to withdraw the prosecution against the petitioners herein”?

11 The trial Court in its order dated 08.08.2008 refused to grant sanction for withdrawal of the case as the Court was not satisfied that any case for passing such order has been made out on the basis of the material placed before it.

12 The learned senior counsel for the petitioner urged that the trial Court committed a serious error in passing the impugned order insofar as it entered into the merit of the matter which is impermissible in law.

13 No doubt, in view of the decision laid down in **Sheonandan Paswan case** (9 supra) the High Court’s power of judicial review is limited. Therefore, this Court could interfere therewith only if an error of law was found to have been committed by the trial Court.

14 A plain reading of Section 321 of Cr.P.C. shows that it is for the Public Prosecutor to withdraw from the prosecution of any person with the consent of the Court. Having considered the scope and object of Section 321 of Cr.P.C., it has been held by the Courts in a catena of decisions that the power to withdraw from prosecution is conferred on the Public Prosecutor alone and that the decision to withdraw must be of the Public Prosecutor. It was also held that the function of the Court in granting its consent is a judicial function which means that the Court has to satisfy itself that the executive function of the Public Prosecutor has not been improperly exercised.

15 Though there can be no dispute with regard to the competency of the Government to pass such an order, the further steps shall be only in accordance with the procedure prescribed under Section 321 of Cr.P.C. which mandates independent exercise of discretion by the Public Prosecutor in-charge of the case subject to the consent of the Court.

16 In the light of the above settled legal position, it is clear that the decision taken by the Government in G.O.Ms.No.150, Finance (OP.1) Department, dated 07.06.2008, is not conclusive and not binding on the Public Prosecutor much less the Court.

Hence, the withdrawal of prosecution of the petitioner is not automatic merely on the basis of G.O.Ms.No.150, Finance (OP.1) Department, dated 07.06.2008 but the same shall be in accordance with the procedure prescribed under Section 321 of Cr.P.C. Admittedly, the Special Public Prosecutor made an application in terms of Section 321 of Cr.P.C. on behalf of the State seeking permission to withdraw the prosecution of the petitioner herein. The learned Special Court, while holding that there was no indication in the application that the learned Public Prosecutor had applied his mind before seeking permission for withdrawal from the prosecution, declined to grant permission to withdraw the prosecution.

17 The object of Section 321, Cr.P.C. appears to reserve power with the executive Government to withdraw any criminal case on longer grounds of public policy such as inexpediency of prosecutions for reasons of State, broader public interest like maintenance of law and order, maintenance of public peace and harmony, changed social, economic and political situation.

18 Section 321, Cr.P.C. does not make it necessary for the Court to record reasons before consent is given. However, it does not mean that consent of the Court is a matter of course.

When the Public Prosecutor makes the application for withdrawal after taking into consideration all the materials before him the Court exercises its judicial discretion by considering such materials and on such consideration either gives consent or declines consent. For justice, it is necessary that the Court should record reasons about his satisfaction with the view of the Public Prosecutor but a detailed order is not required.

19 Permission for withdrawal from prosecution cannot be granted mechanically. Withdrawal must be for proper administration of justice and only in Public Interest. It has been held by the Apex Court in the case of **Abdul Karim and others vs. State of Karnataka**¹⁶, that an application under Section 321 Cr.P.C. could not be allowed only on the ground that the State Government had taken a decision for withdrawing the prosecution and such an order could only be passed after examining the facts and circumstances of the case.....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

¹⁶ (2000) 8 SCC 710

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.

20 In the case of **Rajender Kumar Vs. State through Special Police Establishment**¹⁷ the Supreme Court has held that "It shall be the duty of the Public Prosecutor to inform the grounds for withdrawal to the Court and it shall be the duty of the Court to appraise itself of the reasons which prompt the Public Prosecutor to withdraw from the prosecution. The Court has a responsibility and a stake in the administration of criminal justice and so has the Public Prosecutor, its 'Minister of Justice'. Both have a duty to protect the administration of Criminal justice against possible abuse or misuse by the Executive by resorting to the provision of Section 321 Cr.P.C. The independence of the judiciary requires that once the case has travelled to the Court, the Court and its officers alone must have control over the case and decide what is to be done in each case."

¹⁷ (1980) 3 SCC 435

21 In **Bairam Muralidhar v. State of Andhra Pradesh**¹⁸, the Prosecutor was seeking a withdrawal of the prosecution against a police officer who had been Accused of demanding a bribe in exchange of not implicating a particular individual for an offence of kidnapping and for reducing the charges against the individual's son. The police officer was accused of offences Under Sections 7 and 13(1) of the Prevention of Corruption Act 1988. An application Under Section 321 of the Code of Criminal Procedure was filed by the Prosecutor based on the fact that the Government had issued an order for withdrawal of prosecution against the officer given his meritorious service and directed that his case be placed before the Administrative Tribunal for disciplinary proceedings. This Court affirmed the concurrent findings of the High Court and the Trial Court and rejected the application for withdrawal. The Hon'ble apex Court held that

19. In the case at hand, as the application filed by the Public Prosecutor would show that he had mechanically stated about the conditions precedent, it cannot be construed that he has really perused the materials and applied his independent mind solely because he has so stated. The application must indicate perusal of the materials by stating what are the materials he has perused, may be in brief, and whether such withdrawal of the prosecution would serve public interest and how he has formed his independent opinion. As we perceive, the learned Public Prosecutor has been totally guided by the order of the Government and really not applied his mind to the facts of the case. The learned trial Judge as well as the High Court has observed that it is a case under the Prevention of Corruption Act. They have taken note of the fact that the State Government had already granted sanction. It is

¹⁸ (2014) 10 SCC 380

also noticeable that the Anti-Corruption Bureau has found there was no justification of withdrawal of the prosecution.

22. We have referred to these authorities only to show that in the case at hand, regard being had to the gravity of the offence and the impact on public life apart from the nature of application filed by the Public Prosecutor, we are of the considered opinion that view expressed by the learned trial Judge as well as the High Court cannot be found fault with. We say so as we are inclined to think that there is no ground to show that such withdrawal would advance the cause of justice and serve the public interest. That apart, there was no independent application of mind on the part of the learned Public Prosecutor, possibly thinking that the court would pass an order on a mere asking.

22 In **State of Kerala v. K.Ajith**¹⁹ the Apex Court formulated the principles on the withdrawal of a prosecution

Under Section 321 of the Code of Criminal Procedure as under:

- (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

¹⁹ AIR 2021 SC 3954

(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.

23 In the light of the above principles laid down by the Hon'ble Supreme Court, this Court is inclined to go through the G.O., through which the learned Public Prosecutor was given permission to seek withdraw from the prosecution against the petitioners herein are concerned, the material part of which reads as under:

"GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Public Services-Allegation of corruption against Sri B.Venkateswara Rao, Section Officer and Sri Ch.Srinivasulu, Assistant Section Officer, Finance Department, AP Secretariat, Hyderabad – Withdrawal of prosecution – Orders – Issued.

FINANCE (OP-1) DEPARMTNET

G.O.Ms.No.150

Dated 07.06.2008

Read the following.

1. G.O.Ms.No.509, Finance (OP-1) Department, dated 11.06.2004.
2. G.O.Ms.No.510, Finance (OP-1) Department, dated 11.06.2004.
3. Representation of Sri B.Venkateswara Rao, SO and Ch.Srinivasulu, ASO, Finance Department dated 28-01-2008.

ORDER :

"In the GOs 1st and 2nd read above, Government have issued prosecution orders against Sri B.Venkateswara Rao, Section Officer and Sri Ch.Srinivasulu, Assistant Section Officer of Finance Department, who were trapped by ACB on 25.07.2003 while accepting the bribe amounts of Rs.2,000/- and Rs.1,000/- from the complainant Sri CV Krishna Reddy, Assistant Accounts Officer, O/o.The Commissioner of Civil Supplies, Hyderabad. Accordingly, the Ante-Corruption Bureau filed a charge-sheet in the Court of the Special Judge for S.P.E. & A.C.B. Cases, Hyderabad on 29.09.2004 in CC No.41/2004.

In the reference 3rd read above the accused Sri B.Venkateswara Rao made an appeal to the Government requesting to withdraw the prosecution launched against him on the following grounds :

(i) That after verification of the bank accounts of the Accused Officer and his family members and after search of the house, the ACB Officers have given a report that there are no disproportionate assets found in his possession. Based on the report, the Hon'ble Pri.Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad in CrI.M.P.No.484 of 2003 on C.No.15/ACB/Cr/2003 directed in their order, dated 26.09.2003 to return all the documents and items which were seized by the ACB.

(ii) That the complainant Sri CV Krishna Reddy, while working as a A.O. in the O/o. The Commissioner of Social Welfare, Hyderabad has been surrendered by the then Commissioner of Social Welfare vide D.O. Letter No.1/JAO/2001 dated 18.07.2001 on the ground that he leaked the official information to the press and published pamphlets against the officers, which reveals the assessment of the bad character of the complainant by the Head of the Department.

(iii) That there is inconsistency in the statements made by the complainant regarding payment of money to the Accused Officers. In the mediators' report that the complainant stated that he paid the amount to the Accused Officers after lunch on demand, but whereas in the statement recorded before the Magistrate under Section 164 Cr.P.C. he has stated that the amount was paid to the Accused Officers before lunch on demand. Hence, there is contrary in both the statements of the complainant, which reveals that there is no truth in payment of the amounts on demand.

(iv) That the complainant was arrested and remanded to judicial custody for three (3) days in a criminal case booked against him, for the irregularities and misappropriation of public money while he was working as Hon'State Treasurer of the State Bharat Scouts and Guides, AP, Hyderabad. To which, the complainant was suspended by the Government, which reveals the deceitful character of the complainant.

Government after careful examination of the facts and antecedents of the complainant and taking into account the totality of the circumstances of the case, hereby ordered to withdraw the prosecution orders issued against Sri B.Venkateswara Rao, Section Officer and Sri Ch.Srinivasulu, Assistant

Section Officer of Finance Department vide references 1st and 2nd read above.

Consequent on withdrawal of the prosecution orders in para 3 above, Government hereby decided to entrust the case to the Tribunal for Disciplinary Proceedings, Hyderabad for conducting regular enquiry.

The Director General, Ante Corruption Bureau, Hyderabad is requested to issue necessary instructions to the Public Prosecutor concern to file a withdrawal petition under relevant provision of law for withdrawal of prosecution in the Court of Special Judge of for S.P.E. & A.C.B. Cases, Hyderabad filed in CC No.41/2004.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)"

24 Consequent upon issuance of the above said G.O, the learned Public Prosecutor filed CrI.M.P.No.696 of 2008 in CC No.41 of 2004 under Section 321 Cr.P.C. seeking permission to withdraw the case of the prosecution against the petitioners and to treat the same as withdrawn and the petitioners herein may be acquitted of the charged offences in the interest of justice and equity.

25 The grounds urged by the learned Public Prosecutor in CrI.M.P.No.696 of 2008 was that the complainant was having a deceitful character and that there were no disproportionate assets found in the bank accounts of the petitioners/accused officers or in the accounts of any of the relatives of the petitioners.

26 However, in the backdrop of the principles laid down by the Hon'ble Supreme Court in Ajit case (19 supra) it is to be seen whether the public prosecutor had filed the petition withdrawing from prosecution not merely on the ground of paucity of evidence but also to further the broad ends of public justice; and whether the public prosecutor has formulated an independent opinion before seeking the consent of the court to withdraw from the prosecution; and that 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;

27 As seen from the G.O.Ms.No.150 dated 07.06.2008, the reasons put forth there for withdrawing the prosecution against the petitioners herein would not fall under the category of public interest. The learned Prosecutor did not appreciate as to how continuation of the proceedings against the petitioner would cause social injustice or that the application was made in good faith, in the interest of public policy and justice and not to thwart or stifle the process of law. The reasons set out in the G.O. or in the application made by the learned Public prosecutor are all matters of record and do not fall under any of the provisions appended to Section 321 (b) Cr.P.C. The allegations

against the petitioners do not relate to possession of disproportionate assets. This is a case of demand and acceptance of bribe and recovery of tainted currency notes from the possession of the petitioners and hence no public interest is involved in the present case. The prosecution did not explain any reason about the consequences that may arise out of the final result of the case.

28 Therefore, I do not believe that the submissions made by the learned Public Prosecutor are relevant and merit consideration by this Court in an application for withdrawal of prosecution Under Section 321 of the Code of Criminal Procedure. In the considered opinion of this Court, the two main reasons set out by the Government as well as the learned Public Prosecutor viz., there were no disproportionate assets in possession of the petitioners and that the character of the complainant is deceitful are not all grounds for seeking withdrawal of prosecution. Both the reasons are to be adjudged during the course of trial or by the learned trial Court in its findings to be recorded in its judgment or/are grounds for the defence in the trial as well as an argument that may be advanced by the defence which may be based on the evidence

that will be produced by the parties. But the prosecution by itself cannot lift a palanquin for the accused and canvass on their behalf. This is not the purport and object of Section 321 Cr.P.C. As held by the Constitution Bench of this Court in Sheonandan Paswan (supra), it is not the duty of this Court, in an application Under Section 321 of the Code of Criminal Procedure, to adjudicate upon evidentiary issues and examine the admissibility or sufficiency of evidence.

29 In that view of the matter, I am of the considered view that the trial Court has correctly held that there are no sufficient grounds or circumstances for the Court to accept withdrawal of the prosecution case against the petitioners.

30 The judgments relied on by the learned senior counsel for the petitioners do not inspire the mind of the Court to take a different view than the view taken by the Court below. The scope of the High Court under Sections 397 and 401 Cr.P.C. is very limited. I do not find any infirmity or impropriety in the impugned order so as to interfere with the same.

31 Having regard to the facts and circumstances of the case and also the principles enunciated in the cases cited supra, this

Criminal Revision Case is dismissed, confirming the order dated 08.08.2008 passed by learned Principal Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad in CrI.M.P.No.696 of 2008 in CC No.41 of 2004. Miscellaneous petitions if any pending in this criminal revision case shall stand closed.

32 However, since the case before the trial Court pertains to the year 2004 and is said to be at the fag end of its trial, let the court below make an endeavour to dispose of the same on its own merits and without being influenced by any of the observations made by this Court in this criminal revision case as well as its own findings given in the order dated 08.08.2008 passed in CrI.M.P.No.696 of 2008 in CC No.41 of 2004, as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this order.

E.V.VENUGOPAL, J

Dated:03.07.2023.

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