

(2007) 12 AHC CK 0062
In the Allahabad High Court

Hari Dhyana Nand Chela Sarnanand @ Dev Nath Yadav, Hari
Gyana Nand Chela Sarnanand @ Dev Nath Yadav, Beani
Dayala Nand alias Lal Bahadur Chela Sarnanand @ Dev Nath
Yadav and Dharma Darshna Nand Chela Sarnanand @ Dev
Nath Yadav

APPELLANT

Vs

State of U.P. and Arvind Singh

RESPONDENT

Date of Decision : 14-12-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 321, 482
Penal Code, 1860 (IPC) — Section 147, 148

Citation : (2008) 1 ACR 894

Hon'ble Judges : Amar Saran, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amar Saran, J.—I have heard Sri V.P. Srivastava and the learned AGA in Criminal Revision No. 1226 of 2003, which is connected with Crl. Misc. Application No. 5417 of 2002.

Crl. Revision No. 1226/2003 has been filed with a prayer to quash the order dated 24.4.2003 passed by the Additional Sessions Judge, Fast Track Court (CTC) Court No. 5 in S.T. No. 299 of 2002 whereby the learned Judge had rejected application Nos. 5 kha and 18 kha moved by the ADGC (Criminal) u/s 321 Cr.P.C. seeking permission to withdraw the prosecution of the Revisionists.

Cr. Misc. Application No. 5417/02 u/s 482 Cr.P.C. has been filed with a, prayer to set aside the order dated 22.5.02 dismissing the Crl. Revision Nos. 82 and 83 of 2002 passed by the Sessions Judge Varanasi, against the order dated 11.2.2002 passed by the CJM Varanasi refusing to allow withdrawal of prosecution u/s 321 Cr.P.C. and to allow application dated 24.5.00 (wrongly dated as 24.5.2002 in the prayer clause) seeking to withdraw the prosecution in Crl. Case No. 2605 of 1999, and for stay of proceedings in the trial meanwhile.

2. The brief facts of the case were that an FIR was lodged by informant Arvind Singh under Sections 302/34/504/506/120-B IPC at case crime No. 350 of 1999 at PS Bhelupur, District Varanasi on 26.10.1998 at 11 am, alleging that the informant's father Shanta Singh, accompanied by the informant, Baba Shanker Chaitanya Brahmachari, Dharam Singh his chachera sala (cousin brother-in-law) Namvar, were leaving the gate of Dharma Sangh to proceed to the Civil Court on 9.45 am on the same day on foot. After they had covered some distance, two motorcycles carrying four riders surrounded these persons and started abusing them proclaiming that they were the persons who had made an enquiry into the corruption at the Garwa Ghat Math and that Swamiji had said that they should be murdered. Thereafter, out of the four persons who were sitting on the motorcycles, namely Hari Dhyana Nand, Hari Gyana Nand, Beam Dayala Nand alias Lal Bahadur and Dharma Darshna Nand, all disciples of Garwa Ghat Math, Dayala Nand took out a country-made pistol and fired on the deceased Shanta Singh, crying out that this sala wanted to get the enquiry done into the properties of Dev Nath Yadav @ Sharda Nand, Mahanth Garhwa Ghat. Thereafter, the accused proceeded in the northern direction. With the assistance of the police, Shanta Singh was rushed to the hospital where he died. On the way, the deceased disclosed to these persons that three days earlier these persons had threatened to kill him. Earlier also threats had been extended to the deceased about which a report had been lodged on 15.5.1998 at PS Cantt. After investigation, charge-sheet was submitted against the applicants, Hari Dhyana Nand, Hari Gyana Nand, Beant Dayala Nand @ Lal Bahadur, and final report was submitted on. 2.3.1999 against Dev Nath Yadav @ Sharda Nand. The case was pending in the Court of the CJM, Varanasi, as CrI. Case No. 2605 of 1999.

3. However, in the meantime the State Government by an order dated 9.7.1999 decided to withdraw the case in public interest. The letter of the State Government was received by ADM (City) on 23.7.1999 who vide letter dated 23.7.1999 directed the Senior Prosecuting Officer (SPO) to take the necessary steps. The APO posted in the Court of the CJM, Varanasi, thereafter, moved an application u/s 321 Cr.P.C. on 4.8.1999, which was to the effect that the State Government after serious consideration vide its order dated 9.7.1999 had decided to take back the CrI. Case No. 2605 of 1999 under Sections 302/504/506/34 IPC in public interest and that he had been ordered to withdraw the said case which was pending for committal on 17.8.1999, hence it was being prayed that the CJM pass an order permitting withdrawal of the case in public interest in deference to the decision of the State Government.

4. However, by an order dated 21.2.2000 the learned CJM was pleased to reject the application of the APO dated 4.8.1999 for want of sufficient grounds. It has been observed in the order dated 21.2.2000, inter alia, that the application for withdrawal was accompanied by a letter of the ADM (City), Varanasi, dated 3.7.1999, and the Government Order dated 9.7.1999. The objection by the informant Arvind Kumar dated 15.9.1999 had also been placed before the Court. The said objection also contained the report of the District Magistrate, Varanasi,

dated 27.5.1999 to the State government's proposal for withdrawal of the case which was annexed to the application. The complainant also filed documents showing that a political conference of the BJP, was convened at Garwa Ghat Ashram, Varanasi, from 19th to 21st March, 1999, and an order passed by the I ACJM on 21.3.1996 in CrI. Case No. 2577 of 1995: State v. Rakesh Kumar Srivastava, under Sections 147, 148, 149, 302 IPC, PS Chetganj, Varanasi, which were annexed to the written objections. It was further observed in the order that the APO had argued that the Government after thoughtful consideration had decided to take back the case in public interest and he had been issued necessary directions for the said purpose. The decision was of the Ministry. The accused were sadhus, who were running a math. The photocopies filed by the complainant could not be seen in evidence, hence the Court should give consent for withdrawal of the prosecution. The counsel for the accused also supported these arguments.

5. Per contra the contention of the informant's counsel was that whether this was a matter involving public interest was a question to be decided by the Court. The informant was the son of the deceased Shanta Singh. The accused on the basis of a conspiracy hatched by Sharda Nand @ Dev Nath Yadav had cruelly murdered his father on 26.10.1998. The informant was an eye-witness. There were other witnesses who had supported the prosecution case. The conviction of the accused was highly likely. It was in the public interest that a message goes out that there is law and order in society and everyone is equal before the law. Mahant Sharda Nand and his four chelas were the real murderers who were very close to the BJP party and its leaders. The math premises had even been given to the BJP for its conference and national and state leaders participated in the same. When the earlier investigating officer Aftab Ahmad Khan was about to a submit charge-sheet, on account of political influence he was transferred. The matter had even gone to the High Court. The High Court had rejected the petition for staying the arrest of Sharda Nand and later the charge-sheet was submitted. The Government had exerted political pressure on the legal administration for submitting a report for withdrawal of the case. However, the district administration submitted an independent report dated 27.5.1999 that looking to the need for maintaining judicial administration the case should not be withdrawn. In spite of the said report the U.P. Government had taken a decision to take back the case and had directed the prosecuting officer in Varanasi to move an application to this effect in Court. The decision of the State Government was mala fide and had been arrived at as a result of undue influence exercised by the assailants. The APO had not given any grounds in his application for seeking withdrawal of the prosecution and that the application deserved to be rejected. It was further observed in the order that the incident took place on 26.10.1998 at 9.45 am near Durga Kund Dharam Sangh about which a report was lodged at 11 am. The informant Arvind Kumar was the son of the deceased Shanta Singh. Apart from the informant, there were other eye-witnesses, namely, Namwar and Baba Shanker Chaitanya Brahmachari. Karuna Nand Bharti

and Mahesh Prasad Yadav gave circumstantial evidence. The motorcycle on which the accused come on the spot had been left at the premises of Pakhandu Ram. Sudama was another witness of circumstantial evidence and that there were both adequate circumstantial and direct evidence in the case. The Court needed to use its judicial discretion for accepting an application u/s 321 Cr.P.C. Furthermore, the Court observed that as the Government had written a letter on 9.7.1999 addressed to the District Magistrate, Varanasi, stating that in regard to the letter of the District Magistrate dated 27.5.1999, after thoughtful consideration of the matter, the State had decided to take back the case in public interest. However, the District Magistrate in his letter dated 27.5.1999 had explicitly mentioned at page 3 that the accused had committed a broad-day light murder at a public place which was a heinous offence.

6. As a result of the murder, there was very adverse impact on the general public and the case did not deserve to be withdrawn. Even the Superintendent of Police was of the opinion that the prosecution should not be withdrawn. When the district authorities, who are concerned with the legal system such as the District Magistrate, SP, the Prosecuting Officer, had not given their recommendations for withdrawal of the prosecution, it was not intelligible how the State Government had considered this matter fit for withdrawal in the public interest. By taking such a decision there would be danger to public security, which would, in turn, affect law and order. Significantly, according to the CJM, there did not appear to be any application of mind by the public prosecutor before seeking withdrawal of the prosecution and that he appeared to be only following the dictates of the higher officials. Political pressure-should not be the criterion for such a decision but the need to maintain public justice and administration should be the prime consideration for such a decision. All criminal matters should properly be decided on merits and an exception could not be made in response to the wishes of the majority of the people because they were calling for the case to be taken back. It was for the public prosecutor to establish that the withdrawal of the prosecution was in public interest. It was not even explained in the application as to how a law and order question would arise if the prosecution was not allowed to be withdrawn. Simply because the accused belonged to a particular political party, was not a ground for withdrawal of the prosecution. The photocopies filed by the informant along with his objections prima facie showed that the political conference of the BJP was held at Garwa Ghat Ashram on March 19, 20 and 21, 1999. It was clear from the perusal of the application of the APO that he had not exercised an independent mind and that only on the dictates of the Government he had moved the said application. The prosecuting officer should have given the other comprehensive reasons relating to public interest, law and order and social and political reasons and that the Government could have only recommended to the prosecuting officer to seek withdrawal of the prosecution but the same was not binding on him. Therefore, it did not appear that the prosecuting officer has applied his independent mind, hence the application was rejected. As mentioned hereabove a CrI. Revision No. 39 of 2000 was, thereafter preferred by the

applicants against the aforesaid order. However, as the DGC (CrI.) and the accused moved an application that they did not wish to press the criminal revision and the revision was also time-barred, the same was dismissed by an order dated 21.12.2000.

7. In the meanwhile ii appears that a second application dated 24.5.2000 u/s 321 Cr.P.C. was moved on behalf of the applicants. In this application the APO further mentioned that he had perused the case-diary and was of the opinion that the case was not fit to be proceeded with. The State Government had taken a decision to withdraw the case in public interest and the evidence was weak, hence the prosecution should be withdrawn on the ground that although the informant had described himself as an eye-witness, in Sir Sundar Lal (BHU) Hospital, when the injured Shanta Singh was brought there at 10.30 am, he was not present for entering his father's name and address which cast a suspicion that the informant was not present there when his father was being hospitalized in the BHU hospital, and that the constable R.N. Misra of PS Bhelupur had only given described the deceased as ex-Block Pramukh instead of mentioning his address. According to the log book of CCR, which was present in the case-diary, at 10.10 am an information was received that a man had been shot at by some unknown assailants at the Gurudham crossing. At 10.35 am another message was received that there was a suspicion that the name of the injured was Shanta Singh, who was an ex-Block Pramukh of Naugarh, and who was involved in a dispute of Garwa Ghat. At 10.40 am there is an entry about the death of the injured Shanta Singh and that the elder son of the deceased, Munna Singh, was ordered to be called from Chakia and also the other details of the deceased were sought from Garwa Ghat. According to the entry in the log book, the Hero Honda (motorcycle) which was driven by two persons was green in colour whereas the informant who was an eye-witness had mentioned that there were two motorcycles but there was no mention of their colour and other particulars of the motorcycle in the report. Although the FIR mentioned that three days earlier these accused persons had threatened to murder the deceased, yet at the time of the incident the deceased was going to the civil Court leaving behind his revolver in his room which was not probable. The name of the accused appeared to have been introduced in an unnatural manner in the FIR. It was well known that Garwa Ghat Ashram was connected with the people of the majority community and that the accused of the case were persons associated with prayers and rituals who were unlikely to commit such a crime. Because of the absence of the information in the entry of the log book which was maintained at the time of his admission in BHU and the other weaknesses in the FIR, it appeared that on the basis of some old enmity and suspicion the accused had been implicated in the case and looking to the weaknesses of the case and suspicious circumstances and the fact that the accused were associated with a religious institution, it was in the public interest that the case be withdrawn. The other application dated 4.8.99 had only been rejected by the CJM on 21.2.2000 because no basis had been provided by the APO for recommending withdrawal of

the case, which was being provided by the subsequent application dated 24.5.2000.

8. However, the CJM by his order dated 11.2.2002 was again pleased to reject the application u/s 321 Cr.P.C. dated 24.5.2000. In the said order, after narrating the facts of the case, as mentioned in the FIR, it was mentioned that after investigation the accused had been charge-sheeted under Sections 302, 504, 506 and 34 IPC and that the State Government had taken a decision to withdraw the prosecution in the public interest and the other facts mentioned in the application of the APO dated 24.5.2000 have been narrated in the order. The order further described the objections of the informant to the said application by the APO. The order mentions the objections of the informant to the said application of the APO that all the facts relating to the incident were prima facie established and that the witnesses had filed affidavits in the Court stating that they were interested in giving evidence in Court. The prosecuting officer had deliberately concealed these facts and moved the application u/s 321 Cr.P.C. When the earlier application dated 4.8.1999 u/s 321 Cr.P.C. moved by the APO had been rejected on merit on 21.2.2000 wherein even the cases of the apex Court were mentioned, the criminal revision against the said order had been got dismissed. The second application by the APO was not maintainable and the Court was not entitled to review its earlier order dated 21.2.2000. The Court had full powers to criticize or review an order passed by the Government. In this case the BJP had colluded with the accused and the APO for stalling farther proceedings in the matter and that by giving undue importance to this matter there would be a violation of the legal system. The DM and SSP had also opposed the withdrawal of the prosecution. After considering the contentions of both the parties and the application and written objections to the same it was observed in the order dated 11.2.2002 that the earlier order had been passed by his predecessor on 21.2.2000 on merit after thoughtful consideration of the submissions of the parties. It was clearly mentioned therein that no ground was mentioned in the application for taking back the prosecution or showing how the same was against the public interest even in the application dated 24.5.2000. The claim of the public prosecutor that there was no reliable evidence, direct and circumstantial was belied by the fact that the witnesses had filed affidavits indicating that it was the accused who murdered the deceased and that they wanted to give evidence in the matter in Court, and only because the State Government wanted to withdraw the prosecution, it was not a good ground for the public prosecutor to seek withdrawal of the prosecution but the prosecutor ought to be also concerned with the maintenance of administration of public justice and it was not spelled out how the withdrawal of the prosecution was in the public interest. The revision against the order passed by his predecessor refusing to consent to the withdrawal of the prosecution had been rejected as being time-barred. In view of the aforesaid circumstances, the learned Magistrate was of the view that the application dated 24.5.2000 u/s 321 Cr.P.C. be also rejected.

9. Subsequently, CrI. Revision Nos. 82 of 2002 and 83 of 2003 were preferred by the applicants for challenging the aforesaid order dated 11.2.2002. One of the said revisions was preferred by the APO and the other by the accused and were decided together by a common order dated 22.5.2002. The same arguments that were raised before the CJM on earlier occasions were again reiterated before the revisional Court. After hearing both the parties, the revisional Court dismissed the said revisions on the grounds that it has been held by the apex Court in the case of Abdul Karim and Ors. v. State of Karnataka XLII 2001 ACC 54, that an application u/s 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. In the present case, the subordinate Court had rejected an earlier application u/s 321 Cr.P.C. on 21.2.2000. After extensive hearing of the matter the criminal revision against the aforesaid order was dismissed as being beyond time. It was also observed in the revisional Court's order that earlier the learned Magistrate had held in his order that the contention in the application of the public prosecutor that the evidence collected was of a very weak nature, the circumstantial evidence was unreliable was belied by the record, because the informant who had lodged the FIR and his eye-witnesses had supported the prosecution version and had even filed affidavits corroborating their statements before the Court. The earlier order had become final, against which no review lay before the Magistrate. The main contention of the public prosecutor was that the state government wanted to withdraw the prosecution but an application could not be allowed on this ground. However, it could not be denied that both the questions of administration of public justice and public interest have to be taken into consideration when a decision is made for withdrawing a prosecution. In this matter, relating to murder, the witnesses were interested in giving evidence. In annexure - 1 to the application which was a letter of the district Magistrate it had been stated that a broad day light murder had been which was a heinous offence and that withdrawal of the prosecution would have adverse effect on the general public, hence he was not recommending the withdrawal of the prosecution. On considering the entire facts, the revisional Court found that the learned Magistrate had committed no illegality in rejecting the application for withdrawal of prosecution u/s 321 Cr.P.C. and consequently the two connected revisions were rejected.

10. Thereafter, it appears that a third application u/s 321 Cr.P.C. was moved by the public prosecutor before the IV ADJ, Varanasi. This application was rejected by an order passed by the IV Addl. District and Sessions Judge, FTC 5, Varanasi, dated 24.4.2003. This order was passed on the grounds that two earlier applications dated 4.8.1999 and 24.5.2000 moved by the prosecutor, which were based on the government order, proved as paper No. 147-kha, with respect to crime No. 350 of 1998, case No. 2605 of 1999, under Sections 302, 34, 504, 506 IPC, State v. Hari Dhyananand and Ors. PS Behlupur, District Varanasi, were backed by recommendations of the government for withdrawal of the prosecution

whereas the last application dated 4.4.2003 was not even supported by any government order suggesting this course of action. Thereafter, after the case was committed to the Court of session, there was no new government order recommending the withdrawal of the prosecution. Hence, there was no fresh application of mind that it was in the public interest that the prosecution be withdrawn and that the application had been made on the basis of earlier orders of the government to this effect. It was further mentioned that in the application dated 4.8.1999 moved by the prosecuting officer u/s 321 Cr.P.C., no grounds were mentioned and in the subsequent application dated 24.5.2000 all the facts were described. Some matters have again been mentioned in the impugned application, Ext. 5-kha, and no new facts are mentioned therein. In the application dated 24.5.2000 it was mentioned that Garwa Ghat Ashram was a religious institution, with which the sentiments and feelings of a particular majority community were associated and that the respondents therein were saints and sadhus who were engaged in religious activities. There were weaknesses and doubtful circumstance in the prosecution version and that by making persons who belonged to the institution as accused, would hurt the feelings of the public who had faith in the institution and it was in the public interest that the case may be taken back. Such contentions had all been raised in the earlier application dated 24.5.2000. Simply by furnishing further details in the supplementary application, Ext. kha-18, which described the activities, in which Garwa Ghat Math Ashram was engaged, constituted no new ground but was merely an elaboration of an earlier ground. Earlier the application dated 24.5.2000, where some of the issues were raised, had already been rejected by the CJM on 11.2.2002 and the criminal revisions preferred before the Sessions Court, viz. Criminal revision No. 82 of 2002, preferred by the State and Crl. Revision No. 83 of 2003, preferred by the accused Swami Hari Dhyana Nand and three others, had been dismissed by a common order dated 22.5.2002, which assailed the order of the CJM dated 11.2.2002. Against the order dated 11.2.2002 and the order dated 22.5.2002 passed by the learned revisional Court, Crl. Misc. Application No. 5417 of 2002 u/s 482 Cr.P.C Hari Dhyana Nand and Ors. v. State of U.P. and Ors. had been filed for challenging the order of the sessions Judge dated 22.5.2002 and the order of the CJM dated 11.2.2002, and the said matter was still pending in the High Court.

Another contention made in the application No. 5-kha, that as the case could not be tried by the CJM, but only could be tried by the Sessions Court, hence the power for withdrawal of the prosecution u/s 321 Cr.P.C. only lay with the Court of session. This contention was rebuffed by the learned Sessions Judge that the disposal of the trial of the case and disposal of an application u/s 321 Cr.P.C. are separate things and that the CJM had jurisdiction for disposal of the said application and that the revision against the said order had already been rejected on 22.5.2002, holding that the said orders of the Magistrate were appropriate and there was no illegality or jurisdictional flaw in the same. Even in the High Court in the application under u/s 482 Cr.P.C. no such prayer was made

that the Magistrate had no jurisdiction to dispose of the application u/s 321 Cr.P.C. which was in any case moved by the prosecution in favour of the accused before the Magistrate. It was also observed that only if there was a new circumstance a fresh application u/s 321 Cr.P.C. could be moved but the facts of the case did not reveal any fresh circumstance. Some authorities cited by the parties were also considered in the order dated 24.4.2003 and after recording a finding that no new circumstance had arisen, the application was dismissed by the Addl. District and Sessions Judge by the aforesaid order. It was further observed that the order dated 11.2.2002 had been passed by the learned CJM after considering all the facts and circumstances in the application of the public prosecutor dated 24.5.2000; and, likewise, the revisional Court had also dismissed the aforesaid revision on 22.5.2002 after considering the entire matter and after holding the order of the learned CJM wholly legal and proper.

11. We have heard Sri V.P. Srivastava at considerable length and he has even filed written arguments. To paraphrase his submissions, it would be useful to quote paragraphs 10 to 22 of the written arguments, which are as follows:

10. The learned Chief Judicial Magistrate, Varanasi, vide order dated 21.2.2000 rejected the application mainly on the ground that no reason has been assigned in the application for withdrawal of prosecution.

11. Aggrieved by order dated 21.2.2000 the State Government filed a criminal Revision No. 39 of 2000, but the same was dismissed as not pressed.

12. During the pendency of aforesaid revision A.P.O. Varanasi moved another application dated 24.5.2000 giving details for withdrawal of the prosecution.

13. The learned Chief Judicial Magistrate, Varanasi vide order dated 11.2.2000 (sic 2002) again rejected the application mainly on the ground that earlier application has been rejected.

14. Aggrieved by order dated 11.2.2002 the State Government as well as applicants preferred two Criminal Revisions numbered as Criminal Revision No. 82 of 2002 and 39 of 2002 before Sessions Judge Varanasi, who vide order dated 22.5.2002 dismissed the revisions mainly on the ground that earlier application of State Government has been rejected.

15. The order passed by both the Courts below are bad in the eye of law. Both the Courts below have rejected second application moved by State Government on the ground that first application has already been rejected. The First application was rejected mainly on the ground that no reason has been given in the application moved for withdrawal of the prosecution. There was no bar for moving second application giving details reason for withdrawal of the prosecution.

16. It was State case and the State Government is prosecutor. u/s 321 Cr.P.C. only public prosecutor is permitted to prosecute and the first informant has no say in the matter except as a witness.

17. Now touching the merit of the case it is submitted that in the First Information Report, it is mentioned that the deceased was carried to BH.U. Medical College Hospital by Arvind Singh first informant who is son of deceased and he is also eye witness, but in the Hospital's record the name of the deceased is mentioned as Santa Singh son of unknown. Had Arvind Singh son of deceased been present in Hospital, then parentage of deceased would have not been mentioned as unknown in the Hospital's record and it is mentioned that he was brought by Constable C.P. 2010, Sri R.N. Mishra, Police Station Behlupur, Varanasi. Address of deceased is mentioned only as ExBlock Pramukh Naugarh, Chandauli.

18. In the C.C.R. Log book of Varanasi, it is mentioned that at 10.10 AM Some unknown miscreant had fired on one person, at 10.35 AM. Another message was transmitted that deceased is Shanta Singh ExBlock Pramukh, at 10.40 A.M. Another message was transmitted that Shanta Singh is dead and his elder son Munna Singh be called from Chakiya. Further it was transmitted that details of the incident may be collected.

19. In the log book, it is mentioned that assailants were two in numbers riding on one Hero Honda motor cycle, but the first informant says they were in two motorcycles and four in number.

20. That First Information Report further says that three days earlier deceased was threatened by the applicants. In such a circumstances deceased would have not gone emptyhand leaving his licensed Revolver in his room.

21. There is serious interpolation in the written report where name of the accused persons are mentioned.

22. The Garwa Math Ashram is a religious institution and all the accused persons arc Sadhus connected with this institution. Majority of the people of the country have full faith and alliance with this Ashram. Hence keeping in view of the facts and circumstances of the case the State Government though it proper in public interest to withdraw the prosecution which is based on very weak type of evidence.

The other paragraphs, relate to legal points which shall be subsequently examined in this judgment.

12. It has wrongly been stated in paragraph 10 of the written arguments that the CJM, Varanasi, by his order dated 21.2.2000 rejected the application mainly on the ground that no reason had been assigned in the application for withdrawal of the prosecution. We have quoted the said order in extenso which shows that the application u/s 321 Cr.P.C. had been rejected by the CJM on various grounds viz. that the murder had taken place in broad day light on 26.10.1998 at 9.45 am about which a report was lodged promptly at 11 am by Arvind Kumar, son of the deceased Shanta Singh. There were eye-witnesses and other circumstantial evidence suggesting that a motorcycle driven by the accused had been left

behind at the nearby premises of Pakhandu Ram. It was further mentioned in the order dated 21.2.2000 that judicial discretion needs to be exercised before accepting an application u/s 321 Cr.P.C. The District Magistrate and the SP had opined that as the accused had committed a broad day light murder at a public place which was a heinous offence, hence the withdrawal of prosecution would have grave adverse impact on the general public, hence they recommended that the case should not be withdrawn. The district authorities who are required to maintain law and order in the district, are not in favour of withdrawal of the prosecution. It was not intelligible, as per the District Magistrate's report, how the state government could recommend withdrawal of prosecution in such circumstances. In this application it was also observed that there did, not appear to be any application of mind on the part of the public prosecutor seeking withdrawal of prosecution and he simply appeared to have rubber stamped the dictates of the State government. It was further observed in the order that political pressure should not be a criteria for such a decision but the need to administer public justice should be the prime criterion for taking such a decision. It was for the public prosecutor to establish that the withdrawal of the prosecution would serve the public interest but in this case he had not even shown how any law and order situation would arise if the prosecution was not withdrawn. The photostat copies filed by the informant showed that the political conference of the BJP was held at Garwa Ghat Ashram on March 19, 20 and 21, 1999. Thus it was clear that it was on account of political pressure that the decision had been taken.

13. Likewise, the ground taken in paragraph 13 of the written arguments that learned CJM, Varanasi, by its order dated 11.2.2002 again rejected the application mainly on the ground that the earlier application had been rejected, is not factually correct. This was a detailed order which narrated the facts of the case mentioned in the FIR, the filing of the charge-sheet under Sections 302, 504, 506 and 34 IPC, the fact that the state government had taken a decision to withdraw the prosecution in public interest and the other facts mentioned in the application of the APO dated 24.5.2000, the objections of the informant to the said application by the APO. The order even goes on to observe that there was a prima facie case relating to the incident and the witnesses had even filed affidavits in the Court that they supported the prosecution version and intended to give evidence in Court and that the prosecuting officer had deliberately concealed these facts when moving the application u/s 321 Cr.P.C. When the earlier application dated 4.8.1999 u/s 321 Cr.P.C. had been rejected on 21.2.2000 by a reasoned order and wherein even a few cases of apex Court were discussed and the criminal revision against the said order has also been dismissed as being beyond time and not pressed. It was further observed that the second application by the APO was not maintainable and the Court was not entitled to review its earlier order dated 21.2.2000. Furthermore, the Court had full powers to review an order passed by the government. It appeared that the BJP had colluded with the accused and the APO for stalling further proceedings in

the matter and such an approach would be destructive of the legal system. The District Magistrate and the SSP had also opposed the withdrawal of the prosecution only on the mere asking of the state government.

14. Again, it has wrongly been mentioned in paragraph 14 of the written arguments aforesaid that the Criminal revision preferred by the State government and the accused against the order dated 11.2.2002 was rejected by the Sessions Judge, Varanasi, by his order dated 22.5.2002 mainly on the ground that the earlier application of the state government had been rejected. As detailed hereinabove, the said revision had been rejected after relying on the cases of the apex Court that on the mere recommendation of the State government withdrawal of the prosecution should not be permitted. The first order u/s 321 Cr.P.C. (i.e. order dated 21.2.2000) was also a comprehensive order deciding the issue on merits after a detailed consideration of the matter. The revision against the said order had been got dismissed as beyond time and not pressed. The arguments, which were being reaffirmed before the revisional Court that the evidence was weak or that the circumstantial evidence was unreliable, were incorrect because the informant who had lodged the report was supported by eye-witnesses who confirmed the incident and had even filed affidavits before the Court of being eye-witnesses. The earlier order had become final which could not be reviewed by the Magistrate. Simply because the State government desired withdrawal of the prosecution, it could not be the only basis for allowing the same because both the issues of the need for administration of public justice and public interest have to be put in the scales before such an order is passed. The witnesses wanted to give evidence in this case of murder. The District Magistrate in his letter had mentioned that it was a broad day light murder at a public place, which was a heinous offence and that withdrawal of prosecution in the same would have an adverse impact on the public. Hence, there was no illegality in the order of the subordinate Courts.

15. The contention in paragraph 15 of the written arguments that as the first application had been rejected mainly on the ground that no reason had been given, hence there was no restriction in moving the second application giving detailed reasons for withdrawal of prosecution, is not correct because, as shown above, detailed reasons had been given in the order 21.2.2000 rejecting the first application.

16. So far as the merits of the case mentioned in paragraphs 17 to 21 of the written arguments, some reference have been made to the hospital's records of the BHU Medical College, where the name of the deceased was mentioned as Shanta Singh, son of unknown. It was argued that if his son, Arvind Singh, would have been present, it would not have been mentioned that he was brought by constable R.N. Misra and that the address of the deceased would not have been described as ex-Block Pramukh, Naugarh, Chandauli. It is possible that Arvind Singh may have been busy somewhere at the moment entries were made and in any case such entries as well as the other entries made in the CCR log book of

the police station, which are mentioned in paragraph 18, will have to be considered and the circumstantial value of the said entries as well as that the fact that the opportunities will have to be provided to the witnesses for taking into account any circumstance against them, which can be done only during the trial of the case, and provides no ground for scuttling of the trial at an earlier stage. Likewise, what weight is to be assigned to the minor discrepancies that in the log book it was mentioned that two persons were riding on a Hero Honda motorcycle but the first informant had mentioned that the four persons were riding two motorcycles are all questions of fact which shall have to be put to the witness during his cross-examination. Not much importance can similarly be given to the circumstance that as the deceased had been threatened three days earlier, there was no possibility of his having left his licensed revolver in his room and having proceeding empty handed. It is a fact that at the moment when he was shot at, the deceased did not have his revolver with him, but that alone would not give a lie to the assertion that the deceased was shot at the place and in the manner alleged, or that the mere non-carrying of the revolver with the deceased would show that the witnesses were not present at that time. Clarifications about the circumstance in which the revolver was left in the room of the deceased, could be sought from the witness when he is examined in the Court. Some interpolations in the written report are mentioned. This matter is also for consideration in the trial and provides no ground for scuttling the trial.

28. The argument raised in paragraph 22 of the written arguments that Garwa Math Ashram was a religious institution and the majority of its inmates sadhus and saints and as the majority community bore allegiance and faith to this Ashram, does not appear to be at all a tenable ground for permitting the withdrawal of prosecution, otherwise in all crimes where saints and sadhus of the majority community are involved, such a prayer could always be raised that it could be in the public interest to withdraw the prosecution, and they could go scot free for their crimes without having to face trial. There are eyewitness accounts, and circumstances also corroborate the incident. The witnesses have filed affidavits. The incident has taken place in broad day light. There is a prompt report and even the District Magistrate and the SSP have recommended that the prosecution should be allowed to proceed and not be allowed to be withdrawn as it could result in erosion of the faith of the public in the administration of justice. There was evidence that the conference of the BJP was held in the Ashram which was a party in power at that stage. Therefore, the suggestion is not unwarranted that undue extraneous influence has been brought to bear for recommending the withdrawal by the state government. I also find that the three applications for withdrawal of prosecution u/s 321 Cr.P.C. have been rejected and two criminal revisions have also been dismissed and this is another unwarranted attempt to get the prosecution in a case u/s 302 IPC withdrawn against the accused.

Learned Counsel for the applicant-revisionist has also raised the certain legal submissions.

18. Firstly it has been contended that it is not open for the Judicial Magistrate to consider the sufficiency or otherwise of the evidence. He has relied on the case of *The State of Bihar Vs. Ram Naresh Pandey*, , for the proposition that although judicial discretion is required for the Court to grant consent for withdrawal of the prosecution, it cannot be said that the discretion is to be exercised only with reference to the material gathered by the judicial method. Otherwise, it would result in narrowing the breadth of the language Section 494 Cr.P.C. (now Section 321 Cr.P.C).

19. However, in the same decision, it has been clarified that the exercise of judicial discretion for grant of consent would require that the Court is satisfied that the executive function of the public prosecutor has been properly exercised and that it is not an attempt to interfere with the normal course of justice for illegitimate purposes and that the public prosecutor although he is an executive officer, is also an officer of the Court who is to assist the Court by a fair considered view. In my view, the CJM and the Session Judge while rejecting the three applications u/s 321 Cr.P.C. and the revisional Courts, which have dismissed the two criminal revisions, have passed legal orders dismissing the applications and criminal revisions, as it would indeed be an improper exercise of jurisdiction if the normal course of justice in a broad day light murder case at a public place where there were eye witnesses, could be scuttled on account of political pressures or because of extraneous considerations, particularly where the District Magistrate and the SSP who are the local officers have also opposed the withdrawal of the prosecution in the circumstances of the case, on the ground that it would give a very wrong message that there could be different standards of justice for politically well connected accused persons and others. In *Ram Naresh's* appeal the view taken by the Chief Justice, whose order was under appeal was dissented from, and it was held that it was not imperative to record the evidence before a Court could allow the application for withdrawal of prosecution on the ground of inadequacy of evidence. However even in *Ram Naresh's* case the Judges felt that the evidence which has already been recorded could be considered for deciding the question of propriety of withdrawal of the prosecution and observed:

...We are not to be understood, however, as implying that such evidence as may already have been recorded by the time the application is made is not to be looked into and considered in such cases, in order to determine the impropriety of the withdrawal as amounting to abuse or an improper interference with the normal course of justice.

20. Reliance was also placed by the learned Counsel for the applicant/revisionist on the decision in *Rajender Kumar Jain and Others Vs. State Through Special Police Establishment and Others*, for the proposition that for restoring an atmosphere of goodwill and calm if an elected government decides not to prosecute offenders or not to proceed with prosecution already launched, then the best authority to take the decision would be the government concerned.

Paragraphs 14 and 15 of the said decision, which have been extracted in the written arguments, are being quoted hereinbelow:

14. We have referred to the precedents of this Court where it has been said that paucity of evidence is not the only ground on which the Public Prosecutor may withdraw from the prosecution. In the past, we have often known how expedient and necessary it is in the public interest for the Public Prosecutor to withdraw from prosecutions arising out of mass agitations, communal riots, regional disputes, industrial conflicts, student unrest etc. Wherever issues involve the emotions and there is a surcharge of violence in the atmosphere it has often been found necessary to withdraw from prosecutions in order to restore peace, to free the atmosphere from the surcharge of violence to bring about a peaceful settlement of issues and to preserve the calm which may follow the storm. To persist with prosecutions where emotive issues are involved in the name of vindicating the law may even be utterly counter-productive. An elected Government, sensitive and responsive to the feelings and emotions of the people, will be amply justified if for the purpose of creating an atmosphere of goodwill or for the purpose of not disturbing a clam which has descended it decides not to prosecute the offenders involved or not proceed further with prosecutions already launched. In such matters who but the Government can and should decide, in the first instance, whether it should be baneful or beneficial to launch or continue prosecutions. If the Government decides that it would be in the public interest to withdraw from prosecutions, how is the Government to go about this task?

15. Under the Code of Criminal Procedure it is the Public Prosecutor that has to withdraw from the prosecution and it is the Court that has to give its consent to such withdrawal. Rightly too, because the independence of the judiciary so requires it, as we have already mentioned. Now, the Public Prosecutor is an Officer of the Court. He sets the criminal law in motion in the Court. He conducts the prosecution in the Court for the people. So it is he that is entrusted with the task of initiating the proceeding for withdrawal from the prosecution. But, where such large and sensitive issues of public policy are involved, he must, if he is right minded, seek advice and guidance from the policy-makers. His sources of information and resources are of a very limited nature unlike those of the policy-makers. If the policy-makers themselves move in the matter in the first instance, as indeed it is proper that they should where matters of momentous public policy are involved, and if they advise the Public Prosecutor to withdraw from the prosecution, it is not for the Court to say that the initiative came from the Government and therefore the Public Prosecutor cannot be said to have exercised a free mind. Nor can there be any quibbling over words. If ill-informed but well meaning bureaucrats choose to use expressions like "the Public Prosecutor is directed" or "the Public Prosecutor is instructed", the Court will not on that ground alone stultify the larger issue of public policy by refusing its consent on the ground that the Public Prosecutor did not act as a free agent when he sought withdrawal from the prosecution. What is at stake is not the language of the

letter or the prestige of the Public Prosecutor but a wider question of policy. The Court, in such a situation is to make an effort to elicit the reasons for withdrawal and satisfy itself, that the Public Prosecutor too was satisfied that he should withdraw from the prosecution for good and relevant reasons.

21. Also simply using the words that the public prosecutor is instructed or directed, does not imply that public prosecutor has not exercised his independent mind if he agrees with the suggestion for moving the application for withdrawal of prosecution. However, in this case itself it has been clarified that the Court must in such a situation elicit the reason for withdrawal and satisfy itself that the public prosecutor was satisfied that he should seek withdrawal of prosecution for good and relevant reasons and that the public prosecutor has not "become anyone's stooge", because it was emphasised that the responsibility for the administration of criminal justice lay with the Court in which the public prosecutor, who is a "minister of justice", has a role to play. Further, both have a duty to protect the administration of criminal justice against possible abuse or misuse by the executive by resort to provisions of Section 321 Cr.P.C. Therefore, in our view, simply because it is contended that the accused who are involved in a murder case are saints and sadhus and belong to the majority community, their prosecutions should be permitted to be withdrawn for restoring peace and calm even though the District Magistrate and SSP concerned have opposed this withdrawal, cannot be accepted because if justice in grave case is not provided to the victims and to society, it can only lead to breakdown and erosion of confidence of the people in the portals of justice, which can have extremely negative consequences for society. On facts it appears that in the present case the application for withdrawal of prosecution appeared to be pressed for mala fide, irrelevant or extraneous considerations. It can also not be said that in this case the recommendation of the State Government for withdrawal of the prosecution was not for political purposes, sans Tamanny Hall Enterprises.

22. Again, reliance was placed by the learned Counsel for the applicants on the celebrated case of Sheonandan Paswan Vs. State of Bihar and Others, of the case of Rajender Kumar Jain (supra) have been extracted in the case of Sheo Nandan Paswan also, which was a case where three Judges approved of the withdrawal of prosecution of Sheo Nandan Paswan whereas two Judges opposed it. However, in the majority view it was pointed out in Sheo Nandan Paswan's case that the public prosecutor stands in a peculiar position as he has a two-fold objectives of ensuring that the guilty does not. escape and the innocent is not made to suffer and the Judgment of the public prosecutor ought not be lightly interfered with by the Court concerned. The majority of Judges in Sheo Nandan Paswan's case cited four grounds for seeking withdrawal of the prosecution viz. (a) lack of prospect of successful prosecution in the light of evidence, (b) implication of persons as a result of political and personal vendetta, (c) inexpediency of the prosecution for reasons of State and public policy and (d) adverse effects that the continuance of the prosecution will bring to the public interest in the light of the changed situation that has come to exist and it appeared to the majority of

the Judges that the public prosecutor had rightly come to the conclusion that the circumstances prevailing at the time of institution of the case and the investigation thereon, the case was instituted on the ground of political vendetta and only to defame the fair image of Jagannath Misra. This opinion of the public prosecutor did not appear to have been motivated by any improper considerations and under the normal circumstances it should be accepted that the public prosecution has acted with fairness. The Magistrate perused the relevant records before accepting the opinion of public prosecutor allowing the withdrawal of the prosecution and the High Court also dismissed the criminal revision against the Magistrate.

23. The position in the present case is quite the reverse and it cannot be said +hat the application had been made in good faith or that it was in the interest of public policy and not intended to thwart or stifle the process of law and the administration of justice. It has further been clarified even in the majority opinion that the judicial function implicit in the exercise of judicial discretion for granting consent, would require the Court to satisfy itself that the executive function of the public prosecutor has not been improperly exercised and that attempt has not been made to interfere with the normal course of justice for illegitimate reasons or purposes. Although the Court has a function to give its consent but there is no obligation on the Court to record reasons before granting consent. However the consent cannot be obtained as a matter of course.

24. Learned Counsel for the applicants also placed reliance on the decision in *M.N. Sankarayarayanan Nair Vs. P.V. Balakrishnan and Others*, However, in this case it was observed that the Court while considering the public prosecutor's request to grant permission for withdrawing from the prosecution should not grant the permission as a mere formality for the mere asking but the request should only be granted if the Court is satisfied on the materials placed before it that the grant of the said consent serves the interests of justice and that ostensibly the permission was not being sought for an ulterior purpose unconnected with the vindication of law which the executive remains duty bound to further and maintain even though the public prosecutor thought that the matter was of civil nature and that the alleged forgery of the valuable securities and cheating was a normal practice in the transport business but his opinion was not accepted and the case was directed to proceed. This case therefore offers no assistance to the accused-applicants.

25. The next Judgment relied on by the learned Counsel for the accused-applicants was that of *State of Orissa v. Chandrika Mohapatra and Ors.* (1976) 4 SCC 254. It was argued in this case that the judicial function of granting consent does not require that the Court must exercise its discretion only with reference to the material gathered by the judicial method as the public prosecutor could seek withdrawal from the case for reasons not confined to the judicial prospects of the prosecution or he could show that the administration of justice would not be advanced or furthered by going on with the prosecution. However even in this

case it was pointed out that it is the duty of the Court to see that the permission was not sought on extraneous grounds or that the offences which are offences against the State do not go unpunished merely because the government as a matter of general policy or expediency unconnected with its duty to prosecute offenders under the law, directs the public prosecutor to withdraw from the prosecution and the public prosecutor acts on its behest.

The next Judgment cited by the learned Counsel for the accused-applicants was *Subliash Chandra v. State (Chandigarh Administration and Ors.)* (1982) 2 SCC 155, which mentions that the executive may for plural concerns and diverse reasons desire that the criminal case be scotched. It could take into account the proper considerations of public peace, public justice, and promotion of long-lasting security in a locality, order in a disorderly situation, harmony in a factitious milieu, or vexatious prosecution in a Court. The agency to be satisfied is the public prosecutor and not the executive authority but the consent of the Court was held to be necessary and it was the duty of the Court to see that permitting withdrawal of prosecution would further the ends of justice and that the permission is not being sought on grounds extraneous to the interests of justice or that the offences against the State do not go unpunished on the altar of expediency and general policy of the government unconnected with its duty to prosecute offenders under the law. The Court has still to consider whether the considerations are germane and whether the actual decision was made by the public prosecutor who had not become a mere mouthpiece blindly complying with the directives of the executive.

27. In *S.K. Shukla and Others Vs. State of U.P. and Others*, it has been held that a Public prosecutor can not act as a post bag or mouthpiece for carrying out government instructions. Although he is required to be receptive to government instructions, but he has to apply his mind for recommending withdrawal of a case. The Court also has to see if a prima facie case is disclosed and the order of the State government and the consequential application of the public prosecutor for withdrawal of the case under POTA were set aside. In this context the following lines in paragraph 33 of the aforesaid law report are pertinent:

33. This petition is filed against the order passed by the State Government dated 29.8.2003 whereby public prosecutor was directed to withdraw the POTA cases against the accused persons. An application was moved by public prosecutor for withdrawal of these cases before Special Judge, though no order was passed permitting withdrawal of these cases. However, in view of our finding in SLP (Crl) 5609 of 2004, we cannot affirm the order of the State Government for withdrawal of these cases and consequential application made by the public prosecutor for withdrawal of these cases. The order passed by the Government dated 29.8.2003 as well as application moved by the special public prosecutor before the Special Judge, Kanpur Nagar cannot be sustained and accordingly the order passed by the State Government and the application moved by the special public prosecutor before the Special Judge at Kanpur, both are rejected. In this

connection our attention was invited to Sheonandan Paswan Vs. State of Bihar and Others, , Rajender Kumar Jain and Others Vs. State Through Special Police Establishment and Others, , R.M. Tewari Vs. State (NCT of Delhi) and Others, In these cases it has been laid down that the public prosecutor has to shoulder a greater responsibility for withdrawal of the cases u/s 321 Cr.P.C. In Sheonandan Paswan Vs. State of Bihar and Others, , it was held, that the settled law laid down by the Supreme Court has been that the withdrawal from the prosecution is an executive function of the Public Prosecutor and the ultimate decision to withdraw from the prosecution is his. Before an application is made u/s 321, the Public Prosecutor has to apply his mind to the facts of the case independently without being subject to any outside influence. The Government may suggest to the Public Prosecutor that a particular case may not be proceeded with, but nobody can compel him to do so. However, Section 321 of the Code does not lay any bar on the Public Prosecutor to receive any instruction from the Government before he files an application under that section. If the Public Prosecutor received such instructions, he cannot be said to act extraneous influence. On the contrary, the Public Prosecutor cannot file an application for withdrawal of a case on his own without instruction from the Government, since a Public Prosecutor cannot conduct a case absolutely on his own, or contrary to the instruction of his client, namely, the Government. Unlike the Judge, the Public Prosecutor is not an absolutely independent officer. He is appointed by the Government for conducting in court any prosecution or other proceedings on behalf of the Government concerned. So there is the relationship of counsel and client between the Public Prosecutor and the Government. If the Government gives instructions to a Public Prosecutor to withdraw from the prosecution of a case, the latter after applying his mind to the facts of the case may either agree with instructions and file a petition stating grounds of withdrawal or disagree therewith having found a good case for prosecution and refuse to do the withdrawal petition. In the latter event the Public Prosecutor will have to return the brief and perhaps to resign, for, it is the Government, not the Public Prosecutor, who is in the know of larger interest of the State. The Public Prosecutor cannot act like a post box or act on the dictate of the State Governments. He has to act objectively as he is also an officer of the Court. At the same time court is also not bound by that. The courts are also free to assess whether the prima facie case is made or not. The court, if satisfied, can also reject the prayer. However in the present case we have examined the matter and found that there is a prima facie case to proceed against the accused persons u/s 4(b) of the Act and other provisions of the Explosive or Arms Act, therefore, the sanction granted by the Government and application moved by public prosecutor for withdrawal of the cases cannot be sustained. Hence Writ Petition Nos. 132-134 of 2004 is accordingly allowed and the order of the State Government dated 29.8.2003 withdrawing the cases against the accused persons is quashed, likewise direction to the public prosecutor for withdrawing the cases from the Court.

(Emphasis added)

28. In *Rahul Agarwal Vs. Rakesh Jain and Another*, it was held that simply because seven years had passed for the witnesses to be examined the High Court was wrong in allowing withdrawal application even though the case was of a minor nature, and the reasons for recommending withdrawal of prosecution have to be examined on the touchstones of relevancy and correctness. Grant of consent is a judicial function but not only based on material gathered by the judicial method. Administration of justice is the prime consideration and the facts and circumstances of each case need to be examined from the objective of attainment of justice, though detailed reasons are not required for granting consent in each case. Furthermore punishing an offender is also a legitimate concern of the criminal justice system and for maintaining the confidence of people in the system of administration of justice. Paragraphs 4 to 11 of the law report which refer to a catena of decisions on the issue may be usefully extracted here:

4. Not many reasons are given in the impugned order as to why the court allowed the withdrawal of the prosecution u/s 321 Code of Criminal Procedure. It is only stated that looking at the facts and circumstances of the case, permission should have been granted for withdrawal as the petitioner therein had been harassed mentally and suffered continuously for seven years during the trial. The fact that the trial was not over and the case was posted for the examination of the accused was not noticed by the High Court. In the application filed by the Public Prosecutor, the only reason given for withdrawal of the prosecution was that the accused was not a habitual criminal and, therefore, the prosecution must be withdrawn.

5. The order passed by the High Court permitting the withdrawal of the prosecution is not legally sustainable. The reasons given in the impugned order are either irrelevant or incorrect. The learned Single Judge did not verify the facts and also did not make any inquiry as to why the case was pending for over seven years. It may be noticed that after the appellant filed the complaint, police took about three years to file a final report. Though the appellant had been cooperating with the completion of the prosecution, the case was being adjourned from time to time and ultimately when the prosecution evidence was about to be over at any point of time, the withdrawal of the prosecution at the instance of the Public Prosecutor had been rightly rejected by the Magistrate as well as the Sessions Court and the High Court should not have interfered with such an Order. The law regarding withdrawal of prosecution has been explained in detail in a series of decisions rendered by this Court.

6. In *The State of Bihar Vs. Ram Naresh Pandey*, , this Court held: 1957 Cri U 567, Para 3

...The function of the court, therefore, in granting its consent may well be taken to be a judicial function. It follows that in granting its consent may well be taken to be a judicial function. It follows that in granting the consent the court must exercise a judicial discretion. But it does not follow that the discretion is to be

exercised only with reference to material gathered by the judicial method.

7. In *State of Orissa Vs. Chandrika Mohapatra and Others*, P.N. Bhagwati, J., as he then was, speaking for the three-Judge Bench, observed:

State of Orissa Vs. Chandrika Mohapatra and Others,

The paramount consideration in all those cases must be the interest of administration of justice. No hard and fast rule can be laid down not can any categories of cases be defined in which consent should be granted or refused. It must ultimately depend on the facts and the circumstances of each case in the light of what is necessary in order to promote the ends of justice, because the objective of every judicial process must be the attainment of the justice.

8. In *Balwant Singh and Others Vs. State of Bihar*, it was observed:

1977 Cri 2

The statutory responsibility for deciding upon withdrawal squarely vests on the public prosecutor. It is non-negotiable and cannot be bartered away in favour of those who may be above him on the administrative side. The Criminal Procedure Code is the only master of the public prosecutor and he has to guide himself with reference to Criminal Procedure Code only. So guided, the consideration which must weigh with him is whether the broader cause of public justice will be advanced or retarded by the withdrawal or continuance of the prosecution.

9. Recently, in *Abdul Karim v. State of Karnataka*, (2000) 8 SCC 710 relying on the earlier decision of the Constitution Bench in *Sheonandan Paswan Vs. State of Bihar and Others*, , this Court made the following observations regarding withdrawal of case u/s 321 Code of Abdul Karim Vs. State of Karnataka and Others Etc. Etc.,

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 before him, 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 the 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 to withdraw from the prosecution of any accused. The discretion exercisable u/s 321 is fettered only by consent from the

court on a consideration of the material before it. What is necessary to satisfy is to see that the Public Prosecutor has acted in good faith and the exercise of discretion by him is proper.

10. 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 Government directs the Public Prosecutor to withdraw the prosecution and an application is filed to that effect, the court must consider all relevant circumstances and find out whether the withdrawal of prosecution would advance the cause of justice. If the case is likely to end in an acquittal and the continuance of the case is only causing severe harassment to the accused, the court may permit withdrawal of the prosecution. If the withdrawal of prosecution is likely to bury the dispute and bring about harmony between the parties and it would be in the best interest or justice, the court may allow the withdrawal of prosecution. The discretion u/s 321 Code of Criminal 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 prosecution which is being done at the instance of the aggrieved parties or the States 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. Therefore, the withdrawal of the prosecution shall be permitted only when valid reasons are made out for the same.

11. In this instant case, the reason given by the learned Single Judge in the impugned order is not correct, and when the case was about to be over the same should not have been allowed to be withdrawn by holding that the trial had been pending for over seven years.

(Emphasis added)

29. Therefore, after a thoughtful consideration of the facts and circumstances of the case and also the legal issues raised in the connected Criminal Revision and application u/s 482 Cr.P.C. in the light of the detailed discussion hereinabove we are not satisfied that any ground is made out for allowing the Criminal Revision or the Application u/s 482 Cr.P.C and the impugned orders are absolutely legal and valid. I therefore dismiss both the Criminal Revision and the application u/s 482 Cr.P.C.

30. As the incident relates to the year 1998 and the trial has remained stayed consequent to the interim order granted in this High Court since 21.5.03 we vacate the stay orders and direct that as far as possible the trial Court shall make every effort to conclude the trial within 6 months. The Registry is directed to communicate this order to the trial Court within a week.