
(2008) 05 AHC CK 0066
In the Allahabad High Court

Jai Prakash Yadav, Vinod Kumar Yadav, Smt. Amrita Devi and
Ram Naresh Yadav

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 05-05-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 321, 417, 435, 436
Penal Code, 1860 (IPC) — Section 304B, 498A

Citation : (2008) 05 AHC CK 0066

Hon'ble Judges : M.K. Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.K. Mittal, J.—This revision has been filed for quashing the order dated 14.3.2008 passed by Additional Sessions Judge, F.T.C. No. 2, in Sessions Trial No. 1 19/99 State of U.P. v. Jai Prakash Yadav and Ors. whereby he allowed the application No. 149 kha and rejected the applications No. 92 kha and 97 kha filed by the prosecutor. The applications 92 kha and 97 kha were filed for withdrawal of the case u/s 321 Cr.P.C. and the application 149 kha was filed with the request that these two applications be dismissed as not pressed.

2. The brief facts of the case are that a first information report was lodged by Dr. Brij Bhan Yadav against the present revisionists on 4th August 1997, alleging that in the night of 3/4 August 1997 his niece Smt. Rekha Yadav who was married with accused Vinod Kumar Yadav was killed by the accused persons as dowry demand could not be fulfilled. In the matter after investigation charge sheet has been submitted under Sections 304B, 498A IPC and 3/4 D.P. Act and charges have also been framed against the accused persons.

3. An application 92 Kha was filed on 08.11.2005 by Sri Atul Kumar Sharma, Additional District Government Counsel (Criminal), for withdrawal of the case. An objection was filed by the complainant to the effect that no grounds for withdrawal were disclosed and the application was liable to be dismissed.

Thereafter another application 97 kha was filed by Sri Atul Kumar Sharma, on 6th December 2005 and in that application reasons were given for withdrawal. Objection was filed by the complainant on 16.01.2006. Thereafter the application 149 kha was filed on 6.9.2007 praying that the earlier two applications be dismissed as not pressed. This application 149 kha was filed by Sri Dinesh Nath Pandey, Additional District Government Counsel (Criminal). The learned Judge allowed the application 149 kha and dismissed the two earlier applications on merit by the impugned order. Feeling aggrieved, this revision has been filed.

4. According to the revisionists the applications for withdrawal were filed on the basis of the order of the State Government to withdraw the prosecution against the revisionists. But the application 149 kha was filed as there was change in the government. The application u/s 321 Cr.P.C. was filed by the Public Prosecutor after application of his mind and he had also given reasons and there was no occasion to file a subsequent application 149 kha which was not legal. The earlier applications were filed by Sri Atul Kumar Sharma and Sri Dinesh Nath Pandey was not posted in the Court of Additional Sessions Judge (FTC Court No. 1) where the application 149 Kha was filed and he was not competent to move the application. The objection against the withdrawal made by the complainant was not permissible under the law. The prosecution can be withdrawn not only on the basis of the public interest but also on the basis of the deficiency of evidence. In the instant case the evidence is not sufficient to bring home the guilt of the accused, particularly u/s 304-B IPC which is the main offence of the case. There was no external injury on any part of the body of the deceased and at the time of examination of viscera, no poison was found. It is for the prosecution, in a dowry death case, to show that the death of the woman was caused in some unnatural circumstances and that she was harassed soon before her death. According to the revisionists the application 149 kha filed not to press the earlier withdrawal applications, was liable to be rejected and the earlier applications were liable to be allowed, but the learned trial Court has erred in passing the impugned order which is liable to be set aside.

5. Although the revisionists have not impleaded the complainant but the complainant appeared and has filed counter affidavit in the case. He has been allowed to contest. In the counter affidavit it has been alleged that the accused persons committed brutal murder of Smt. Rekha Yadav within one and half years of the marriage due to non-fulfillment of demand of dowry. The Investigating Agency was in collusion with the accused persons and even the doctors who conducted the post mortem examination were not fair as in the viscera report there is note to the effect that the entire stomach, the piece of intestine, piece of liver, pancreas, one kidney and spleen should have been sent as a whole but only small pieces of the tissues were sent which was objectionable. On this basis the complainant has contended that the accused had from the very beginning tried to tilt the case. Although, the State Government had directed the District Magistrate to withdraw the prosecution case but there was no ground for it and the learned Additional District Government Counsel (Criminal), moved the

application on 8.11.2005 (92 kha) to withdraw the prosecution without any ground. Learned Additional District Government Counsel (Criminal), moved another application 97 kha to withdraw the prosecution case. The perusal of this second application shows that it was moved in collusion with the accused persons without examining the facts. There was nothing in the public interest for withdrawal of the prosecution case. Sri Atul Kumar Sharma who had earlier moved the applications for withdrawal of the case, died on 31.8.2007. These applications were pending since long and the Sessions Judge transferred the sessions trial on 21.8.2007 to the Court of Additional Sessions Judge F.T.C.I. and on 6.9.2007, learned Additional District Government Counsel (Criminal) who was working in that Court was absent and therefore, Sri Dinesh Nath Pandey was looking after the Court work of the Court of Additional Sessions Judge F.T.C. No. 1, Gyanpur Bhadohi and he made endorsement on the earlier applications for withdrawal of the case, not to press them and also moved an application to that effect. Thereafter the case was again transferred to the Court of Additional Sessions Judge, F.T.C. No. 2 and the learned Judge after considering the applications has passed impugned order which does not suffer from any illegality and needs no interference. In the government order for withdrawing the prosecution no ground was mentioned. According to the complainant the revisionist No. 1 was then District President of Samajwadi Party and the revisionist No. 2 was the district President of Yuvjan Sabha Samajwadi Party and were having good relations with the former ruling party. The charges were framed in the case on 6.2.2005 but the accused have through out been delaying the hearing of the trial.

6. Learned Counsel for the revisionists has contended that the earlier applications for withdrawal of the case were given by Sri Atul Kumar Sharma but the application, not pressing those applications, was given by another Additional District Government Counsel (Criminal) namely Sri Dinesh Nath Pandey and he was not competent to give the application and the application filed by him should have been rejected. He has also referred to Section 321 of the Code of Criminal Procedure which provides that the application for withdrawal can be filed by Public Prosecutor or Assistant Public Prosecutor "incharge of the case". The learned Counsel for the revisionists has contended that in the old Cr.P.C. of the year 1898 the words "incharge of the case" were not there and they have been introduced in the present Criminal Procedure Code. But the learned Counsel for the complainant and the learned AGA have submitted that the earlier two applications were filed by Sri Atul Kumar Sharma but he died on 31.8.2007 and when the application was filed by Sri Dinesh Nath Pandey in the Court of the Additional Sessions Judge (F.T.C.) No. 1 on 6.9.2007, he was looking after the work of that Court and was incharge of work on behalf of Public Prosecutor and therefore, he was competent to file the application 149 kha as he was incharge of the case on that date. Subsequently this case was transferred to the Court of Additional Sessions Judge F.T.C. No. 2 and that Court has decided the application. The learned Judge in the impugned order has discussed this aspect of the case

and has recorded a finding that Sri Dinesh Nath Pandey was incharge of the case when he filed the application. This finding has been correctly recorded by the learned Judge and the contention of the learned Counsel for the revisionists that Sri Dinesh Nath Pandey was not competent to file the application is not tenable and can not be accepted.

7. Learned Counsel for the revisionists has contended that the application to withdraw the case was filed by Sri Atul Kumar Sharma on the basis of the letter issued by the State Government. The copy of this letter has been filed as Annexure-4 to the affidavit filed by the revisionists. This paper shows that this letter is dated 22.9.2005 and through this letter the District Magistrate, Bhadohi, was informed by the State Government that it had decided to withdraw the case and the Governor had also permitted the prosecutor to present the application in the Court for withdrawal of the case. Learned Counsel for the complainant has submitted that in this letter no reasons have been given for withdrawal of the case. Learned Counsel for the revisionists has further submitted that since the earlier applications were given consequent to this letter, there was no direction from the State Government to the Public Prosecutor to move any application for not pressing the earlier applications and that there was no direction, recalling the permission for withdrawal of the case and therefore, learned Additional District Government Counsel (Criminal) should not have moved any application like 149 kha. According to the learned Counsel for the revisionists it is purely the wisdom of the Public Prosecutor and once the wisdom has been expressed the incoming public prosecutor cannot withdraw it. But this contention of the learned Counsel for the revisionists cannot be accepted. The applications for withdrawal were filed by the learned Additional District Government Counsel (Criminal) and as per Section 321 Cr.P.C. it is the discretion of the Public Prosecutor to move the application for the purpose. This section provides that the Public Prosecutor or Assistant Public Prosecutor incharge of the 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. Therefore, it is discretion of the Public Prosecutor to move the application. He can move the application even without the permission or the direction of the State. And if a person holding one office moves an application, his successor has implied discretion to recall the same, if he considers it necessary to do so. However, it should be bona fide and not impelled by any extraneous consideration. Therefore, if learned Additional District Government Counsel (Criminal), incharge of the case, moved an application with the prayer not to press earlier applications, it cannot be said that he was not competent to move the same as there was nothing illegal in it. In the grounds of revision no allegation has been made which could create doubt in the bonafide of the public prosecutor or that he was under any extraneous influence. The only allegation that there was change of government, is not sufficient to doubt his credibility.

8. Now it has to be seen as to on what ground can the State/Public Prosecutor

withdraw the case and is the Court bound to give consent. In Section 321 Cr.P.C. the grounds have not been specified. On this subject the law has developed on the basis of the different pronouncements of the Hon'ble Apex Court during the course of time. The earliest important case cited by the learned Counsel for the revisionists is the case of the State of Bihar v. Ram Naresh Pandey and Anr. 1957 CLT 567. In that case the full bench of the Hon'ble Apex Court considered the scope of Section 494. (as it was in the old Criminal Procedure Code and parallel new section being 321 Cr.P.C.) It has been held that "Section 494 Cr.P.C. is an enabling one and vests in the Public Prosecutor the discretion to apply to the Court for its consent to withdraw from the prosecution of any person. The consent, if granted, has to be followed up by his discharge or acquittal as the case may be. The section gives no indication as to the grounds on which the Public Prosecutor may make the application, or the considerations on which the Court is to grant its consent. There can be no doubt, however, that the resultant order, on the granting of the consent, being an order of discharge or "acquittal" would attract the applicability of correction by the High Court under Sections 435, 436 and 439 or Section 417, Criminal P.C. The function of the Court, therefore, 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. Otherwise the apparently wide language of Section 494, Criminal Procedure Code would become considerably narrowed down in its application. In understanding and applying the section, two main features thereof have to be kept in mind. The initiative is that of the Public Prosecutor and what the Court has to do is only to give its consent and not to determine any matter judicially. The section gives a general executive discretion to the Public Prosecutor to withdraw from the prosecution subject to the consent of the Court, which may be determined on many possible grounds. The judicial functions, therefore, implicit in the exercise of the judicial discretion for granting the consent would normally mean that the Court has to satisfy itself that the executive function of the Public Prosecutor has not been improperly exercised, or that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes. In this context it is right to remember that the public prosecutor though an executive officer is, in a larger sense, also an officer of the Court and that he is bound to assist the Court with his fairly considered view and the Court is entitled to have the benefit of the fair exercise of his function."

9. In the case of Balwant Singh and Others Vs. State of Bihar , the full bench of the Hon'ble Apex Court while considering the scope of Section 321 Cr.P.C. held that "the sole consideration for the Public Prosecutor when he decides to withdraw from a prosecution is the larger factor of the administration of justice not political favours nor party pressures nor like concerns. Of course, the interests of public justice being the paramount consideration they may transcend and overflow the legal justice of the particular litigation. For instance communal

feuds which may have been amicably settled should not reerupt on account of one or two prosecutions pending. Labour disputes which might have given rise to criminal cases, when settled, might probably be another instance where the interests of public justice in the broader connotation may perhaps warrant withdrawal from the prosecution. Other instances also may be given where public justice may be served by withdrawal even apart from the merits of the case. 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."

(Emphasis supplied)

10. In the case of *Rajender Kumar Jain and Others Vs. State Through Special Police Establishment and Others*, the following guidelines have been laid down in para 14 and 15.-

14. Thus, from the precedents of this Court, we gather:

1. Under the scheme of the Code prosecution of an offender for a serious offence is primarily the responsibility of the executive.
2. The withdrawal from the prosecution is an executive function of the Public Prosecutor.
3. The discretion to withdraw from the prosecution is that of the Public Prosecutor and none else, and so, he cannot surrender that discretion to someone else.
4. The government may suggest to the Public Prosecutor that he may withdraw from the prosecution but none can compel him to do so.
5. The Public Persecutor may withdraw from the prosecution not merely on the ground of paucity of evidence but on other relevant grounds as well in order to further the broad ends of public justice, public order and peace. The broad ends of public justice will certainly include appropriate social, economic and, we add, political purposes sans Tammary Hall enterprises.
6. The Public Prosecutor is an officer of the court and responsible to the Court.
7. The court performs a supervisory function in granting its consent to the withdrawal.
8. The Court's duty is not to reappreciate the grounds which led the Public Prosecutor to request withdrawal from the prosecution but to consider whether the Public Prosecutor applied his mind as a free agent, uninfluenced by irrelevant and extraneous considerations. The court has a special duty in this regard as it is

the ultimate repository of legislative confidence in granting or withholding its consent to withdrawal from the prosecution.

15. We may add it shall be the duty of the Public Prosecutor to inform the Court and it shall be the duty of the Court to apprise 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 resort to the provisions of Section 321 Criminal Procedure Code. 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.

11. In this case in para 27 of the judgment, it has also been held by the Hon''ble Apex Court:

While it would be obnoxious and objectionable for a Public Prosecutor to allow himself to be ordered about, he should appraise himself from the government and thereafter appraise the court the host of factors relevant to the question of withdrawal from the cases. But under no circumstances should he allow himself to become anyone's stooge.

12. In the case of Sheonandan Paswan Vs. State of Bihar and Others, cited by the learned Counsel for the revisionists a constitutional bench of the Hon''ble Apex Court considered the scope of Section 321 Cr.P.C. in detail and held in para 73 that "Section 321 Cr.P.C. gives the Public Prosecutor power of withdrawal of any case at any stage before Judgment is pronounced. This pre-supposes the fact that the entire evidence may have been adduced in the case, before the application is made. When an application u/s 321 Cr.P.C. is made, it is not necessary for the Court to assess the evidence to discover whether the case would end in conviction or acquittal. To contend that the Court when it exercises its limited power of giving consent u/s 321 has to assess the evidence and find out whether the case would end in acquittal or conviction would be to re-write Section 321 Cr.P.C. and would be to concede to the Court a power which the scheme of Section 321 does not contemplate. All that 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 these facts of the case, will have to see whether the application suffers from such improprieties or illegalities as to cause manifest injustice if consent is given.

(Emphasis supplied)

13. It has been further held in para 79:

That the Court's function is to give consent. This Section does not obligate the court to record reasons before consent is given. However, I should not be taken to hold 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.

14. Learned Counsel for the complainant has also cited the case of Abdul Karim and Ors. v. State of Karnataka 2001, SCC Cri 59 where the full bench of the Apex Court placing reliance on the case of Sheo Nandan Paswan (supra) held in paras 19 and 20 as under:

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

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

15. Learned Counsel for the complainant has further cited the case of S.K. Shukla and Ors. v. State of U.P. and Ors. 2006(1) S.C. C Cri 366. In this case also the cases of Sheo Nandan Paswan (supra) and Rajendra Jain (supra) have been followed and it has been held that Public Prosecutor can not act like a post box or act on the dictates of the State Government. He has to act objectively as befits an officer of the Court. Further more, Court is not bound by opinion of Public Prosecutor and is free to assess whether a prima facie case is made out or not. In that case prima facie case was made out against the accused and an application of Public Prosecutor and order of State Government for withdrawal of

cases were quashed.

16. Learned Counsel for the complainant has also cited the case of *Rahul Agrawal v. Rakesh Jain and Anr.* 2005 SCC (Cri) 506, where it has been held by the Hon"ble Apex Court in paragraph No. 11 as under

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 of 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 State for redressing their grievance. Every crime is an offence against the society and if the accused committed an offence, society demands that he should be punished. Punishing the person who perpetrated the crime is an essential requirement for the maintenance of law and order and peace in the society. Therefore, the withdrawal of the prosecution shall be permitted only when valid reasons are made out for the same.

17. Therefore, from the above case laws, the legal position that emerges is that the application for withdrawal of the case u/s 321 Cr.P.C. can be filed by the public prosecutor and the paramount consideration for the public prosecutor to withdraw from the prosecution must be the larger interest of justice and society and not political favour or pressures. The public prosecutor may also withdraw the case on the ground of paucity of evidence. While doing so, the public prosecutor should apprise himself from Government and thereafter apprise the court, the host of factors relevant to the question of the withdrawal the case. The public prosecutor is also required to aver in the application that he is satisfied in good faith after consideration of all relevant materials that his withdrawal from prosecution is in public interest and it will not stifle or thwart the process of law or cause injustice. The function of the court in granting its consent is a judicial function and the court must exercise its judicial discretion. It normally means that the court has to satisfy itself that the executive function of the public prosecutor has not been improperly exercised and that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes while granting consent to withdraw the case. The court has to be satisfied whether the public prosecutor has applied his mind as a free agent, uninfluenced by relevant and extraneous consideration. When an application u/s 321 Cr.P.C. is made it is not necessary for the court to assess the evidence whether the case

would result in conviction or acquittal. All 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 stifle or thwart the process of law and that it will not cause manifest injustice, if consent is given. The court has also to see the larger interest of society and that the withdrawal of the case is not being sought at the instance of aggrieved party.

18. While applying these principles in the instant case, we have to see as to what public interest, being the paramount consideration, was to be served by the withdrawal of the case. The first application that was filed by the learned prosecutor for withdrawal of the case was without any reasons. The State Government also did not give any reason while directing District Magistrate to withdraw the case. When the complainant filed objection against withdrawal application, the second application for withdrawal was filed but in the second application also there is no mention of the fact as to how the public interest, public order and peace was to be served by the withdrawal of the case although there is mention of the fact that the withdrawal was for public justice and public order and peace. Although the prosecutor claimed to have applied his independent mind while giving this second application for withdrawal but he did not mention the material on the basis of which he came to the conclusion that the withdrawal was for the ends of public justice, peace and harmony in society. Learned Counsel for the revisionists has contended that the ground as taken in this application was sufficient and the withdrawal was for the ends of justice. According to him the case is not likely to result in conviction and is likely to result in acquittal and therefore, the withdrawal would save the expenses of the State Exchequer as well as the precious time of the court that may be devoted in hearing of the case and the time so saved could be utilized for hearing other cases. But it cannot be a ground to withdraw the case in the interest of justice or in the public interest. Moreover, this ground has not been taken in the application filed for withdrawal and has been stated in the grounds of revision in paragraph No. 10. This case is of dowry death and a married woman died in mysterious circumstance in her in law's house within a period of 1 ? years of her marriage. The withdrawal of the case of dowry death can by no stretch of imagination be treated to be in public interest or in the interest of justice or society.

19. The learned Counsel for the revisionists has also submitted that the prosecution can also be withdrawn if the evidence is insufficient. In the circumstance of the case, learned Counsel for the revisionists has contended that cause of death could not be ascertained. It is correct that at the time of postmortem examination the medical officer could not ascertain the cause of death and viscera was preserved. The report of chemical examination shows that the complete viscera parts were not sent and some tissues of the parts were preserved and sent for chemical examination. The chemical analyst specifically mentioned that not sending of organs was objectionable. The learned Counsel for the complainant contended that the factum of death can be proved by the prosecution by other evidence also.

20. Learned Counsel for the revisionists further contended that the death was caused on account of Jara Bukhar and in that connection he also referred to the statement of medical officer recorded u/s 161 Cr.P.C. In the application 97 kha, learned prosecutor has also taken that ground. But it would have been too early to accept that defense plea without giving any opportunity to the prosecution to lead its evidence. The satisfaction of the learned prosecutor on this evidence that the deceased died as a result of fever cannot be said to have been exercised with independent mind and uninfluenced by extraneous consideration. Learned Counsel for the complainant has contended that the applications for withdrawal were given by the public prosecutor at the instance of the accused persons. He has also submitted that when the applications were filed the revisionist No. 1 (sic) 2 had good relations with the ruling party and they managed to obtain a letter from the Government for withdrawal of the case wherein no ground was mentioned and further managed the learned public prosecutor to file the withdrawal applications. The facts and circumstance as have come, prima facie show that the contention as raised by the learned Counsel for the complainant cannot be discarded altogether.

21. Learned judge by the impugned order allowed the application filed by the public prosecutor for not pressing the earlier applications and rejected earlier applications not only on the ground that they were not being pressed but also on merit. As said above, the court is not supposed to give consent as a matter of course but also has to see if the case is withdrawn will it be in the interest of public justice and society. The learned trial court has rightly concluded that the withdrawal of the case was not in the interest of public policy and public justice. He also held that there was sufficient evidence on the basis of which cause of death could be ascertained.

In the facts and circumstance, I come to the conclusion that learned trial judge has rightly allowed the application No. 149 kha and rightly rejected the applications 92 kha and 97 kha which were filed for withdrawal of the case u/s 321 Cr.P.C. There is no merit in this revision and it is liable to be dismissed and is hereby dismissed. The interim order dated 1.4.2008 stands vacated.