

(2017) 06 SHI CK 0062
In the High Court Of Himachal Pradesh
Case No : 68 of 2015

State of Himachal Pradesh

APPELLANT

Vs

Singhi Ram & others

RESPONDENT

Date of Decision : 28-06-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 397](#), [Section 173\(8\)](#), [Section 13\(2\)](#), [Section 320](#), [Section 209\(1\)](#), [Section 494](#), [Section 321](#), [Section 277](#), [Section 253\(1\)](#) - Calling for records to exercise powers of revision - Report of police officer on completion of Investigation - Special Judicial Magistrates - Compounding of offences - Commitment of case to Court of Session when offence is triable exclusively by it - Withdrawal from prosecution - Language of record of evidence - Conviction on plea of guilty in absence of accused in petty cases
[Indian Penal Code, 1860](#), [Section 120B](#), [Section 420](#), [Section 468](#), [Section 471](#) - Punishment of criminal conspiracy - Cheating and dishonestly inducing delivery of property - Forgery for purpose of cheating - Using as genuine a forged document

Citation : (2017) 06 SHI CK 0062

Hon'ble Judges : Chander Bhusan Barowalia

Bench : Single Bench

Advocate : R.M. Bisht, Pushpinder Jaswal, Rajat Chauhan, B.C. Negi, B.N. Sharma, Lovneesh Kanwar, Neeraj Gupta

Final Decision : Disposed

Judgement

1. The present criminal revision petition is maintained by the petitioner/State, laying challenge against order dated 21.11.2014, passed by the learned Special Judge, Kangra at Dharamshala, District Kangra, H.P., in Criminal M.A. No. 130 of 2014, whereby the application moved under Section 321 of the Code of Criminal Procedure, 1973 (hereinafter, for the sake of convenience, to be referred to as "Cr.P.C.") for withdrawal from prosecution, against the accused/respondents, in case FIR No. 2 of 2008, dated 11.03.2008, registered under Sections 420, 468,

471, 120-B IPC and Section 13(2) of P.C. Act, Police Station State Vigilance and Anti Corruption Bureau, Shimla, was dismissed.

2. Succinctly, the facts giving rise to the present petition are that the petitioner/ State lodged FIR No. 2 of 2008, dated 11.03.2008, under Sections 420, 468, 471, 120-B of IPC and Section 13(2) P.C. Act, in Police Station State Vigilance and Anti Corruption Bureau, Shimla, against the respondents/accused. As per the allegations, State Vigilance and Anti Corruption Bureau, Shimla received a source report qua tampering of mark sheet, which was issued in favour of respondent No. 2 (daughter of respondent No. 1). In the year 2005, respondent No. 2 managed to procure a mark sheet, bearing Sr. No. 0203303, from Himachal Pradesh Board of School Education, Dharamshala, whereby she was awarded 446 marks out of 500 marks. On the basis of said mark sheet, respondent No. 2 got admission in Lady Siri Ram College, New Delhi. It was also unearthed during the enquiry that in the year 2006 respondent No. 2 withdrew her documents from Lady Siri Ram College, New Delhi. In 2007, respondent No. 2 again appeared in 10+2 examination from National Open School and in the same year she got admission in Jesus and Marry College, New Delhi. Precisely, as per the prosecution, H.P. Board of School Education issued a forged mark sheet to respondent No. 2 only on the behest of respondent No. 1 (father of respondent No. 2), who was Ex Food & Civil Supplies Minister in Himachal Pradesh Government. The mark sheet was prepared by one Rakesh Bhardwaj, who was Personal Assistant to Chairman, Himachal Pradesh Board of School Education, Dharamshala, and respondent No. 4, who was Deputy Secretary, Education Board, at the instance of respondent No. 3, who was the then Chairman of the Education Board. It came to light during the enquiry that a blank mark sheet was given by the Secrecy Branch to the Personal Assistant of respondent No. 3 and he alongwith respondent No. 4 forged the mark sheet. It has further come in the enquiry that in the year 2006 respondent No. 3 constituted a committee for destroying 15 sample mark sheets. The documents/proceedings qua constitution of the said committee are back dated, i.e., 06.09.2005. The said committee, despite the directions of the Chairman, retained photocopies of 14 mark sheets, however, the photocopy of the mark sheet issued in favour of respondent No. 2 was not retained.

3. After conclusion of the investigation, FIR was registered against the respondents. Respondent No. 2, during the trial, maintained an application under Section 227 Cr.P.C. for discharging/dropping the proceedings against her, however, the learned Special Judge, dismissed the same.

4. The Public Prosecutor, on an application moved by respondent No. 2, again thoroughly examined the case. As per the petitioner, respondent No. 2 in the year 2007 again appeared in 10+2 examination, through National Open School and after clearing the same she got admission in Jesus & Marry College, Delhi, and she did not complete her studies on the basis of alleged forged mark sheet. Respondent No. 2 has now got Masters Degree in Arts without any prejudice to

anyone. The petitioner further contented that the forged mark sheet had not been recovered, which shakes the very basis of the case. As per the petitioner, no direct or circumstantial evidence, demonstrating the involvement of respondents No. 1, 3 and 4, was available. Thus, on the basis of the above grounds and on instructions received from the State Government, vide letter No. Home(Vig)A(5)-64/2008 (Minister) dated 13.05.2014, the petitioner/State maintained an application under Section 321 Cr.P.C. for withdrawing from prosecution against the respondents/accused, in the learned Trial Court. However, the learned Trial Court, vide its order dated 21.11.2014, dismissed the same, hence the present revision petition.

5. I have heard the learned Additional Advocate General for the petitioner/State and the learned Counsel for the respective respondents.

6. Learned Additional Advocate General has argued that the opinion given by the Public Prosecutor qua withdrawal from prosecution against the respondents was bona fide and independent, as the same is based upon the material available before him. He has further argued that the learned Trial Judge did not appreciate the contents of the application for withdrawal from prosecution in its right and true perspective, therefore, the impugned order is not only perverse, but also against the law. In case the prosecution is allowed to continue against the respondents, the same will not serve any fruitful purpose, as nothing is emanating from the investigation that someone has destroyed the alleged forged mark sheet. The prosecution investigation does not reveal anything against the respondents that they had a prior concert or meeting of minds in forging the alleged mark sheet. The alleged forged mark sheet has not seen the light of the day, thus there is no material on record to establish the offence of conspiracy. Keeping in view all the above facts in mind, the opinion, as given by the Public Prosecutor, was bona fide. The learned Additional Advocate General has further argued that the powers of the learned Trial Judge was only supervisory in nature and he had to see whether the action of the learned Public Prosecutor was bona fide or not, however, he, merely suspected the action of the Public Prosecutor, and exceeded his jurisdiction. The learned Trial Judge passed the impugned order only on the basis of suspicion on the action of the Public Prosecutor and no mala fides had been attributable against the Public Prosecutor. It has also been brought to the notice of this Court that one of the coaccused (Rakesh Bhardwaj) is no more in this world. Lastly, it has been argued that the order of the learned Trial Judge is perverse and against the law, thus the same may be set aside.

7. Mr. B.C. Negi, Senior Advocate, has argued that the learned Trial Court has failed to consider that there is no case made out against respondents No. 1 and 2, as there is nothing on record to suggest that these respondents have committed any offence and the application made by the learned Public Prosecutor should have been allowed by the learned Trial Court. Mr. Lovneesh Kanwar, Advocate, appearing for respondent No. 3 has argued that respondent No. 3 is not at all involved in the prosecution case, as there is no iota of evidence

in the police file connecting him with the alleged offence. Lastly, Mr. Neeraj Gupta, Advocate, appearing for respondent No. 4 has argued that in the entire police challan there is nothing against respondent No. 4 and the Public Prosecutor had moved the application for withdrawal from prosecution bona fide, which should have been allowed.

8. In order to appreciate the respective contentions of the parties, I have gone through the record carefully.

9. At the very outset, I would like to extract Section 321 of the Code of Criminal Procedure, 1973, in extenso, which is as under:

"321. Withdrawal from prosecution.- The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and, upon such withdrawal,-

(a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;

(b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences: Provided that where such offence-

(i) was against any law relating to a matter to which the executive power of the Union extends, or

(ii) was investigated by the Delhi Special Police Establishment under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or

(iii) involved the misappropriation or destruction of, or damage to, any property belonging to the Central government, or

(iv) was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty, and the Prosecutor in charge of the case has not been appointed by the Central Government, he shall not, unless he has been permitted by the Central Government to do so, move the Court for its consent to withdraw from the prosecution and the Court shall, before according consent, direct the Prosecutor to produce before it the permission granted by the Central Government to withdraw from the prosecution."

10. Manifestly, the record, which is collected by the prosecution, is in the shape of documents and the statements of the witnesses. As far as the documents are concerned, the alleged forged mark sheet has not been recovered by the prosecution and the whole edifice of the prosecution case rests on this alleged forged mark sheet. Thus, the original alleged forged mark sheet has not seen the light of the day. Even, for want of original mark sheet, the expert has not given any specific opinion on the photocopy of the alleged forged mark sheet, as

mentioned in Column No. 6, the report of the expert. It is further case of the prosecution that the original mark sheet could not be traced, as the same was destroyed. This stand of the prosecution also seems hypothetical and suspicious, especially when Shri Sohan Singh, a witness, has made a statement before the police, which is on record, that a blank certificate with the same serial No., on which the duplicate is shown, has been destroyed alongwith other blank certificates, after following the proper procedure. The other material witness, whose statement has been recorded by the prosecution, is Shri Ashwani Kumar. He has appended a note while signing page 48 of the file of the learned Trial Court, about the constitution of the committee, but there is no note in the report. Smt. Chander Kanta, another prosecution witness, has stated that a blank certificate was issued and as per the record the same had been issued on 12.08.2005, but as per the prosecution, the filled in certificate was used in June, 2005. Thus, the statement of Smt. Chander Kanta, even if taken proved in toto, will be of no help to the prosecution.

11. Statement of Shri Pritam Chand, which is at page 133, is very material. He has also stated that a blank certificate was issued on 12.08.2005 to one Rajesh Bhardwaj. Rajesh Bhardwaj was made as accused by the prosecution and now he is no more in this world. As per the prosecution, the alleged forged and filled in certificate was used in June, 2005. The statement of Shri Sohan Singh, which is at page 136 of the challan file, demonstrates that proper procedure was followed for destroying the blank certificates. The prosecution has tried to bring on record that respondents No. 1 and 3 have met in the month of October, 2006, however, after going through the entire record, there is nothing to suggest that these accused met at any point of time.

12. Now, coming to the fact whether the offence of cheating or forgery could be proved on the basis of the material, which is placed before the learned Trial Court, the answer is that it is suspicious and doubtful. It emanates from the record that as per the prosecution story, even respondent No. 2 had not taken any benefit out of the said alleged forged mark sheet and she had cleared her 10+2 from National Open School. Thereafter, respondent No. 2 did B.A., M.A., M. Phil. and Ph.D. from Delhi University.

13. In case the proceedings are allowed to continue, the ultimate result which seems is acquittal of the respondents. In these circumstances, whether to continue with the proceedings against respondent No. 2, who has not fetched any benefit from the alleged forged mark sheet, and against the other respondents, against whom there is no evidence, or not is the question which needs to be examined on the touchstone of Section 321 Cr.P.C. After going through the entire available material on record, this Court finds that the Public Prosecutor, while making reference to the State Government for permission to allow him to move an application before the learned Trial Court for withdrawal from prosecution under Section 321 Cr.P.C., acted bona fide and this fact is also evident from the discussion made hereinabove. In a similar set of circumstances,

the Hon"ble Supreme Court in Mohd. Mumtaz vs. Nandini Satpathy and others (I), (1987) 1 Supreme Court Cases 269, has held as under vide paras 19 and 20:

"19. In this case the Special Public Prosecutor had set out in paras 5 and 6 of his application the relevant materials which had prevailed upon him to seek withdrawal of prosecution of the case, after obtaining the consent of the Court, to subserve the interests of justice better. There is no material in the case to show that the Special Public Prosecutor was influenced by any improper motives for filing the application for withdrawal of the prosecution or that he had acted against his will at the behest of anyone else.

20. The learned Additional Chief Judicial Magistrate has bestowed judicial consideration over the matter and has thereafter passed a reasoned order. While giving his consent for the withdrawal of the prosecution the learned Magistrate has borne in mind the Principles laid down by this Court in Rajender Kumar Jain v. State which has followed the earlier decision of this Court in State of Bihar v. Ram Naresh Pandey. Before passing the order, the learned Magistrate has been fully alive to the responsibility of the court before it grants consent to an application made under Section 321 CrPC. The portion extracted below from the order of the learned Additional Chief Judicial Magistrate fully reveals this position:

While mentioning the facts in the petition, I have already indicated the reasons for which the prosecutor does not want to prosecute. Now the Court has to consider whether consent should be given or not. The discretion as to whether consent should be given to withdraw is with the court but it should be exercised judiciously and on correct legal principles. It is not to be given as a matter of course nor the court shall surrender its own independence of judgment.

After making an objective assessment of the merits of the application, the learned Additional Chief Judicial Magistrate held that the withdrawal of the prosecution "would in no way affect any public interest or improve any public confidence" and concluded as follows:

Considering all these circumstances if the public prosecutor most judiciously thought it proper to withdraw from the case in my opinion, the court should be not a stumbling block by disallowing its consent. I feel it just and proper to allow the petition."

14. The Hon"ble Supreme Court in Ghanshyam vs. State of M.P. & others, (2006) 10 Supreme Court Cases 473, has held as under vide para 14:

"14. The discretion to withdraw from the prosecution is that of the Public Prosecutor and none else, and so, he cannot surrender that discretion to any one. The Public Prosecutor may withdraw from the prosecution not merely on the ground of paucity of evidence but on other relevant factors as well in order to further the broad ends of justice, public order, peace and tranquility. The High Court while deciding the revision petition clearly observed that the material already available on record was insufficient to warrant conviction. The flow of

facts and the possible result thereof as noticed by the Public Prosecutor and appreciated by the Courts below, constituted the public interest in the withdrawal of the said prosecution. The High Court clearly came to the conclusion that the application for withdrawal of the prosecution and grant of consent were not based on extraneous considerations."

15. The Hon'ble Supreme Court in *Sheonandan Paswan vs. State of Bihar & others*, (1987) 1 Supreme Court Cases 288, has held as under:

"69. Section 321 needs three requisites to make an order under it valid; (1) The application should be filed by a Public Prosecutor or Assistant Public Prosecutor who is competent to make an application for withdrawal, (2) He must be in charge of the case, (3) The application should get the consent of the court before which the case is pending.

70. I find that all the three requisites are satisfied here. The question is whether the functions by the Public Prosecutor and the court were properly performed. At no stage was a case put forward by anyone that the application made by the Public Prosecutor was either mala fide or that it was not in good faith. There is no allegation of bias against the Special Judge. The application filed by the Public Prosecutor discloses the fact that he had gone through the case diary and the relevant materials connected with the case and that he came to the conclusion that in the circumstances prevailing at the time of institution of the case and investigation thereof, the case was instituted on the ground of political vendetta and only to defame the fair image of Jagannath Mishra. This statement of the Public Prosecutor has not been challenged as borne out of any unwholesome motive. It has not been made out or suggested that the Public Prosecutor was motivated by improper considerations. The only contention raised is that the reasons are not sufficient or relevant.

71. The Public Prosecutor should normally be credited with fairness in exercise of his power under S. 321, when there is no attack against him of having acted in an improper manner. He had before him the State government's communication of the policy taken by it. He had before him the case diary statements and other materials. He perused them before filing the application. Thus his part under Section 321 in this case has been performed strictly in conformity with this section. The question that remains then is whether the grounds urged by him in support of withdrawal were sufficient in law. The application clearly shows that Shri Sinha applied his mind to the facts of the case. One would normally not expect a more detailed statement in an application for withdrawal than the one contained in the application in question, when one keeps in view the scope of S. 321 and the wide language it uses. The plea that there was lack of application of mind by the Public Prosecutor has only to be rejected in this case.

73. Section 321 gives the Public Prosecutor the power for withdrawal of any case at any stage before judgment is pronounced. This presupposes the fact that the entire evidence may have been adduced in the case, before the application is

made. When an application under Section 321 Criminal Procedure Code 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 under Section 321 has to assess the evidence and find out whether the case would end in acquittal or conviction, would be to rewrite Section 321 Criminal Procedure Code and would be to concede to the court a power which the scheme of Section 321 does not contemplate. The acquittal or discharge order under Section 321 are not the same as the normal final orders in criminal cases. The conclusion will not be backed by a detailed discussion of the evidence in the case of acquittal or absence of prima facie case or groundlessness in the case of discharge. 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 facets 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. In this case, on a reading of the application for withdrawal, the order of consent and the other attendant circumstances, I have no hesitation to hold that the application for withdrawal and the order giving consent were proper and strictly within the confines of Section 321 Criminal Procedure Code.

78. 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. 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 judicial function 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.

86. These two sub-sections use the expression "with the permission of the court" and "with the consent of the Court" which are more or less ejusdem generis. On a fair reading of the above-mentioned sub-sections it can be safely presumed that the sections confer only a supervisory power on the court in the matter of compounding of offences in the manner indicated therein, with this safeguard that the accused does not by unfair or deceitful means, secure a composition of the offence. Viewed thus I do not think that a plea can be successfully put forward that granting permission or giving consent under sub-section (4)(a) or (4)(b) for compounding of an offence, the court is enjoined to make a serious detailed evaluation of the evidence or assessment of the case to be satisfied that the case would result in acquittal or conviction. It is necessary to bear in mind that an application for compounding of an offence can be made at any stage. Since Section 321 finds a place in this chapter immediately after Section 320, one will be justified in saying that it should take its colour from the immediately preceding section and in holding that this section, which is a kindred to Section

320, contemplates consent by the court only in a supervisory manner and not essentially in an adjudicatory manner, the grant of consent not depending upon a detailed assessment of the weight or volume of evidence to see the degree of success at the end of the trial. All what is necessary for the court to see is to ensure that the application for withdrawal has been properly made, after independent consideration, by the Public Prosecutor and in furtherance of public interest.

87. I referred to these sections only by way of illustration to emphasize the distinction between Section 321 and other sections of the Code dealing with orders withdrawing criminal cases or discharging or stopping proceedings. My purpose in referring to the above sections is only to show that Section 321, in view of the wide language it uses, enables the Public Prosecutor to withdraw from the prosecution any accused, the discretion exercisable under which is fettered only by a consent from court on a consideration of the materials before it and that at any stage of the case. The section does not insist upon a reasoned order by the Magistrate while giving consent. All that is necessary to satisfy the section is to see that the Public Prosecutor acts in good faith and that the Magistrate is satisfied that the exercise of discretion by the Public Prosecutor is proper.

88. There is no appeal provided by the Act against an order giving consent under Section 321. But the order is revisable under Section 397 of the Criminal Procedure Code. Section 397 gives the High Court of the Sessions Judge jurisdiction to consider the correctness, legality or propriety of any finding, sentence or order and as to the regularity of the proceedings of any inferior court. While considering the legality, propriety or the correctness of a finding or a conclusion, normally, the revising court does not dwell at length upon the facts and evidence of the case. The court in revision considers the materials only to satisfy itself about the correctness, legality and propriety of the findings, sentence or order and refrains from substituting its own conclusion on an elaborate consideration of evidence.

91. Since Section 321 does not give any guidelines regarding the grounds on which a withdrawal application can be made, such guidelines have to be ascertained with reference to decided cases under this Section as well as its predecessor Section 494. I do not propose to consider all the authorities cited before me for the reason that this court had occasion to consider the question in all its aspects in some of its decisions. Suffice it to say that in the judgments rendered by various High courts, public policy, interests of the administration, inexpediency to proceed with the prosecution for reasons of State and paucity of evidence were considered good grounds for withdrawal in many cases and not good grounds for withdrawal in certain other cases depending upon the peculiar facts and circumstances of the cases in those decisions. *Giribala Dasi v. Mader Gazi*, *Emperor v. Milanmal Hardasmal*, *Harihar Sinha v. Emperor*, *King v. Moule Bux*, *A. N. Mathur v. State of Rajasthan* and *Bawa Faqir Singh v. Emperor* are

some of the cases which were brought to our notice.

92. Ram Naresh Pandey case is a landmark case which has laid down the law on the point with precision and certainty. In this decision the functions of the court and the Public Prosecutor have been correctly outlined. While discussing the role of the court, this court observed: His discretion in such matters has necessarily to be exercised with reference to such material as is by then available and it is not a prima facie judicial determination of any specific issue. The Magistrate's functions in these matters are not only supplementary, at a higher level, to those of the executive but are intended to prevent abuse. Section 494 requiring the consent of the court for withdrawal by the Public Prosecutor is more in line with this scheme, than with the provisions of the Code relating to inquiries and trials by court. It cannot be taken to place on the court the responsibility for a prima facie determination of a triable issue. For instance the discharge that results therefrom need not always conform to the standard of "no prima facie case" under Sections 209 (1) and 253 (1) or of "groundlessness" under Sections 209 (2) and 253 (2). This is not to say that a consent is to be lightly given on the application of the Public Prosecutor, without a careful and proper scrutiny of the grounds on which the application for consent is made. This decision was approved by this court in *M. N. Sankarayarayanan Nair v. P. V. Balakrishnan*, (1972) 1 SCC 318, as is seen at page 606: In the *State of Bihar v. Ram Naresh Pandey* it was pointed out by this court that though the Section does not give any indication as to the ground on which the Public Prosecutor may make an application on the consideration of which the court is to grant its consent, it must nonetheless 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.

95. In *State of Orissa v. Chandrika Mohapatra* the application for withdrawal was made on two grounds: (i) that it was considered inexpedient to proceed with the case; (ii) that the evidence collected during investigation was meagre and no useful purpose would be served by proceeding with the case against the accused. The Magistrate gave consent holding that compelling the State to go on with the prosecution would involve unnecessary expenditure and waste of public time. This court upheld the consent and held that meagre evidence was a legitimate ground for withdrawal. The following observation at page 338 of the reports is useful for our purpose on an important aspect. In that case, as in this case, the Magistrate had clearly stated in his order that he was giving consent after going through the materials placed before him. This is how the court summed up its finding: It is difficult for us to understand how the High court could possibly observe in its order that the Magistrate had not perused the case diary when in terms the learned Magistrate has stated in his order that he had read the case diary and it was after reading it that he was of the opinion that the averment of the prosecution that the evidence was not sufficient was not ill-founded. Then again it is difficult to comprehend how the High court could possibly say that the learned Magistrate accorded consent to the withdrawal of the prosecution on the

ground that it was inexpedient to proceed with the case, when, in so many terms, the learned Magistrate rejected that ground and granted consent only on the second ground based on inadequacy of evidence. When the Magistrate states in his order that he has considered the materials, it is not proper for this court not to accept that statement. The proper thing to do is to hold that the Magistrate gave consent on objective consideration of the relevant aspects of the case. It would be acting against the mandate of Section 321 to find fault with the Magistrate in such cases, unless the order discloses that the Magistrate has failed to consider 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."

16. The Hon"ble Supreme Court in Sheonandan Paswan vs. State of Bihar & others, (1983) 1 Supreme Court Cases 438, has held as under vide para 91:

"91. An order under S. 321 of the Code, in our opinion, does not have the same status as an order of conviction or acquittal recorded by a trial or appellate court in a criminal prosecution, inasmuch as the former has not been made appealable. An order under S. 321 of the Code has a narrower scope. As an order under S. 321 of the Code recorded by the trial court is judicial. what the trial court is expected to do is to give reasons for according or refusing its consent to the withdrawal. As stated above, the duty of the court is to see that the grounds of withdrawal are legally valid and the application made by the Public Prosecutor is bona fide and is not collusive. In revision of an order under S. 321 of the Code. the duty of the High court is to see that the consideration by the trial court of the application under S. 321 was not misdirected ; and that the grounds of withdrawal are legally valid. In this case. the trial court elaborately considered the grounds of withdrawal and found them to be valid and accordingly accorded its consent for withdrawal. In revision the High court affirmed the findings of the trial court."

17. The Hon"ble Supreme Court in State of Orissa vs. Chandrika Mohapatra and others, (1976) 4 Supreme Court Cases 250, has held as under vide paras 6 and 7:

"6. It will, therefore, be seen that it is not sufficient for the Public Prosecutor merely to say that it is not expedient to proceed with the prosecution. He has to make out some ground which would show that the prosecution is sought to be withdrawn because inter alia the prosecution may not be able to produce sufficient evidence to sustain the charge or that the prosecution does not appear to be well founded or that there are other circumstances which clearly show that the object of administration of justice would not be advanced or furthered by going on with the prosecution. The ultimate guiding consideration must always be the interest of administration of justice and that is the touchstone on which the question must be determined whether the prosecution should be allowed to be withdrawn.

7. Now in the present case it is clear that according to the prosecution, the

evidence collected during investigation was not sufficient to sustain the charge against the respondent and the learned Magistrate was satisfied in regard to the truth of this averment made by the Court Sub-Inspector. It is difficult for us to understand how the High Court could possibly observe in its order that the Magistrate had not perused the case diary when in terms the learned Magistrate has stated in his order that he had read the case diary and it was after reading it that he was of the opinion that the averment of the prosecution that the evidence was not sufficient was not ill-founded. Then again it is difficult to comprehend how the High Court could possibly say that the learned Magistrate accorded consent to the withdrawal of the prosecution on the ground that it was inexpedient to proceed with the case, when, in so many terms, the learned Magistrate rejected that ground and granted consent only on the second ground based on inadequacy of evidence. There is no doubt that the learned Magistrate was right in granting consent and the High Court committed a manifest error in setting aside the order of the learned Magistrate. We accordingly allow Criminal Appeal No. 308 of 1975, set aside the order of High Court and restore that of the learned Magistrate."

18. The Hon"ble Supreme Court in *State of Punjab, vs. Union of India and others*, (1986) 4 Supreme Court Cases 335, has held as under vide para 1:

"1. We are satisfied on hearing learned counsel for the parties that the judgment of the High Court cannot be sustained. It is the duty of the Court while granting permission to the Public Prosecutor to withdraw from the prosecution under S. 494 Criminal P.C. 1898, 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. The ultimate guiding consideration while granting a permission to withdraw from the prosecution must always be the interest of administration of justice and that is the touchstone on which the question must be determined whether the prosecution should be allowed to withdraw. The Public Prosecutor may withdraw from the prosecution of a case not merely on the ground of paucity of evidence but also in order to further the broad ends of public justice, and such broad ends of public justice may well include appropriate social, economic and political purposes."

19. The Hon"ble Supreme Court in *Pushpa Devi M. Jatia vs. M.L. Wadhavan, Additional Secretary, Government of India and others*, 1986 (Supp.) Supreme Court Cases 535, has held as under vide para 6:

"6. A Commission was set up after the emergency had ended and holding fresh elections, a different political party had come to power. Following the report of the Commission this prosecution had been launched. The petitioner's learned Counsel did not dispute the position that the finding of the Commission is not evidenced and no conviction can lie on the conclusion either. In these circumstances, chances of conviction are too far-fetched and bleak. We do not think it is in public interest that the prosecution should proceed. We may add

that in a report under S. 173(8) of the Code, the investigating agency has also indicated that adequate evidence has not been forthcoming to support the prosecution. It is thus not necessary to examine the legal aspect canvassed in the special leave petitions and argued during hearing. Both the petitions are dismissed."

20. The present case is squarely covered with the above cited cases, At the same point of time, the Hon''ble Supreme Court in Sheonandan Paswan vs. State of Bihar and others, (1987) 1 Supreme Court Cases 288, has taken a majority view, which has been reproduced hereinabove. Now, applying the law to the facts of the present case, it is clear that the application moved by the Public Prosecutor before the learned Trial Court was without any extraneous considerations and the same had been moved upon the material which has come on record. Therefore, the order of the learned Trial Court refusing to give consent for withdrawal from proceedings is without application of mind, wrong, not sustainable in the eyes of law and the same is against the well settled principles of law. Resultantly, the present petition is allowed and the order, dated 21.11.2014, passed by the learned Trial Court, on application moved under Section 321 Cr.P.C., quashed and set aside. Accordingly, the petitioner/State/Public Prosecutor is permitted to withdraw from prosecution against the respondents.

21. In view of the above, the petition, as also the pending application(s), if any, stand(s) disposed of.