

(2025) 12 RAJ CK 1712

In the Rajasthan High Court, Jaipur Bench

Case No : Criminal Miscellaneous (Petition) No.6829 Of 2025

State of Rajasthan

APPELLANT

Vs

Bhawani Singh Rajawat

RESPONDENT

Date of Decision : 04-12-2025

Acts Referred:

Constitution of India, 1950 — Article 136
Indian Penal Code, 1860 — Section 143, 188, 269, 270, 283
Rajasthan Epidemic Diseases Act, 2020 — Section 5
Code of Criminal Procedure, 1973 — Section 321

Citation : (2025) 12 RAJ CK 1712

Hon'ble Judges : Anoop Kumar Dhand, J

Bench : Single Bench

Advocate : Rajesh Choudhary, Aman Kumar Agarwal, Sandeep Pathak, Arnav Singh, Hemraj Rodiya

Final Decision : Disposed Of

Judgement

Anoop Kumar Dhand, J

1. All these misc. petitions are being decided by this common order since identical question of law and facts are involved in all these misc. petitions, seeking leave of this Court for withdrawal of the case pending before the Trial Court, pursuant to the guidelines framed by the Apex Court in the case of Ashwini Kumar Upadhyay vs. Union of India and Anr. reported in 2021 (20) SCC 599, as the same pertain to withdrawal of prosecution in the matters involving former/sitting MLA.

2. Learned Government Advocate-cum-Additional Advocate General submits that the petty nature of allegations have been levelled against the petitioners in the respective FIRs registered against them, as the respondents were raising peaceful protest for the benefit of the public at large. Counsel submits that considering all the facts and circumstances of the case, the High Powered Committee of the Government of Rajasthan has taken a decision to withdraw the

prosecution qua the respondents herein, vide orders dated 07.07.2025 and 02.07.2025 respectively. Counsel submits that now, the State is not willing to prosecute the respondents in FIR No.227/2011 registered with the Police Station Sultanpur, District Kota Rural for the offences under Sections 143 and 283 IPC, and in the FIR No.95/2021 and 340/2021 registered with the Police Station Ramganj Mandi, District Kota for the offences under Sections 188, 269, 270 IPC and Section 5 of the Rajasthan Epidemic Diseases Act, 2020. Learned counsel submits that public agitation was initiated by the respondents in the interest of the public at large, on several public issues relating to the demand of water and demand of justice from the administration for taking action against the accused persons. Counsel submits that the agitation was for public causes, wherein the respondents did not have any personal interest. Counsel submits that considering the overall circumstances, a decision was taken by the State Government to withdraw all the FIRs along with the charge-sheet submitted against the respondents before the competent Court of law. Counsel submits that Hon'ble Apex Court in the case of Ashwini Kumar Upadhyay (supra) has formulated certain guidelines with regard to withdrawal of prosecution under Section 321 Cr.P.C. and in para No.8 of the aforesaid judgment, the Hon'ble Apex Court has specifically held that in a criminal case registered against a sitting or former MP and MLA, there shall be no withdrawal of prosecution without seeking leave from the concerned jurisdictional High Court. Counsel submits that in compliance of the aforesaid order passed by the Apex Court in the case of Ashwini Kumar Upadhyay (supra), the instant misc. petitions have been submitted seeking leave of this Court for withdrawal of prosecution in favour of the accused respondents, who are sitting or former MLAs.

3. Learned counsels appearing on behalf of the respondents have no objection in case, the instant misc. petitions are allowed and leave, as prayed for, is granted. They jointly submit that the accused respondents are public representatives and they are under legal and social obligation to raise demands on behalf of the public before the State authorities in the democratic setup of this country. The accused-respondents were discharging their legal and social obligations and there was no intention on their part to commit any kind of offence having the effect of causing hindrance in maintaining Law and Order. They conjointly submit that in the interest of public at large, the decision has been rightfully taken by the State to withdraw the prosecution against the respondents.

4. Heard and considered the submissions made at the Bar and perused the material available on the record.

5. To decide the issue involved in these matters, it would be appropriate for this court to firstly refer and rely upon the provisions of Section 321 of the Code of Criminal Procedure and for the sake of ready reference, the said provisions are reproduced 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."

6. The power and discretion to withdraw the prosecution is required to be utilised with utmost care and good faith to serve the larger public interest. The Hon'ble Apex Court in the case of *State of Kerala v K. Ajith* reported in 2021 SCC Online SC 510 has held as under:-

"25. The principles which emerge from the decisions of this Court on the withdrawal of a prosecution under Section 321 of the CrPC can now be formulated:

(i) Section 321 entrusts the decision to withdraw from a prosecution to the public prosecutor but the consent of the court is required for a withdrawal of the prosecution;

(ii) The public prosecutor may withdraw from a prosecution not merely on the ground of paucity of evidence but also to further the broad ends of public justice;

(iii) The public prosecutor must formulate an independent opinion before seeking the consent of the court to withdraw from the prosecution;

(iv) While the mere fact that the initiative has come from the government will not vitiate an application for withdrawal, the court must make an effort to elicit the reasons for withdrawal so as to ensure that the public prosecutor was

satisfied that the withdrawal of the prosecution is necessary for good and relevant reasons;

(v) In deciding whether to grant its consent to a withdrawal, the court exercises a judicial function but it has been described to be supervisory in nature. Before deciding whether to grant its consent the court must be satisfied that:

(a) The function of the public prosecutor has not been improperly exercised or that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes;

(b) The application has been made in good faith, in the interest of public policy and justice, and not to thwart or stifle the process of law;

(c) The application does not suffer from such improprieties or illegalities as would cause manifest injustice if consent were to be given;

(d) The grant of consent sub-serves the administration of justice; and

(e) The permission has not been sought with an ulterior purpose unconnected with the vindication of the law which the public prosecutor is duty bound to maintain;

(vi) While determining whether the withdrawal of the prosecution sub-serves the administration of justice, the court would be justified in scrutinizing the nature and gravity of the offence and its impact upon public life especially where matters involving public funds and the discharge of a public trust are implicated; and

(vii) In a situation where both the trial judge and the revisional court have concurred in granting or refusing consent, this Court while exercising its jurisdiction under Article 136 of the Constitution would exercise caution before disturbing concurrent findings. The Court may in exercise of the well-settled principles attached to the exercise of this jurisdiction, interfere in a case where there has been a failure of the trial judge or of the High Court to apply the correct principles in deciding whether to grant or withhold consent."

7. The Apex Court, in *Ashwini Kumar Upadhyay* (supra), has further held in Para 8 as under:

"8. In view of the law laid down by this Court, we deem it appropriate to direct that no prosecution against a sitting or former MP/MLA shall be withdrawn without the leave of the High Court in the respective suo motu writ petitions registered in pursuance of our order dated 16-9-2020. The High Courts are requested to examine the withdrawals, whether pending or disposed of since 16-9-2020, in light of guidelines laid down by this Court."

8. This Court has gone through the details of the justifications and reasons assigned by the State, while passing the orders dated 02.07.2025 and 07.07.2025, wherein it has been mentioned that the agitation was initiated in the

interest of the public at large and the accused respondents were only raising demands for the benefit of the public at large, on the issues relating to water scarcity and demand of justice from the administration, for taking action against the guilty accused.

9. The Constitution Bench of the Hon'ble Supreme Court in *Sheonandan Paswan v. State of Bihar* reported in (1987) 1 SCC 288, on the scope of Section 321 of Cr.P.C. has observed as follows:

"77.....This section enables the Public Prosecutor, in charge of the case to withdraw from the prosecution of any person at any time before the judgment is pronounced, but this application for withdrawal has to get the consent of the court and if the court gives consent for such withdrawal the accused will be discharged if no charge has been framed or acquitted if charge has been framed or where no such charge is required to be framed. It clothes the Public Prosecutor to withdraw from the prosecution of any person, accused of an offence both when no evidence is taken or even if entire evidence has been taken. The outer limit for the exercise of this power is "at any time before the judgment is pronounced". 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.

79. 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. 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 materials available, the order giving consent has necessarily to be upheld."

10. In *R.M.Tewari v. State (NCT of Delhi)* reported in (1996) 2 SCC 610, the Hon'ble Supreme Court has held as follows:

"7. It is, therefore, clear that the Designated Court was right in taking the view that withdrawal from prosecution is not to be permitted mechanically by the court on an application for that purpose made by the public prosecutor. It is equally clear that the public prosecutor also has not to act mechanically in the

discharge of his statutory function under Section 321 CrPC on such a recommendation being made by the Review Committee; and that it is the duty of the public prosecutor to satisfy himself that it is a fit case for withdrawal from prosecution before he seeks the consent of the court for that purpose.

8. It appears that in these matters, the public prosecutor did not fully appreciate the requirements of Section 321 CrPC and made the applications for withdrawal from prosecution only on the basis of the recommendations of the Review Committee. It was necessary for the public prosecutor to satisfy himself in each case that the case is fit for withdrawal from prosecution in accordance with the settled principles indicated in the decisions of this Court and then to satisfy the

Designated Court of the existence of a ground which permits withdrawal from prosecution under Section 321 CrPC.”

11. In *Abdul Karim v. State of Karnataka* reported in (2000) 8 SCC 710, the Apex Court has held as follows:

“19. The law, therefore, is 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 under Section 321 must aver that the Public Prosecutor is, in good faith, satisfied, on 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.” [Emphasis supplied]

12. In *Bairam Muralidhar v. State of Andhra* reported in (2014) 10 SCC 380, the

Hon'ble Supreme Court has held as follows:

"18. The central question is whether the Public Prosecutor has really applied his mind to all the relevant materials on record and satisfied himself that the withdrawal from the prosecution would subserve the cause of public interest or not. Be it stated, it is the obligation of the Public Prosecutor to state what material he has considered. It has to be set out in brief. The court as has been held in Abdul Karim case [Abdul Karim v. State of Karnataka, (2000) 8 SCC 710 : 2001 SCC (Cri) 59 : AIR 2001 SC 116], is required to give an informed consent. It is obligatory on the part of the court to satisfy itself that from the material it can reasonably be held that the withdrawal of the prosecution would serve the public interest. It is not within the domain of the court to weigh the material. However, it is necessary on the part of the court to see whether the grant of consent would thwart or stifle the course of law or cause manifest injustice. A court while giving consent under Section 321 of the Code is required to exercise its judicial discretion, and judicial discretion, as settled in law, is not to be exercised in a mechanical manner. The court cannot give such consent on a mere asking. It is expected of the court to consider the material on record to see that the application had been filed in good faith and it is in the interest of public interest and justice. Another aspect the court is obliged to see is whether such withdrawal would advance the cause of justice. It requires exercise of careful and concerned discretion because certain crimes are against the State and the society as a collective demands justice to be done. That maintains the law and order situation in the society. The Public Prosecutor cannot act like the post office on behalf of the State Government. He is required to act in good faith, peruse the materials on record and form an independent opinion that the withdrawal of the case would really subserve the public interest at large. An order of the Government on the Public Prosecutor in this regard is not binding. He cannot remain oblivious to his lawful obligations under the Code. He is required to constantly remember his duty to the court as well as his duty to the collective.

19. In the case at hand, as the application filed by the Public Prosecutor would show that he had mechanically stated about the conditions precedent, it cannot be construed that he has really perused the materials and applied his independent mind solely because he has so stated. The application must indicate perusal of the materials by stating what are the materials he has perused, may be in brief, and whether such withdrawal of the prosecution would serve public interest and how he has formed his independent opinion. As we perceive, the learned Public Prosecutor has been totally guided by the order of the Government and really not applied his mind to the facts of the case. The learned trial Judge as well as the High Court has observed that it is a case under the Prevention of Corruption Act. They have taken note of the fact that the State Government had already granted sanction. It is also noticeable that the Anti Corruption Bureau has found there was no justification of withdrawal of the prosecution."

13. In *Abdul Wahab v. State of Kerala* reported in 2018 (4) KHC 705, the Hon'ble Supreme Court has held that the Public Prosecutor or an Assistant Public Prosecutor, as the case may be, has a vital role under the statutory scheme and he/she is expected to act as an independent person. He/she has to apply his/her mind and consider the effect of withdrawal on society, in the event such permission is granted.

14. The idea of public interest is a protean one. It is certainly not static but rather evolves over time and gains its content from the context in which it is used.

15. The Black's Law Dictionary (Bryan A. Garner (ed.), 7th ed., St. Paul, Minn.: West Publishing Co., 1979) defines public interest as "(1) The general welfare of the public that warrants recognition and protection, and (2) something in which the public as a whole has stake; especially an interest that justifies government regulation". One of the elements that constitutes the construct of public interest includes: Maintaining conditions that support an ongoing social order.

16. It is settled proposition of law that the right to peaceful assembly and protest is fundamental in a democracy and restrictions to the same are only applicable when public order is disturbed. Peaceful protests are therefore, protected under the Constitution and penal provisions cannot be invoked against such protests without clear evidence of public order disturbance.

17. Considering the overall facts and circumstances of the case and the arguments advanced by counsels for the parties and the law laid down by the Hon'ble Apex Court in the above noted cases, it can safely be held that there was no personal interest of the accused respondents in initiating the public agitation and they were simply raising reasonable demands in the interest of the public at large. Furthermore, considering the nature of the offence and circumstances, in which the incident has taken place, this Court deems it just and proper to grant leave for withdrawal of their prosecution. This Court has also considered the fact that there was no specific allegation against the respondents in the charge-sheet with regard to disturbance of public order.

18. Accordingly, all these misc. petitions stand allowed by granting leave to the State to file an appropriate application under Section 321 Cr.P.C. for withdrawal of prosecution before the jurisdictional Court.

19. In case, such application is submitted before the jurisdictional Court, the same shall be heard and decided in accordance with law.

20. Before parting with this order, it is made clear that whatever has been observed by this Court, shall not affect or prejudice the decision of the Trial Court on the application preferred by the State for withdrawal of prosecution of the respondents.

21. The stay applications and all pending applications, if any, stand disposed of.