

Capt. Ram Singh - Petitioner @HASH State of Himachal Pradesh and Others

Court: High Court of Himachal Pradesh

Date of Decision: July 26, 2016

Acts Referred: Criminal Procedure Code, 1973 (CrPC) - Section 156, Section 321, Section 397, Section 401, Section 482

Penal Code, 1860 (IPC) - Section 120B, Section 418, Section 420

Prevention of Corruption Act, 1988 - Section 13(2)

Citation: (2017) 1 AICLR 63 : (2016) CriLJ 4469

Hon'ble Judges: Sandeep Sharma, J.

Bench: Single Bench

Advocate: Mr. N.S. Chandel, Advocate, for the Petitioner; Mr. Rupinder Singh Thakur, Additional Advocate General, for the Respondent No. 1; Mr. Satyen Vaidya, Sr. Advocate, with Mr. Vivek Sharma, Advocate, for the Respondent No. 2

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Mr. Sandeep Sharma, J. - Present Criminal Revision Petition filed under Sections 397, 401 read with Section 482 of the Code of Criminal

Procedure is directed against the order dated 22nd December, 2008, passed by learned Special Judge, Bilaspur, District Bilaspur in Corruption

Case No.2 of 2005, whereby he allowed the application filed by the Public Prosecutor under Section 321 Cr.P.C. for permission to withdraw

case from the prosecution in case arising out of FIR No. 59 of 2002, dated 3.4.2002 under Sections 420, 120-B IPC & 13(2) of Prevention of

Corruption Act, police Station, Barmana, District Bilaspur, HP.

2. Briefly stated facts as emerge from the record are that the petitioner filed a complaint under Section 13(2) of the Prevention of Corruption Act

and under Sections 418, 420, 465, 468, 471, 472 read with Section 120-B of Indian Penal Code (in short "IPC") in the Court of learned Special

Judge, Bilaspur praying therein for referring the investigation to the police under Section 156(3) of the Code of Criminal Procedure (in short

Cr.P.C.).

3. Careful perusal of the complaint suggest that respondent No.2 was functioning as Chairman-Cum-Managing Director (in short "CMD") of H.P.

Ex-servicemen Corporation, Hamirpur since 1998 (in short ""Corporation""). Respondent No.3, Pawan Kumar is the son of respondent No.2, who

as per complainant was unemployed and was not having independent source of income. The corporation owned a Diesel Pump set up by

Hindustan Petroleum at Barmana, H.P. Since diesel pump as referred above, was causing obstruction in the free flow of traffic, it was decided to

shift the same to some other location and in that regard Deputy Commissioner, Bilaspur was requested by the corporation to arrange some

alternate site. However, Deputy Commissioner informed the corporation that no land for the purpose of setting up diesel pump is available with the

Government and, as such, corporation may itself locate some piece of land for setting up of diesel pump. Accordingly, respondent No.2 along with

his son respondent No.3 purchased a piece of land measuring 2 bighas from one Sh. Krishnu, R/o village Bhater for consideration of Rs.4 lacs.

Aforesaid amount of consideration was paid by respondent No.2 to the owner of the land i.e. Sh. Krishnu, R/o village Bhater. It is also alleged in

the complaint that respondent No.2 falsely represented to the Government that the land in question, which was purposed to be purchased for

setting up a diesel pump was located along with the National Highway, whereas same was far away from the National Highway. Complainant also

alleged that respondent No.2 never disclosed his relationship with respondent No.3 to any of the members of the Board of Directors and got the

said land measuring 2 bighas comprising khasra No. 244/70 and 71, purchased by the corporation for total consideration of Rs. 8,22,800/- plus

Rs. 98760/- i.e. expenditure on the stamp duty, registration charges, from respondent No.3, who happened to be his son. It is also alleged that

aforesaid amount was not paid through cheque, rather same was paid in cash at the residence of respondents No.2 and 3. Complainant specifically

averred in the complaint that at the time of purchase of aforesaid piece of land, respondent No.2 was fully aware that this piece of land belongs to

respondent No.3, who happened to be his son but despite this he never disclosed this fact to any of the members of the Board and by concealing

this material fact from the Government as well as members of Board, obtained permission to purchase the land for shifting of diesel pump.

4. Apart from above, complainant also alleged that from day one respondent No.2 had been representing to the Government that the land

purposed to be purchased for setting up diesel pump is located along with National Highway but as a matter of fact, land purchased is/was not

abutting to the National Highway, rather other pieces of land owned by other person exists between the National Highway and the land purchased

by corporation from respondent No.3. Complainant in support of averments contained in the application also made available copy of two sale

deeds, whereby the land was purchased by respondent No.3 Sh. Pawan Kumar and further sold to Corporation. Complainant in his complaint

specifically averred that at first instance land in question was purchased by Sh. Pawan Kumar, respondent No.3 at Barmana, which was further

sold to the corporation headed by his father. Complainant further alleged that within a period about 14 months from the purchase of the land from

respondent No.3, Sh. Pawan Kumar, further sold the same to corporation misusing influence/position of respondent No.2 at exorbitant rates. By

placing on record two sale deeds as referred above, complainant also attempted to demonstrate that the land was purchased by respondent No.3

against the total consideration of Rs. 4 lacs, whereas same was further sold to corporation for total consideration of Rs.8,22,800/-, causing huge

financial loss to the complainant. Complainant prayed in the complaint that since aforesaid act of cheating was done by respondent No.2 misusing

his official position in connivance with accused No.1 and 3, they are liable to be punished under section 13(2) of Prevention of Corruption Act and

Sections 418, 420, 465, 468, 471, 472 read with Section 120-B of IPC.

5. Subsequent to the aforesaid complaint filed by the complainant, learned Special Judge vide communication dated 30.3.2002 forwarded the

complaint to the SHO Police Station Barmana, for investigation under Section 156(3)Cr.P.C in accordance with law. Documents available on

record further reveals that police after necessary investigation, presented the challan before the competent Court of law in the year, 2005.

6. Careful perusal of the record of the Court below suggest that during the investigation police collected material evidence on record suggestive of

the fact that a prima facie case exists against the accused. Police during investigation besides collecting relevant records also recorded the

statements of the member of the Board of Directors of corporation, which are available on record. However, on 22.12.2008 learned public

prosecutor moved an application under Section 321 Cr. P.C for withdrawal from the prosecution in the Court of learned Special Judge, Bilaspur,

H.P.

7. Learned Special Judge, Bilaspur taking cognisance of the averments contained in the application filed under section 321 Cr.P.C for granting

permission to withdraw the case from prosecution in case FIR No. 59/2002, dated 3.4.2002, allowed the application and granted the permission

to learned public prosecutor to withdraw the case from the prosecution.

8. Feeling aggrieved and dissatisfied with the impugned order dated 22.12.2008 passed by learned Special Judge, Bilaspur, present petitioner

preferred the instant revision petition before this Court praying therein for quashing of impugned order and remand the case back to the learned

Special Judge, Bilaspur for further proceedings in accordance with law.

9. Petitioner by way of instant criminal revision petition further contended that since the case was registered at his instance, he being an interested

party was required to be joined as party in the application for withdrawal moved by the learned public prosecutor so that he could have effectively

assisted the learned special Judge in the proceedings of the withdrawal of prosecution under Section 321 Cr.P.C. Petitioner has also contended

that it was incumbent upon the learned Special Judge while deciding the application for withdrawal filed by the learned public prosecutor to issue

notices to the petitioner in the interest of justice because he being the complainant would have been the best person to assist the Court. Since no

notice, whatsoever, was issued to the complaint, on whose behest matter was investigated and FIR was lodged, great prejudice had been caused

to him. Petitioner has also stated that bare perusal of the application filed by the learned public prosecutor discloses no grounds whatsoever, which

could compel the learned Special Judge to permit the public prosecutor to withdraw the case from the prosecution.

10. Petitioner in the revision petition specifically stated that since there is/was ample evidence collected on record by the investigating Agency,

which was enough to connect the accused with the offences allegedly having been committed by them, there was no occasion, whatsoever, for the

learned Special Judge to allow the application filed under Section 321 Cr.P.C.

11. Mr. N.S. Chandel, learned counsel duly assisted by Mr. Dinesh Thakur, advocate representing the petitioner vehemently argued that the

impugned order dated 22.12.2008, passed by learned Special Judge, Bilaspur on the application filed under section 321 Cr.P.C by learned public

prosecutor is unsustainable in the eye of law as the same is not based upon the correct appreciation of the evidence available on record. He

vehemently argued that the learned Court below should not have proceeded ahead with the matter without issuing notice to the complainant

because he was an interested party in the matter. He contended that the complainant-petitioner was required to be heard by learned Special Judge

before rendering decision on the application moved by learned public prosecutor under Section 321 Cr.P.C.

12. During arguments made by him, he invited the attention of the Court to the application filed under Section 321 Cr.P.C for granting permission

to withdraw the case from the prosecution to demonstrate that no material worth the name was placed on record by the learned public prosecutor

in support of the contention made in the application. Mr. Chandel, learned counsel forcibly contended that the learned Special Judge while allowing

the application filed by the public prosecutor failed to acknowledge the fact that relevant material which was sufficient to prove the guilt of the

accused was withheld from Court by the prosecution and learned Special Judge solely on the basis of the averments contained in the application,

passed order dated 22.12.2008 without realising that great prejudice would be caused to the complainant as well as public at large. Mr. Chandel,

learned counsel during proceeding of the case made this Court to travel through the averments contained in the application to demonstrate that

averments contained in the application were not sufficient to conclude that withdrawal of the case, if any, would be in the interest of public and

exchequer of the government. Mr. Chandel while making his arguments also made this Court to travel through various documents available on the

file of Court below suggestive of the fact that respondent No. 2 never informed/disclosed to the Government as well as and Managing Committee

of the Corporation that the seller of the land is his son and land is being sold to the corporation for double the price. He also invited the attention of

the Court to the sale deeds pertaining to the piece of land, which was ultimately purchased by the corporation for setting up the diesel pump to

show that how great financial loss was caused to the public exchequer by the action of respondents No. 2 and 3.

13. Mr. Chandel, learned counsel also invited the attention of the Court to the revenue documents available on record to establish that the land

actually purchased by the respondent No.2 for setting up the diesel pump from his son namely Pawan Kumar respondent No.3 is /was far away

from the National Highway. He further contended that there is private land owned by some other person exists in between the National Highway

and the land got purchased by respondent No.2 from respondent No.3 for shifting of petrol pump. However, aforesaid information was

deliberately concealed from Govt. and by misrepresenting the facts, respondent No.2 procured approval from the State Government to purchase

that particular piece of land, which was owned by his son respondent No.3. Mr. Chandel, while referring to the documents available on record

strenuously argued that the averments contained in para-5 of the application moved by learned public prosecutor that "all documents annexed with

the case file are in favour of accused persons is totally contrary to the records and clearly indicates that the learned Special Judge while passing

impugned order solely relied upon the averments contained in the application and did not bother at all to refer to the documents collected on

record by the Investigating Agency. It is also contended on behalf of the petitioner that all the documents attached with the police challan clearly

supports/corroborates the oral evidence collected by the investigating agency while investigating the matter in terms of Section 156(3) Cr.P.C.

Documents available on record suggest that respondent No.2 concealed the material facts from the Government and procured approval on the

basis of the wrong information deceitfully. Had he disclosed factual position to the Government that the land proposed to be purchased belongs to

respondent No.3 and same is not abutting to the National Highway, Government would have never accorded any sanction for purchase of that

piece of land. Moreover, perusal of the statements recorded by the police of members of the Board clearly suggest that they all were kept in dark

and at no point of time they were informed that the land proposed to be purchased for setting up diesel pump belongs to son respondent No.2.

Mr. Chandel, learned counsel, strenuously argued that in view of the aforesaid facts, it is ample clear that the public prosecutor did not present the

true picture before the Court while moving application under Section 321 Cr.P.C, rather he made wrong statement/submission in the application

intentionally and deliberately to mislead the learned Special Judge solely with a motive to procure relief, which would have been not granted

otherwise. It is further contended that respondent No.2 by purchasing particular piece of land, which was admittedly not abutting the National

Highway that too from his son respondent No.3, caused huge pecuniary loss to the corporation because admittedly till date petrol pump could not

be installed on that piece of land.

14. Learned counsel representing the petitioner also contended that non participation of respondent No.2 in the alleged meetings held on 4th

August, 1999 for the sale of land is immaterial as the proposal to sell the land of his son to corporation was moved by him at first instance that too

without informing other Board members, which itself is sufficient to conclude that his intention was to defraud the corporation. Had respondent

No.2 disclosed the Board members that land proposed to be purchased for setting up diesel pump belongs to his son, there was every possibility

of objection being raised by the members of the Board. But respondent No.2 purposely concealed the material facts from the Government as well

as Board of members and as such, caused wrongful loss to the corporation and public at large. It is also contended that respondent No.2 also

concealed from the members of Board with regard to distance of suitable land, which was very much in his knowledge, which fact clearly points

towards his dishonest intention to defraud the corporation. At last, learned counsel representing the petitioner stated that the impugned order

passed by learned Special Judge Bilaspur is not based on correct appreciation of material evidence available on record, rather same had been

passed merely taking into consideration the averments contained in the application and as such, same deserves to be quashed and set-aside.

15. Mr. Rupinder Singh Thakur, learned Additional Advocate General duly assisted by Mr. Rajat Chauhan, Law Officer, representing the

respondent-State duly supported the impugned order passed by learned Special Judge, Bilaspur, and submitted that there is no illegality and

infirmity in the impugned order and same deserves to be upheld. Mr. Thakur, learned Additional Advocate General vehemently argued that as per

Section 321 Cr.P.C, public prosecutor was well within its right to move an application for withdrawing the prosecution since there was no

evidence whatsoever, available on record which could be sufficient to hold the accused guilty of having committed the offence under Sections

13(2) of Prevention of Corruption Act and under sections 418, 420, 465, 468, 471, 472 read with Section 120-B of IPC. Mr. Thakur, learned

Additional Advocate General also contended that bare perusal of impugned order passed by learned Special Judge suggest that learned special

Judge before passing the order satisfied himself that there is no evidence on record suggestive of participation of the accused, in any, of the

proceedings related to selection of the alternative site and hence it cannot be said that the learned special Judge passed the impugned order in hot

haste manner without due application of mind. He specifically invited the attention of this Court to impugned order, whereby learned Special Judge

concluded that ""I have also scanned the evidence on record and I, too, am of the considered and circumspect view that, the, offences as alleged

against the accused, in the police challan presented before this Court may not stand vindication, as the documentary evidence is overwhelmingly in

favour of the accused and it throws over Board the value if any of oral evidence."" . Lastly while concluding its arguments, Mr. Rupinder Singh

Thakur, forcibly contended that Section 321 Cr.P.C fully empowers the learned PP to move application for withdrawal of prosecution and

accordingly in the present case, when it appeared to learned PP that there is no evidence of involvement of respondent No.2, he moved

application and as such present petition deserve to be dismissed being devoid of any merits.

16. Mr. Satyen Vaidya, learned Senior Advocate duly assisted by Mr. Vivek Sharma, Advocate representing the respondents No. 2 and 3 also

supported the impugned order dated 22.12.2008 passed by learned Special Judge, Bilaspur. Mr. Vaidya, learned Senior Counsel forcibly

contended that the impugned order dated 22.12.2008 has been passed by the learned Special Judge after due application of mind and as such,

same deserves to be upheld. Mr. Vaidya, forcibly contended that Section 321 of Cr.P.C empowers public prosecutor to withdraw the case from

prosecution before the judgment is pronounced and as per Section 321 Cr.P.C, it is his sole prerogative to do so. In case learned public

prosecutor is satisfied that there is no evidence on record of the participation of the accused, in any of the proceedings, he can move an application

under section 321 Cr.P.C for withdrawal from prosecution. During arguments having been made by him, he while referring to the documents

available on record forcibly contended that there is no document available on record to connect respondents No. 2 and 3 with the alleged offence.

As per Mr. Vaidya, there is no evidence on record of participation of the accused in any proceedings relating to selection of the alternative site as

had been alleged by the complainant. He prayed that since the order dated 22.12.2008 had been passed by learned Special Judge after due

application of mind, there is no scope, whatsoever, for the interference of this Court and prayed for dismissal of the petition. Mr. Vaidya, learned

senior counsel also submitted that scope of interference of this Court is very limited while examining the correctness and validity of order, if any,

passed under Section 321 Cr.P.C. In this regard, he placed reliance on the judgment passed by Constitution Bench of Hon"ble Apex Court in

Sheonandan Paswan v State of Bihar and others (1987) 1 SCC 288 : (1987 Cri LJ 793).

17. I have heard the learned counsel for the parties and have gone through the record of the case.

18. Before proceeding to decide the controversy, it would be profitable to reproduce the provision of Section 321 Cr.P.C:-

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 had 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.

19. Bare reading of Section 321 Cr.P.C reproduced here in above, nowhere spells out any guiding factors grounds, which may be available to

public prosecutor for making an application for withdrawal and as such, this Court with a sole view to ascertain the guiding factors available to

public prosecutor while moving an application under Section 321 Cr.P.C as well as to learned Court while deciding the same, deemed it fit to refer

to the latest judgment passed by Hon"ble Apex Court in Bairam Muralidhar v. State of Andhra Pradesh (2014) 10 SCC 380 : (2014 Cri LJ

4242).

20. In the case referred above, the Hon"ble Apex Court while dealing with the scope of Section 321 Cr.P.C has taken into consideration the law

laid down by Hon"ble Apex Court in Sheonandan Paswan v. State of Bihar and others (1987)1 SCC 288 : (1987 Cri LJ 4242). wherein

their lordship's while deliberating upon the power of the public prosecutor seeking withdrawal from prosecution under section 321 Cr.P.C as well

as power of trial Court to grant permission to withdraw has dealt with each and every aspect of the matter. Constitutional Bench while laying down

the guidelines/guiding factors for moving an application under Section 321 Cr.P.C as well as for deciding the same by the Court specifically

referred to the basic decision of Apex Court i.e. State of Bihar v. Ram Naresh Pandey AIR 1957 SC 389 and 1957 Cri.L.J. 567. In State

of Bihar v. Ram Naresh Pandey, which was the first case dealing with the interpretation and application of Section 321 Cr.P.C this Court while

deliberating on the role of a Public Prosecutor said:-

.....it is right to remember that the Public Prosecutor(though an executive officer as stated by the Privy Council in Bawa Faqir Singh v. King

Emperor 1938 LR 65 IA 388,395 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. It has also to be appreciated that in this country the

scheme of the administration of criminal justice is that the primary responsibility of prosecuting serious offences(which are classified as cognisable

offences) is on the executive authorities. Once information of the commission of any such offence reaches the constituted authorities, the

investigation, including collection of the requisite evidence, and the prosecution for the offence with reference to such evidence, are the functions of

the executive. But the Magistrate also has his allotted function in the course of these stages. In all these matters he exercises discretionary functions

in respect of which the initiative is that of the executive but the responsibility is his.

(P.325&326)

21. The Hon"ble Apex Court in case titled as Bairam Muralidhar v. State of Andhra Pradesh(2014 Cri LJ 4242)(supra) while examining the

scope of applicability under section 321 Cr.P.C held that it is the obligation of the Public Prosecutor to state what material he has considered

which compelled him to move an application under Section 321 Cr.P.C seeking withdrawal of the prosecution. The Hon"ble Apex Court has

categorically observed that Public Prosecutor cannot act like the post office on behalf of the State Government, rather he is required to act in good

faith, peruse materials on record and form an independent opinion that withdrawal of the case would really sub-serve public interest.

22. Similarly, the Hon"ble Apex Court has observed that while giving consent under Section 321 of the Code, Court is required to exercise its

judicial discretion, which is not to be exercised in mechanical manner, rather it is incumbent upon 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 and justice.

23. Before analysing the material available on record in terms of the law laid down by the Hon"ble Apex Court in the case referred above, it would

be profitable to reproduce relevant para No.12 to 22 as under:-

12. In the said case, the larger Bench referred the decisions in Bansi Lal v. Chandan Lal(1976) 1 SCC 421;Balwant Singh v. State of

Bihar(1977)4 SCC 448, Subhash Chander v. State(Chandigarh Admn) (1980) 2 SCC 155 ; Rajender Kumar Jain v. State(1980) 3

SCC 435 , and the principles stated in State of Bihar v. Ram Naresh Pandey (1957 Cri.LJ 567) and eventually came to hold as follows:-

99. All the above decisions have followed the reasoning of Ram Naresh Pandey"s case and the principles settled in that decision were not

doubted.

100. It is in the light of these decisions that the case on hand has to be considered. I find the application for withdrawal by the Public Prosecutor

had been made in good faith after careful consideration of the materials placed before him and the order of consent given by the Magistrate was

also after due consideration of various details, as indicated above. It would be improper for this Court, keeping in view the scheme of Section 321,

to embark upon a detailed enquiry into the facts and evidence of the case or to direct retrial for that would be destructive of the object and intent

of the Section.

13. In R.M. Tewari, Advocate v. State (NCT of Delhi) (1996)2 SCC 610 , this Court while dealing with justifiability of withdrawal from the

prosecution the Court referred to Section 321 of the Code and the principle that had been stated in Sheonandan Paswan (1987 Cri LJ

793)(Supra) and opined that:-

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 Cr.P.C 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.

14. A three-Judge Bench in Abdul Karim v. State of Karnataka(2000) 8 SCC 710 referred to the Constitution Bench judgment in

Sheonandan Paswan case (1987) 1 SCC 288 : (1987 Cri LJ 793) and Bharucha, J (as His Lordship then was) speaking for himself and D.P.

Mohapatra, J. observed thus: (Abdul Karim case (2000) 8 SCC 710, SCC p.729, paras 19-20)

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.

15. Y.K. Sabharwal, J (as His Lordship then was) in his concurring opinion elaborating further on fundamental parameters which are to be the

laser beam for exercise of power under Section 321 of the Code opined that: (Abdul Karim case (2000) 8 SCC 710, SCC p.739, paras 42-43)

42. The satisfaction for moving an application under Section 321 CrPC has to be of the Public Prosecutor which in the nature of the case in hand

has to be based on the material provided by the State. The nature of the power to be exercised by the Court while deciding application under

Section 321 is delineated by the decision of this Court in Sheonandan Paswan v. State of Bihar(1987 Cri LJ 793). This decision holds that

grant of consent by the court is not a matter of course and when such an application is filed by the Public Prosecutor after taking into consideration

the material before him, the court exercises its judicial discretion by considering such material and on such consideration either gives consent or

declines consent. It also lays down that the court has to see that 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 or suffers from such improprieties or illegalities as to cause manifest injustice if consent is given.

43. True, the power of the court under Section 321 is supervisory but that does not mean that while exercising that power, the consent has to be

granted on mere asking. The court has to examine that all relevant aspects have been taken into consideration by the Public Prosecutor and/or by

the Government in exercise of its executive function.

16. In *Rahul Agarwal v. Rakesh Jain* (2005) 2 SCC 377) the Court was dealing with what should be the lawful consideration while dealing

with an application for withdrawal under Section 321 of the Code. The Court referred to the decisions in *Ram Naresh Pandey* (1957 Cri LJ

567)(supra), *State of Orissa v. Chandrika Mohapatra*, AIR 1977 SC 903, *Balwant Singh v. State of Bihar*, AIR 1977 SC 2265(supra)

and the authority in *Abdul Karim* (2001 Cri LJ 148)(supra) wherein the earlier decision of the Constitution Bench in *Sheonandan Paswan*

(1987 Cri LJ 793) was appreciated and after reproducing few passages from *Abdul Karim* (supra) ruled that:-

10. From these decisions as well as other decisions on the same question, the law is very clear that the withdrawal of prosecution can be allowed

only in the interest of justice. Even if the Government directs the Public Prosecutor to withdraw the prosecution and an application is filed to that

effect, the court must consider all relevant circumstances and find out whether the withdrawal of prosecution would advance the cause of justice. If

the case is likely to end in an acquittal and the continuance of the case is only causing severe harassment to the accused, the court may permit

withdrawal of the prosecution. If the withdrawal of prosecution is likely to bury the dispute and bring about harmony between the parties and it

would be in the best interest of justice, the court may allow the withdrawal of prosecution. The discretion under Section 321, Code of Criminal

Procedure is to be (pic)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.

(Emphasis added)

17. The obtaining fact situation has to be tested on the anvil of aforesaid enunciation of law. As is demonstrable, the State Government vide

GOMs. No. 268 dated 23rd May, 2009 enumerated certain aspects which are reproduced hereinbefore. The reproduction part requires slight

clarification. In the order passed by the State Government, the third reference refers to the representation of Shri B. Muralidhar, Sub-Inspector of

Police, Kamareddy Town P.S. dated 5.8.2007 and the fourth reference refers to the communication from the Director General, Anti Corruption

Bureau, Andhra Pradesh, Hyderabad dated 12.10.2007. Thereafter, the State Government has given its opinion why the case required to be

withdrawn. The learned public prosecutor in his application for withdrawal of the prosecution has referred to the Government order and sought

permission of the Court. What the public prosecutor has stated is that he has perused the Government order, the material evidences available on

record and has applied his mind independently and satisfied that it was a fit case for withdrawal.

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 had been held in Abdul Karim's case, 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

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 had

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.

20. A case under the Prevention of Corruption Act has its own gravity. In *Niranjan Hemchandra Sashittal and another v. State of*

Maharashtra (2013) 4 SCC 642)) while declining to quash the proceeding under the Act on the ground of delayed trial, the Court observed thus:

25. In the case at hand, the appellant has been charge-sheeted under the Prevention of Corruption Act, 1988 for disproportionate assets. The

said Act has a purpose to serve. Parliament intended to eradicate corruption and provide deterrent punishment when criminal culpability is proven.

The intendment of the legislature has an immense social relevance. In the present day scenario, corruption had been treated to have the potentiality

of corroding the marrows of the economy. There are cases where the amount is small and in certain cases, it is extremely high. The gravity of the

offence in such a case, in our considered opinion, is not to be adjudged on the bedrock of the quantum of bribe. An attitude to abuse the official

position to extend favour in lieu of benefit is a crime against the collective and an anathema to the basic tenets of democracy, for it erodes the faith

of the people in the system. It creates an incurable concavity in the Rule of Law. Be it noted, system of good governance is founded on collective

faith in the institutions. If corrosion"s are allowed to continue by giving allowance to quash the proceedings in corruption cases solely because of

delay without scrutinising other relevant factors, a time may come when the unscrupulous people would foster and garner the tendency to pave the

path of anarchism.

21. Recently, in *Dr. Subramanian Swamy v. Director, CBI* (2014) 8 SCC 682, the Constitution Bench while declaring Section 6-A of the

Delhi Special Police Establishment Act, 1946, which was inserted by Act 45 of 2003 as unconstitutional has opined that:-

"59. It seems to us that classification which is made in Section 6-A on the basis of status in the Government service is not permissible under Article

14 as it defeats the purpose of finding prima facie truth into the allegations of graft, which amount to an offence under the PC Act, 1988. Can there

be sound differentiation between corrupt public servants based on their status? Surely not, because irrespective of their status or position, corrupt

public servants are corrupters of public power. The corrupt public servants, whether high or low, are birds of the same feather and must be

confronted with the process of investigation and enquiry equally. Based on the position or status in service, no distinction can be made between

public servants against whom there are allegations amounting to an offence under the PC Act, 1988.

And thereafter, the larger Bench further ruled: (SCC p.726, para 60)

60. Corruption is an enemy of the nation and tracking down corrupt public servants and punishing such persons is a necessary mandate of the PC

Act, 1988. It is difficult to justify the classification which has been made in Section 6- A because the goal of law in the PC Act, 1988 is to meet

corruption cases with a very strong hand and all public servants are warned through such a legislative measure that corrupt public servants have to

face very serious consequences." And again, the larger Bench observed:

"70. Office of public power cannot be the workshop of personal gain. The probity in public life is of great importance. How can two public

servants against whom there are allegations of corruption of graft or bribe taking or criminal misconduct under the PC Act, 1988 can be made to

be treated differently because one happens to be a junior officer and the other, a senior decision maker.

72. Corruption is an enemy of nation and tracking down corrupt public servant, howsoever high he may be, and punishing such person is a

necessary mandate under the PC Act, 1988. The status or position of public servant does not qualify such public servant from exemption from

equal treatment. The decision making power does not segregate corrupt officers into two classes as they are common crime doers and have to be

tracked down by the same process of enquiry and investigation.

22. We have referred to these authorities only to show that in the case at hand, regard being had to the gravity of the offence and the impact on

public life apart from the nature of application filed by the public prosecutor, we are of the considered opinion that view expressed by the learned

trial Judge as well as the High Court cannot be found fault with. We say so as we are inclined to think that there is no ground to show that such

withdrawal would advance the cause of justice and serve the public interest. That apart, there was no independent application of mind on the part

of the learned public prosecutor, possibly thinking that the Court would pass an order on a mere asking.

24. Careful perusal of the judgment passed by Hon"ble Apex Court referred here in above, clearly suggest that foremost guiding factors for

moving an application for withdrawal from the prosecution would be "interest of justice" and in that regard the public prosecutor to seek

withdrawal from the prosecution in furtherance of the cause of public justice. It is incumbent upon the learned P.P to show that he may not be able

to produce sufficient evidence to sustain the charge. Though, as per Section 321 Cr.P.C prosecution can be withdrawn at any stage, even after the

framing of the charge. But at this stage, learned Court as well as learned Public Prosecutor both are expected to keep in mind that on same set of

evidence, cognizance, if any, was taken by Court at the time of presentation of challan under Section 173 Cr.P.C and thereafter at the time of

framing of charge under Section 288 Cr.P.C.

25. Further perusal of the judgment rendered by the Constitutional Bench as reproduced above suggest that the public prosecutor is expected to

justify his application moved under section 321 Cr.P.C for withdrawal from the prosecution by clearly stating that same is being done in the interest

of justice and in administration of justice. Admittedly, public prosecutor is empowered to seek withdrawal in terms of Section 321 Cr.P.C but the

basic principle as emerge from the judgment referred above for withdrawal would be ""advancement of administration of justice"" in furtherance of

administration of public justice."" It clearly emerge from the judgment referred above that public prosecutor cannot be allowed to maintain the

application for withdrawal from prosecution solely on the ground that no sufficient evidence is available against the accused.

26. In the present case, as emerge from the record, learned public prosecutor moved an application bearing Cr. M.A No. 131 of 2008, titled as

State v. Chet Ram & others under Section 321 Cr.P.C before learned Special Judge, Bilaspur praying therein for permission to withdraw case

from the prosecution. It would be apt to reproduce the contents of the application as under:-

That the statement of the witnesses and also relevant record of the case annexed with the case file clearly shows that the people of Barmana had

made a representation to the Hon"ble Chief Minister in the year, 1997 for shifting their diesel pump of the Ex. Serviceman corporation from main

road to some other suitable place, since it was making a hindrance and there has been blocked of road/traffic and in general the flow of traffic was

obstructed due to the present diesel pump of the Ex.-servicemen corporation. The letter of the S.P. Bilaspur also conveyed to the chairman-cum-

Managing Director of H.P Ex. Serviceman corporation Hamirpur for shifting of the diesel pump to some other suitable place and there has been a

correspondence with the CM/D. of the Hindustan Petroleum and with the D.C. Bilaspur and also with the Commissioner-cum-Secretary (GAD) to

the Govt. of H.P. Shimla for shifting of the diesel pump to a suitable place and purchase of land for the installation of the diesel pump. The

Managing Committee comprising of members of the Ex. Serviceman Corporation decided that the suit land will be purchased in Barmana and the

present diesel pump be shifted to that place.

3. That the documents annexed with the challan also show that there has been a proper permission from the Govt. for installation/shifting of the

diesel pump to a suitable place and the Managing committee of the Ex. Servicemen corporation had also consented for the purchase of land and

installation of the diesel pump.

4. That the Managing Committee of Ex. Serviceman corporation Hamirpur was neither against the purchase of the land in Barmana nor for shifting

the diesel pump to a place that has been purchased.

5. So for the statement of the witnesses are concerned they are to be seen in consonance with the record of the case which could clearly reflect

and the case is totally weak and there are no chances of success of the case. The documents annexed with the case file are in favour of the

accused persons and the oral evidence cannot over take the legal sanctity of the documents, which are annexed with the case file.

6. That the withdrawal of the case will be in the interest of public and exchequer of the Govt. There is also no conclusive proof of the statements on

record to prove the guilt of the accused persons with the intention to have committed the offences they have been faced trial under the provisions

of the IPC and PC Act.

7. That prior to the letter dated 21.3.1999, the accused had not participated in any meetings for selection of site and shifting of patrol pump from

the existing petrol pump site. The sale transactions were not in exercise then market value.

27. Close scrutiny of the averments contained in the application suggest that people of Barmana made a representation to the Hon"ble Chief

Minister for shifting their diesel pump owned by Ex. Servicemen Corporation to other suitable place as it was causing hindrance and blockade of

the road/traffic. Accordingly, Superintendent of Police, Bilaspur conveyed aforesaid decision to the Chairman-Cum-Managing Director of the

corporation i.e. respondent No.2. It also emerge from the averments contained in the application that there has been a correspondence with the

C.M./D. of the Hindustan Petroleum as well as Deputy Commissioner, Bilaspur and also with the Commissioner-cum-Secretary(GAD) to the

Govt. of H.P for shifting the diesel pump to the suitable place and purchase of land for installation of diesel pump. As per averments contained in

the application, the Managing Committee comprising of members of corporation, decided that suitable land will be purchased at Barmana and

present diesel pump would be shifted to that place. There is no specific mention of document, if any, in the application but it is averred in the

application that proper permission from the Government for installation of the diesel pump to a suitable place was obtained and land in question

was purchased for setting up diesel pump with the consent of State as well as corporation. Applicant specifically stated that withdrawal of the case

will be in the interest of public and exchequer of the Government since there is no conclusive proof on record to prove the guilt of the accused

persons. In para-7 of the application it has been stated that prior to issuance of notice dated 21.3.1999, accused (respondent No.2) had not

participated in any meetings for shifting of diesel pump from the existing site and sale transactions were not excessive of the market value. Though,

there is mention with regard to the documents but as have been observed above, no documents have been attached with the application filed under

Section 321 Cr.P.C to substantiate the averments contained in the application.

28. Learned counsel representing the petitioner while advancing his arguments had made this Court to travel through various documents available

on the file of learned trial Court below suggestive of the fact that respondents No.2 misusing his official position (Chairman of Committee),

benefited respondent No. 3, who happened to be his son, by making corporation to purchase piece of land owned by his son for shifting of the

diesel pump in view of advise rendered by District Administration in that regard. Admittedly, respondent No. 2 i.e Sh. Chet Ram Ex. Lt. Col. was

the Chairman of the corporation at the relevant time, whereas respondent No.3 Sh. Pawan Kumar is his son. On the basis of complaint made

under Section 13(2) of P.C. Act and Sections 420,418, 465,471, 472 read with Section 120-B of IPC, Court of learned Special Judge, Bilaspur,

referred the investigation to police under Section 156(3) of the Code of Criminal Procedure. Pursuant to the directions issued by learned Special

Judge, police carried out the investigation and registered FIR 59 of 2002, dated 3.4.2002 and thereafter presented the challan before the Court of

learned Special Judge, Bilaspur enclosing therewith documents to prove its case beyond reasonable doubt against the accused/respondents No. 2

and 3.

29. Documents available on the record of learned trial Court below suggest that one Sh. A.P.Gautam, Colonel (Retd) Vice Chairman of the

corporation sent a communication to the Chairman-cum-Managing Director of the Corporation intimating therein that Hon"ble Chief Minister of

Himachal Pradesh has desired that diesel pump owned by the corporation be shifted immediately from the existing site to another suitable site at

Barmana as it is causing obstruction in the free flow of traffic. He also invited the attention of the Chairman to the letter No. 14904-5, dated 1st

August, 1997 regarding shifting of pump. Thereafter, vide communication dated 12th March, 1998, respondent No.2, the then, Chairman of the

corporation sent communication to the Deputy Commissioner, Bilaspur requesting him to provide Government land at Barmana for setting up

diesel pump so that traffic problem is resolved. There is a document available on record suggestive of the fact that the matter was taken up by the

Corporation for providing Government land but ultimately vide communication dated 19th June, 1998, Deputy Commissioner, Bilaspur advised the

Chairman of the Corporation to purchase some private land for setting up diesel pump so that old diesel pump is shifted to the new place.

Aforesaid communication was sent by the Deputy Commissioner on 19th June, 1998 but it appears that no action, whatsoever, was taken at that

time by the Chairman-cum-Managing Director of the corporation so far as purchase of private land for setting up diesel pump is concerned. Vide

communication dated 21st March, 1999, respondent No.2, the then, Chairman-cum-Managing Director of the Corporation sent a communication

to Commissioner-Cum-Secretary (GAD) to the Government of Himachal Pradesh, wherein it was stated as under:-

Keeping in view the problems of truck parking and frequent observations of Police Department, a case for allotment of Govt. suitable land on

lease basis was sent to the Deputy Commissioner, Bilaspur. The District Administration directed the revenue department to search suitable land for

allotment to this Corporation for the above mentioned purchase. After searching, the revenue department has intimated that no suitable Govt. land

is available at Barmana for this purpose.

To get rid of the problems of truck parking being faced by the Ex-Serviceman Truck operations and the Police Department's interference, this

Corporation now decided to purchase 2 bighas of land for shifting the consumer diesel pump from its existing place to another suitable place. A

copy of one year estimated cost is enclosed herewith. Owner of the land has given his consent to give land to Corporation provided the cost of

registration or any other overhead charges are borne by the Corporation.

It is also brought to your notice that it is very difficult to find a suitable piece of land for installation of curve side pump at Barmana. Local market

rates prevailing in the market are much higher than the average market rates given by the Patwari.

In view of the facts mentioned above, it is requested that the sanction may please be accorded at the earliest to finalise the deal.

30. Perusal of the letter referred here in above suggest that the corporation had decided to purchase two bighas of land for shifting the diesel pump

to another suitable place. There is specific mentioning with regard to owner of the land, who consented to give land to the corporation for setting

up of the petrol pump but no specific name of the seller was disclosed in the letter dated 21st March, 1999. There are other documents collected

on record by the Investigating Agency suggestive of the fact that the piece of land, which was proposed to be purchased by the corporation for

setting up diesel pump was inspected by the Managing Director of Hindustan Petroleum Corporation Limited, who after inspecting the spot had

given his NOC also. During arguments as well as while perusing the record of court below this Court could also lay its hand to one document

dated 1.3.2000 allegedly written by respondent No.3 namely Pawan Kumar, who happened to be son of respondent No.2 addressed to Dy.

Controller(F& A) of corporation, which is reproduced as under:-

I want to bring it to your notice that because of the strategic location and my piece of land, the price of land has been fluctuating quite a bit in the

past few years. I want to sell this land at a price based upon the 5 years average rate of land plus 30% solatium. I would request you to take into

consideration and please speed up the proceedings so as to finalise the transaction. The Copy of five years average rate has been enclosed

herewith

31. Perusal of the contents of this letter referred above clearly suggest that Sh. Pawan Kumar, respondent No.3 was in contact with the

corporation and has been negotiating the price of the land, which he had purposed to sell to the corporation for setting up diesel pump. While

examining the evidence available on record, this Court could also lay its hand to the minutes of the various meetings of the Board of Directors held

during the relevant period. Perusal of the minutes of the Board meeting as available on record, nowhere suggest that respondent No.2 ever brought

to the notice of the members of the Board that land purposed to be purchased for setting up diesel pump belongs to his son respondent No.3.

32. Apart from above, two sale deeds have been adduced on record by the Investigating Agency to demonstrate that how respondent No.3

caused huge financial loss to the corporation. Investigating Agency has also placed on record sale deeds dated 12.6.2000 and dated 26th May,

2000 suggestive of the fact that respondent No.3 Pawan Kumar Son of Sh. Chet Ram, respondent No.2 purchased two bighas of land for total

consideration of Rs.4,00,000/-. It clearly emerge from the record that accused No.3 purchased land, which he ultimately sold to corporation, from

one Sh. Krishnu son of Sh. Jangi on 6.4.1999 for total consideration of Rs. 4 lacs but later he sold the same piece of land to corporation for total

consideration of Rs.8,22,800/-. Investigating Agency has also adduced on record documents to demonstrate that the person from whom the land

was purchased by respondent No. 3, was later on given appointment at petrol pump owned by corporation. This Court solely with a view to

ascertain the correctness and genuineness of the averments contained in the instant revision petition as well as submissions having been made on

behalf of the counsel representing the petitioner at the time of arguments, critically analysed the documents made available on record of the trial

Court. This Court had an occasion to peruse the statement of the Board members recorded by the police under section 161 Cr.PC during

investigation. None of the Board members, whose statements have been recorded under section 161 Cr.P.C stated that they were aware of the

fact that the land purposed to be purchased for setting up diesel pump actually belonged to respondent No.3, who happened to be son of

respondent No.2. There is revenue record available on record on the Court file of the learned trial Court suggestive of the fact that the piece of

land, sold to the corporation by respondent No.3 for setting up diesel pump is/was not abutting the National Highway, rather two plots exists

between National Highway and land purchased by the corporation from respondent No.3. Investigating Agency further collected ample evidence

on record, which as per its wisdom could be sufficient to hold that respondents No.2 and 3 guilty of having committed the offences as mentioned

above and presented the challan before the competent Court of law. Record suggest that the learned Special Judge, Bilaspur taking cognizance of

the material made available on record issued notices to the respondents No.2 and 3. Perusal of the order dated 7.6.2005 available on Court file

also suggest that copies of challan filed by the police was made available to the accused by the Court of Learned Special Judge, Bilaspur.

Thereafter, surprisingly no charges whatsoever, were ever framed in the proceedings initiated by the Court of learned Special Judge, Bilaspur on

the basis of the challan filed by police. This Court is shocked to see that after presentation of challan, matter was listed for more than 25 times for

framing of charge, but on every date time was procured on one pretext or other. Suddenly, after three years of presentation of the challan, learned

Public Prosecutor moved an application dated 22.4.2008 under Section 321 Cr.P.C seeking permission to withdraw the case from the

prosecution, contents whereof have been already reproduced here in above. Learned Pubic Prosecutor stated in the application that withdrawal of

the case will be in the interest of justice and there is no sufficient evidence to prove the guilt of the accused person. Learned Special Judge,

Bilaspur vide order dated 22.12.2008 allowed the application filed by learned public prosecutor and granted him permission as sought vide

application under reference.

33. Perusal of the impugned order dated 22.12.2008 suggest that learned Special Judge while passing the impugned order also scanned the

evidence on record and on the basis of the averments contained in the application as well as record made available to him concluded that there is

overwhelming documentary evidence in favour of the accused and as such, accused ought not to be subjected to agony and unnecessary trial. But

this Court while examining the correctness/genuineness of the averments contained in application as well as submissions made during the

proceedings of the case travelled through the entire evidence, be it ocular or documentary adduced on record by Investigating Agency and really

finds it difficult to agree with the aforesaid findings of the Special Judge. After perusing the evidence on record as had been discussed above, this

Court is really finding it difficult to digest the observation/finding of Special Judge, wherein while allowing the application under Section 321 Cr.P.C

it has given clean chit to accused/respondents No.2 and 3.

34. Now, at this stage, this Court needs to determine whether order dated 22.12.2008 passed by learned Special Judge is strictly in terms of

Section 321 Cr.P.C, where it has been specifically provided that the public prosecutor may with the consent of the Court withdraw the

prosecution of any person of any offence before the pronouncement of the judgment. Similarly, this Court needs to examine that under what

circumstances public prosecutor moved instant application under section 321 Cr.P.C, seeking withdrawal from the prosecution that too after three

years of the presentation of the challan. Undoubtedly, section 321 Cr.P.C, clearly empowers the public prosecutor in charge of the case to

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, before the

judgment is pronounced in the case but with the consent of the Court.

35. Section 321 Cr.P.C needs three requisites to make an order under it valid:(1) The application should be filed by a 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.

36. At the cost of repetition, it is again reiterated that bare reading of Section 321 Cr.P.C, leaves no scope for other interpretation to conclude that

the public prosecutor can seek withdrawal from the prosecution at any stage before the pronouncement of judgment but taking note of the law laid

down by the Hon"ble Apex Court from time to time as had been discussed and deliberated upon in detailed judgment referred in above,

withdrawal of prosecution can be allowed only in the interest of justice and there should be ample evidence on record to suggest that public

prosecutor seeking withdrawal from prosecution in furtherance of cause of public justice. Before, making an application under section 321 Cr.P.C

public prosecutor is required/expected to apply his mind to all the relevant material made available on record by the Investigating Agency and

satisfy himself that withdrawal from the prosecution would subserve the public interest or not. Whenever, public prosecutor moves an application

under section 321, it is his bounden duty to state in detail that what material actually he considered, which compelled him to move an application

for withdrawal. Collective reading of the judgment referred here in above as well as law laid down by the Hon"ble Apex Court from time to time

clearly suggest the public prosecutor while moving an application under Section 321 Cr.P.C is required/expected to form an independent opinion

on the basis of the material on record that with the withdrawal of the case, public interest at large would be served. If public prosecutor moves an

application under section 321 Cr.P.C for withdrawal after filing of challan or framing of charge it becomes more important for him to state in the

application that what are those compelling circumstances which led him to file an application under Section 321 Cr.P.C. because it is only public

prosecutor who presents challan under section 173 Cr.P.C and thereafter at the time of framing of charge persuades the Court to frame charges

against the accused solely relying upon the documents adduced on record by the Investigating Agency suggestive of the fact that prima-facie case

exist against the accused. Once investigating agency after completion of the investigation comes to a conclusion that a prima facie case exists

against the accused, it submits police report along with required documents to be relied upon to the public prosecutor for filing challan under

Section 173 Cr.P.C in the competent Court of law. If at that stage, learned public prosecutor comes to the conclusion that it is a fit case, where on

the basis of evidence adduced on record, conviction can be recorded against the accused, he files challan under section 173 Cr.P.C. Similarly,

when the challan under section 173 Cr.P.C is filed in the competent Court of law and Court on the basis of material made available to him comes

to the conclusions that prima-facie case exists against the accused and issue notices to the accused. But fact remains, that in both the eventuality as

referred above, public prosecutor as well as learned judge while presenting the challan as well as taking cognisance of challan under Section 173

applies their mind and then only notices are issued to the accused. Once Court as well as public prosecutor comes to the conclusion at the time of

filing of challan under section 173 Cr.P.C that there is sufficient material on record to proceed against the accused, it may not be later possible for

the Court on the similar material to permit the public prosecutor to withdraw from the prosecution on mere application moved under Section 321

Cr.P.C.

37. No doubt during the pendency of the trial some material may emerge, which creates doubt on the veracity of the prosecution case and in that

regard public prosecutor is empowered to apply for withdrawal from prosecution but in that eventuality prosecutor is not to move an application

under Section 321 in cursory manner, rather he is expected to indicate/state in the application that for these reasons, it may not be possible for the

prosecution to prove case against the accused. Apart from above, public prosecutor needs to make out a case that withdrawal of prosecution is in

public interest and if same is not allowed, it will be against the interest of justice.

38. Similarly, section 321 Cr.P.C while empowering the public prosecutor to move an application for withdrawal from prosecution also provides

that withdrawal, if any, would be with the consent of the Court, meaning thereby, that application moved by public prosecutor under Section 321

Cr.P.C. can not only be allowed in mechanical manner without the consent of the Court. Plain reading of Section 321 Cr.P.C. somehow suggest

that public prosecutor has independent power under Section 321 to withdraw prosecution, at any stage, because admittedly Section 321 Cr.P.C

does not provide guidelines factor/circumstances under which public prosecutor can move an application. But careful reading of Section 321

Cr.P.C, wherein it had been specifically mentioned that ""with the consent of the Court"" certainly indicates towards the duly imposed/cast upon the

Court by the legislation to ascertain whether the application moved by the public prosecutor is in good faith or in the public interest or not. Court

while examining the application under Section 321 Cr.P.C must consider whether public prosecutor has considered the material and reached to the

conclusion that withdrawal from the prosecution would serve the public interest. Similarly, duty is cast upon the Court while considering the

application under Section 321 Cr.P.C to ensure that grant of consent, if any, may not result in thwarting/stifling of the course of law or cause

manifest injustice.

39. The public prosecutor while moving an application under Section 321 Cr.P.C must state that he is satisfied on the basis of material available on

record that no public interest at all would be served in case prosecution is allowed to continue. Similarly, he must state in application that he has

considered all the relevant materials adduced on record by the investigating agency but he is of the opinion that it may not be sufficient to hold

accused guilty of having committed the offence. Similarly, Court while granting permission is not expected to decide the same as a matter of routine

merely on the basis of the averments contained in the application, rather Court is expected to consider all the relevant aspect which had been set in

for consideration by the public prosecutor and no permission, if any, can be granted on mere asking of the learned public prosecutor. The Court

should be satisfied that the matter adduced on record by the investigating agency may not be sufficient to hold the accused guilty of having

committed offence. But above all, Court must be satisfied that withdrawal of public prosecutor from the prosecution is in public interest. The Court

before deciding application under section 321 is expected to satisfy itself that before moving an application, learned public prosecutor has

considered the material in good faith and has come to the conclusion that withdrawal from the prosecution will serve public interest. The Hon"ble

Apex Court in the judgment referred above, has specifically observed that while deciding the application, Court must be consider whether grant of

consent would thwart or stifle the course of law.

40. Now after taking into consideration the observation as well as guidelines/factors as emerge from the judgment passed by the Hon"ble Apex

Court here in above, this Court would be critically analysing the material available on record to explore whether application filed by the public

prosecutor under Section 321 Cr.P.C in the case was strictly in terms of guidelines/factors which have been framed/formulated by the Hon"ble

Apex Court from time to time while deliberating upon the scope of Section 321 Cr.P.C Similarly, on the basis of law as referred above, this Court

would be attempting to ascertain whether impugned order passed by the Special Judge granting permission to withdraw from the prosecution was

based upon the correct principles as have been culled out in the judgments referred here in above.

41. In the present case, interestingly, while perusing the record of the case, this court found that after 7.6.2005, no proceedings, whatsoever, have

been conducted in the present case by the Court below after issuance of notices to the respondents. Records suggest that after presentation of

challan, matter was listed on 25 dates for framing of charge but nothing was done. Thereafter, one fine morning learned years public prosecutor

moved an application under section 321 Cr.P.C, which appears to be totally cryptic. It has averred in the application that case is totally weak and

there are no chances of success of the case. But interestingly in para-5 of the application, public prosecutor has stated that documents, annexed

with the case are in favour of the accused persons and the oral evidence, cannot over take the legal sanctity of the documents which are annexed

with the case file, meaning thereby, that even at the stage, public prosecutor was having one set up of evidence be it ocular, suggestive of the fact

that prima-facie case exist against the accused. Public prosecutor has simply sought withdrawal from the case from the prosecution in the interest

of public and exchequer of the Government but there are no details that in what manner withdrawal of prosecution would serve the public interest.

Rather para-7 of the application, itself suggest that somewhere in his mind even public prosecutor also knows that accused had actively

participated in the selection of site for shifting the petrol pump because in this para it had been stated that prior to issuance of letter dated

21.3.1999 accused had not participated in any proceedings. But fact remains that transaction, if any, took place after 21st March, 1999, wherein

admittedly respondent No.2 being Chairman of the corporation got the land of respondent No.3, who happened to be his son, purchased by

corporation that too at exorbitant prices. Though, similarly learned Judge while allowing the application has stated in his order that he has scanned

the record but in view of the minute scrutiny of record made by this Court in the present case, aforesaid statement of learned Special Judge does

not appear to be correct, rather this Court is compelled to draw conclusion that the learned trial Court granted the permission to withdraw from the

prosecution in cursory manner, merely on the basis of the averments contained in the application moved by the public prosecutor without bothering

to look into the material adduced on record by the investigating agency at the time of presentation of challan under Section 173 Cr.P.C. As had

been observed above, it was only this material made available to learned Judge by the public prosecutor at the time of presenting the challan under

section 173 Cr.P.C, which persuaded/compelled him to conclude at that time that prima-facie case exist against the accused and accordingly

notices were issued.

42. Moreover, court below while deciding the application under section 321 Cr.P.C lost sight of the fact that accused No.1, who happened to be

Chairman of the corporation has misused his official position by making corporation to purchase land of his son respondent No.3 that too on

exorbitant prices. This Court is of the view that when element of corruption as clearly emerge from the record, was involved in the case, court

below should have exercised due care and caution while deciding the application for withdrawal of prosecution moved by the public prosecutor.

43. It has clearly emerged from the record that accused being chairman of the corporation, while making corporation to purchase the land from his

son hoodwinked all the members of the Board because at no point of time respondent No.2 disclosed to the members of the Board that the land

proposed to be purchased is owned by his son. Similarly, accused No.2 misusing his official position procured approval from the Government for

the purchase of land of his son concealing material fact that the land is not abutting to the National Highway, rather 2-3 plots exists in between

National Highway and land proposed to be purchased. Court below also failed to consider/appreciate that despite purchasing land spending Rs.

8,22,800/-, no petrol pump could be set up on the new site till date.

44. Consequently, in view of the detailed discussion made here in above as well as law laid down by the Hon"ble Apex Court as referred here in

above, this Court is of the view that no grounds, whatsoever were available to the public prosecutor to seek withdrawal from the prosecution,

especially any ground suggestive of the fact that withdrawal would be in furtherance of the cause of justice and serve the public interest. Similarly,

Court is of the view that the learned court below while granting permission has also not acted strictly in terms of the principles/guidelines carved out

in the judgment passed by Hon"ble Apex Court referred supra and as such, order passed by learned special judge deserves to be quashed and

set-aside. Accordingly, criminal revision petition is allowed and impugned order dated 22.12.2008, passed by learned Special Judge, Bilaspur

allowing the application filed by the public prosecutor under Section 321 Cr.P.C for permission to withdraw the case from the prosecution in case

FIR No.59/2002, dated 3.4.2002, under Section 418,420,120-B IPC & 13(2) Prevention of Corruption Act, is quashed and set-aside. The

Court below is directed to proceed with the matter on the basis of the challan filed by the investigating Agency and conclude the trial expeditiously.

45. Needless to say, Court below while deciding the case at hand would not be influenced by any of the observations made by this Court while

deciding the present revision petition and shall decide the case at hand purely on the merits/evidence available on record without being imbued by

any observations/findings made by this Court while deciding the present petition.