Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1587 OF 2014
(Arising out of S.L.P. (Crl.) 1487 of 2012)

Bairam Muralidhar ... Appellant

Versus

State of Andhra Pradesh ... Respondent

J U D G M E N T

Dipak Misra, J.

Leave granted.

2. In this appeal, by special leave, the assail is to the defensibility of the order dated 8.12.2011 passed by the High Court of Judicature of Andhra Pradesh at Hyderabad in Criminal Petition No. 1125 of 2010 whereby the learned Single Judge has concurred with the view expressed by the Principal Special Judge for SPE and ACB Cases, City Civil Court, Hyderbad in Crl. P No. 994 of 2009 in C.C. No. 24 of

2007, whereunder the learned trial Judge had declined to grant permission to withdraw the case pending against the accused-appellant in exercise of the power under Section 321 of the Code of Criminal Procedure (for short "the Code").

3. The expose' of facts are the appellant was arrayed as an accused for offences punishable under section 7 and 13 (1) (d) r/w 13 (2) of the Prevention of Corruption Act, 1988 (for brevity 'the Act'). As per the prosecution case the son of one Ranga Dharma Goud fell in love with his neighbour's daughter and both of them eloped on 25.01.2006. The neighbour, Radhakrishna Murthy, lodged an FIR at Kamareddy Town Police Station which was registered as Criminal Case No. 21/2006 under Section-366(A) of the Indian Penal Code (IPC). Sub-Inspector of the Police Station took up the investigation and arrested the son of the Ranga Dharma Goud who suffered judicial custody. When all these things happened Ranga Dharma Goud who was working as a Driver in Dubai came to India and he was asked to come to the Police Station on 22.04.2006 and again on 26.04.2006 on which dates the

investigating officer demanded a sum of Rs.6000/- to be paid for not implicating him in the said kidnapping case and also to file the charge-sheet against his son by reducing the gravity of the charge. As Ranga Dharma Gaud expressed his inability to pay the amount the investigating officer reduced the demand to Rs.5000/-. Expressing his unwillingness to pay, he approached the DSP, ADB, Nizamabad Range, who after due verifications, registered a case in Cr. No. 4/ACB/NZB/2006 on 4.5.2006 under Section 7 & 13 (1) (d) r/w Section 13 (2) of the Act. On the basis of the registration of the FIR the trap was laid and eventually charge-sheet was placed against the accused officer before the competent Court.

4. When the case came up for hearing on charge the public prosecutor filed a petition on 22.06.2009 to withdraw the case against the accused officer on the ground that the Government of A.P. had issued G.P. Ms. No. 268 of Home (SC.A) Department, dated 23.05.2009, to withdraw the prosecution against the accused officer. The learned trial Judge referred to the copy of the G.O. Ms. No. 268 that was annexed to the petition of the Special Public

Prosecutor wherein it was mentioned that on the due examination the Government had found regard being had to the good work of the accused in the anti-extremist field and other meritorious service his case be placed before the Administrative Tribunal for disciplinary proceedings after withdrawal of the prosecution pending in the court of Special Judge. The learned trial Judge referred to various authorities, adverted to the role and duty of the public prosecutor and the role of the Court under Section 321 of the Code, and further taking note of the nature of the case and grant of sanction by the State Government to prosecute the case opined that the public prosecutor really had not applied his independent mind except filing the petition with copy of G.O. Ms. issued by State Government; that there were no sufficient ground or circumstances for the Court to accept the withdrawal of the prosecution case against the officer; and that there was no justification to allow such an application regard being had to the offences against the accused persons, and accordingly, dismissed the petition.

5. As the permission was not granted by the learned trial Judge the appellant invoked the jurisdiction of the High Court under Section 482 of the Code before the High Court and the learned Single Judge after adverting to the facts and the reasons ascribed by the learned trial Judge came to hold that the order passed by the learned trial Judge was absolutely impeccable inasmuch as the public prosecutor had actually not given any valid reason for withdrawal of the case and further, the case, in the obtaining factual matrix, did not warrant withdrawal under Section 321 of the Code.

6. We have heard Ms. Madhurima Tatia, learned counsel for the petitioner and Mr. ATM Rangaramanujam, learned senior counsel for the State.

7. The seminal question that arises for consideration is whether in the obtaining factual score the Court was justified to decline permission under Section 321 of the Code for withdrawal of the case. To appreciate the controversy in proper perspective, it is condign to refer the Government order whereby a decision has been taken

to withdraw the case. The relevant part of it reads as follows:-

> "2. In the reference third read above. Sri. Bairam Muralidhar, Sub-Inspector of Police, has submitted a representation wherein he has stated that a trap was laid on him on 5.5.2006 by the Deputy Superintendent of Police, Anti Corruption Bureau, Nizamabad Range, Nizamabad, along with his staff on a false and frivolous complaint lodged by the complainant by name Sri. Ranga Dharma Goud of Kamareddy, Nizamabad District. Actually, a case in Cr No. 21/2006 u/S.366 (A) Indian Penal Code was registered in Town Police Station of Kamareddy on 01.02.2006 against Naresh Goud, son the of complainant. A charge sheet was also filed by him in the Court of Judicial First Class Magistrate, Kamareddy, against Naresh Goud on 20.03.2006 itself, and the same was numbered vide PRC No. 27/2006. Thus, there was no official favour that was to be done to the complainant or his son in this case as alleged. The complainant himself persuaded him to accept the bribe. When he refused to accept, the complainant forcibly thrusted some currency notes into his left side shirt pocket. When he resisted the said acts of the complainant for the unprecedented act, the Anti-Corruption Bureau, officials rushed to the spot and conducted trap proceedings on him without heeding to his requests. He further informed that he is discharging his legitimate duties and his case was considered for Accelerated Promotion from Sub-Inspector of Police for his contribution in the anti extremist work. His services were recognized by way of awarding Police Katina Seva Pathakam in 2005 and his name was also recommended for Prestigious Indian Police Medal for Gallantry for the year 2003. Hence, keeping in view his

previous record, he requested the Government to consider his request for withdrawal of prosecution and also to reinstate into service.

3. In the reference fourth read above, the Director General, Anti-Corruption Bureau, Andhra Pradesh, Hyderabad, while rebutting the contentions of the Accused Officer has stated that there are no merits in the application filed by the applicant and it is not maintainable and as such requested the Government to dismiss the application filed by the Accused Officer Sri. B. Muralidhar, Sub-Inspector of Police.

4. Government have examined the matter in detail, keeping in view of his good work in the anti-extremist field and other meritorious service and order that the case of Sri. Bairam Muralidhar, Sub-Inspector of Police, Kamareddy Town Police Station, Nizamabad, be placed before the Tribunal for Disciplinary Proceedings, duly withdrawing the prosecution in C.C. No. 24/2007...."

8. The application for withdrawal that was filed by the learned Public Prosecutor deserves to be referred to. After narrating the factual matrix about the case, while seeking withdrawal the following grounds were put forth:

"It is further submitted that as the matter stood thus, the Government has reviewed the case and decided to modify the orders issued in G.O. Ms. No.06, Home (SC-A) Department, dt. 10.01.2007 and placed the respondent/accused officer on his defense before Tribunal for disciplinary proceedings and issued G.O. Ms. No. 268, home (SC-A) Department, dated 23.5.2009, the said G.O. is filed along with the petition for consideration.

> I respectfully submit that on perusal of the Government order and the material evidences available on record and on application of the mind independently and for the reasons accorded by the Government I am satisfied that the case is fit for withdrawal from prosecution in accordance with the settled principles of law as laid down by the Honourable Supreme Court of India.
>
> Therefore, under the above said circumstances it is prayed that this Honourable Court may be pleased to permit me to withdraw the case of the prosecution against the respondent/accused officer Sri. Bairam Murlidhar and the same may be treated as withdrawn and the respondent/accused officer may be discharged in the interest of justice and equity."

9. The learned counsel for the petitioner submitted that in a similar case in ***Name Dasarath v. State of Andhra Pradesh in Criminal Appeal No. 299 of 2014 decided on 30th January 2014***, this Court has after reproducing paragraphs 69, 70 and 71 of the Constitution Bench decision in ***Sheo Nandan Paswan v. State of Bihar and others***[1] has quashed the prosecution and remanded the matter. The operative part of the said order reads as follows:-

> "We accordingly allow the appeal, set aside the order of the Trial Court and the impugned order of the High Court and remand the matter to the

[1] AIR 1987 SC 877

> Trial Court for fresh consideration of the petition for withdrawal of prosecution against the appellant under Section 321 Cr.P.C. in the light of the judgments of this Court and in particular the majority judgments of the Constitution Bench of this Court in ***Sheo Nandan Paswan v. State of Bihar and others*** quoted above."

10. In the said case, as we notice, an application was preferred for withdrawal of the case where charge-sheet had already been filed under Section 13 (2) r/w Section 13(1)(e) of the Act and the Principal Special Judge for SPE & ACB had declined to grant the prayer and the High Court had refused to entertain the criminal revision. This Court observed that the trial Court as well as the High Court has not correctly appreciated the law laid down in ***Sheo Nandan Paswan's case*** and accordingly passed the order which we have reproduced hereinbefore.

11. We have already referred to the facts of the case, reproduced the Government order and the application filed by the public prosecutor. Before we express our opinion with regard to legal sustainability of the order passed by the learned trial Judge, we think it apposite to refer to certain authorities pertaining to the role of the Public Prosecutor and the duty of the Court as envisaged under section 321 of the Code. The Constitution Bench in

Sheo Nandan Paswan's case referred to Section 333 of the old Code and taking note of the language employed under Section 321 of the present Code opined thus:-

> "69. A harmonious view should, in my view, prevail in the reading of the two sections. Section 333 does not give any discretion or choice to the High Court when a motion is made under it. Such being the case, Section 321 must also be construed as conferring powers within circumscribed limits to the court to refuse to grant permission to the Public Prosecutor to withdraw the prosecution. If such a harmonious view is not taken it would then lead to the anomalous position that while under Section 333, a High Court has to yield helplessly to the representation of the Advocate-General and stop the proceedings and discharge or acquit the accused, the subordinate courts when moved under Section 321 CrPC would have a power to refuse to give consent for withdrawal of the prosecution if it is of opinion that the case did not suffer from paucity of evidence. The legislature would not have intended to confer greater powers on the subordinate courts than on the High Court in the exercise of powers under Section 494 of the old Code and Section 333 respectively. It would, therefore, be just and reasonable to hold that while conferring powers upon the subordinate courts under Section 494 to give consent to a Public Prosecutor withdrawing the prosecution, the legislature had only intended that the courts should perform a supervisory function and not an adjudicatory function in the legal sense of the term.
>
> Section 321 reads as follows:
>
> "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. (Proviso omitted)"

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".

70. 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.
>
> 71. 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."

12. In the said case, the larger Bench referred the decisions in ***Bansi Lal v. Chandan Lal***[2]***, Balwant Singh v. State of Bihar***[3]***, Subhash Chander v. State***[4]***, Rajendra Kumar Jain v. State***[5]***,*** and the principles stated in ***State of Bihar v. Ram Naresh Pandey***[6] and eventually came to hold as follows*:-*

[2] AIR 1976 SC 370
[3] (1978) 1 SCR 604
[4] (1980) 2 SCR 44
[5] AIR 1980 SC 1510
[6] AIR 1957 SC 389

> "All the above decisions have followed the reasoning of Ram Naresh Pandey's case and the principle settled in that decision were not doubted.
>
> 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 has 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 S. 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) and others***[7] this Court while dealing with justifiability of withdrawal from the prosecution the Court referred to the Section 321 of the Code and the principle that has been stated in ***Sheonandan Paswan*** (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

[7] (1996) 2 SCC 610

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."

14. A three-Judge Bench in ***Abdul Karim etc. etc. v. State of Karnataka and others etc.***[8] referred to the Constitution Bench judgment in ***Sheonandan Paswan case*** and Bharucha, J (as his Lordship then was) speaking for himself and D.P. Mohapatra, J. observed thus:-

"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

[8] AIR 2001 SC 116

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]

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:-

> "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*. 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."
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> [Underlining is ours]

16. In ***Rahul Agarwal v. Rakesh Jain and another***[9] the Court was dealing with what should be the lawful

[9] (2005) 2 SCC 377

consideration while dealing with an application for withdrawal under Section 321 of the Code. The Court referred to the decisions in ***Ram Naresh Pandey*** (supra), ***State of Orissa*** **v.** ***Chandrika Mohapatra***[10], ***Balwant Singh v. State of Bihar*** (supra) and the authority in ***Abdul Karim*** (supra) wherein the earlier decision of the Constitution Bench in ***Sheonandan Paswan*** 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 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

[10] (1976) 4 SCC 250

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 G.O. Ms. 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 has 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. 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.

19. A case under the Prevention of Corruption Act has its own gravity. In ***Niranjan Hemchandra Sashittal and***

another v. State of Maharashtra[11] while declining to quash the proceeding under the Act on the ground of delayed trial, the Court observed thus:

> "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 has 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 corrosions 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."

20. Recently, in ***Dr. Subramanian Swamy v. Director, Central Bureau of Investigation & Anr.***[12]***,***

[11] (2013) 4 SCC 642

[12] Writ Petition (Civil) No. 38 of 1997 etc. pronounced on May 06, 2014

the Constitution Bench while declaring Section 6A of the Delhi Special Police Establishment Act, 1946, which was inserted by Act 45 of 2003 as unconstitutional has opined that:-

> "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 faice 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 inquiry 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:

> "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.
>
> 71. 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 inquiry and investigation."

21. 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. The view expressed in ***Name Dasarath***'s case (supra) is not applicable to the case at hand as the two-Judge Bench therein has opined that the law laid down in ***Sheo Nandan Paswan's*** case has not been correctly appreciated by the learned trial Judge and the High Court. We have referred to the said authority and the later decisions which are on the basis of ***Sheo Nandan Paswan's*** case have laid down the principles pertaining to the duty of the public prosecutor and the role of the Court and we find the view expressed by the trial Court and the High Court is absolutely impregnable and, therefore, the decision in ***Name Dasarath*** (supra) is distinguishable on facts.

22. In the result, the criminal appeal, being *sans substratum,* is dismissed.

.....J.
[Dipak Misra]

.....J.

[Pinaki Chandra Ghose]

New Delhi;
July 31, 2014.