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CrL.R.P.No.1195 of 2012

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

THURSDAY, THE 17<sup>TH</sup> DAY OF OCTOBER 2024 / 25TH ASWINA, 1946

CRL.REV.PET NO. 1195 OF 2012

AGAINST THE ORDER DATED 23.04.2012 IN CMP NO.3778 OF  
2012 IN CC NO.959/2007 OF JUDICIAL MAGISTRATE OF FIRST  
CLASS -I, HOSDRUG

REVISION PETITIONER/ACCUSED:

MUHAMMED ASHRAF K.A.,  
S/O.ABDLLA B.C., B.C.HOUSE,  
NEAR PADNE U.P.SCHOOL,  
PADNE VILLAGE, KASARAGOD DISTRICT.

BY ADV  
SRI.SUNNY MATHEW

RESPONDENTS/COMPLAINANT AND STATE:

1 THE SUB INSPECTOR OF POLICE,  
CHANDERA POLICE STATION,  
KASARAGOD DISTRICT.

\*2 P.V.NIRMALA  
WOMEN SUB INSPECTOR,  
PAZHAYANNUR POLICE STATION.

\* ADDRESS OF R2 IS CHANGED AS  
NIRMALA P.V., W/O.BHASKARAN,  
WEAVERS STREET, KARIVELLUR, PIN - 670521,  
KANNUR DISTRICT, KERALA, MOB:9495458755 AS PER  
ORDER DATED 06.09.2024 IN CRL.R.P.NO.1195/2012



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**3 STATE OF KERALA,  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM,  
COCHI-682031.**

**BY ADVS.  
SMT.NEEMA JACOB, R1 AND R3  
SMT.SHAHNA KARTHIKEYAN, R2**

**THIS CRIMINAL REVISION PETITION HAVING BEEN  
FINALLY HEARD ON 17.10.2024, THE COURT ON THE SAME  
DAY DELIVERED THE FOLLOWING:**



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**K.BABU, J.**

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Dated this the 17<sup>th</sup> day of October, 2024

**ORDER**

The revision is at the instance of the accused in C.C.No.959/2007. The challenge in this revision is to the order dated 23.04.2012 in CMP No.3778 of 2012, a petition seeking withdrawal of the prosecution under Section 321 of Cr.P.C.

2. The prosecution case is as follows:-

Smt.P.V.Nirmala was the Sub Inspector Police, Payyanoor Police Station. On 25.06.2007, Smt. Sameera a native of Punchakad filed a petition (Petition No.374/2007) before the Principal Sub Inspector against one Sri.Rafeeq, a native of Padanna. The Principal Sub Inspector authorised Smt.P.V. Nirmala (PW1) to conduct a preliminary enquiry into the allegations in the petition. Around 5.30 p.m., on 25.06.2007, PW1 went to the residence of Sri.Rafeeq. He was not there. His brother Sri. Mohammed Ashraf (revision



petitioner/accused) was there. PW1 enquired about Sri.Rafeeq. The accused threatened her and showered abusive words upon her. He used criminal force with intent to outrage her modesty. He retorted that he was a political leader of the locality. He stated to her that no police could do anything against him. He again used criminal force against PW1. She was pushed out by the accused using force. He threatened PW1 with fear of death. He also threatened that he will set fire after putting her in the vehicle.

3. PW1 gave a statement to the SHO, Payyanoor police Station narrating the incident and the overt acts alleged. Based on her statement, the police registered Crime No.175/2007 alleging offences punishable under Sections 353, 354, 295(b) and 506(ii) of the IPC.

4. The police conducted investigation and submitted final report as early as on 29.07.2007.

5. The Court took cognizance of the offences on 17.08.2007. The revision petitioner/accused appeared on



summons. Charges were framed against him on 13.03.2008. The learned Magistrate proceeded with the trial. On 06.06.2008, the Court issued summons to CW1(PW1). She gave evidence as PW1 on 22.07.2008. The trial of the case continued till 23.04.2012. By that time, the prosecution had completed the evidence. The Court examined the accused under Section 313 of Cr.P.C. On 23.04.2012, the learned Public Prosecutor submitted an application under Section 321 Cr.P.C. The application reads thus:-

“It is humbly submitted that the above case is charge sheeted u/s 353, 354, 294(b) & 506(ii) of IPC. The evidence of prosecution is over in this case. 313 of the accused also over.

Now I have received an order from the Govt. stating that the Govt is having no objection to withdraw the case with the permission of the Hon’ble Court.

So I am filing this application. Appropriate orders may be passed in the interest of justice.”

6. The learned Magistrate on 23.04.2012 passed the following order on the application seeking withdrawal of the prosecution:-

“This is a petition filed by the Asst. Public Prosecutor u/s. 321 Cr.P.C.

2. Heard. Considering the nature of the offence committed, this application cannot be allowed.



A lady police officer was insulted and assaulted by the accused while discharging her official duty. Therefore, this petition is dismissed.”

7. I have heard the learned counsel for the revision petitioner, the learned counsel appearing for the victim and the learned Public Prosecutor.

8. The learned counsel for the revision petitioner submitted that the learned Magistrate mechanically passed the impugned order. It is submitted that the District Police Chief also had recommended for the withdrawal of the prosecution. The learned counsel for the revision petitioner further submitted that it was after a full fledged enquiry, the District Police Chief recommended the withdrawal of the prosecution. The learned counsel submitted that the State has the right to decide whether the prosecution is to be continued or not. The learned counsel relied on **State of Kerala v. Balakrishna Pillai (1993 KHC 79)** to contend that the powers exercised by the Public Prosecutor under Section 321 of the Cr.P.C. is in the nature of a prerogative and the role of the Court is only limited in the sense that it is supervisory, and not adjudicatory or appellate in character.



9. The learned counsel for the victim submitted that the plea of the revision petitioner that the District Police Chief conducted an enquiry and submitted a recommendation to the Government to withdraw the prosecution is baseless. It is submitted that the victim had no idea about the enquiry stated to have been conducted by the District Police Chief. The learned counsel for the victim submitted that the Assistant Public Prosecutor had failed to discharge his duty as provided under Section 321 of Cr.P.C.

10. The learned Public Prosecution submitted that the woman Police Sub Inspector (PW1) was on official duty as part of a preliminary enquiry on a petition filed in the police station. On the date of occurrence itself she lodged a complaint before the police. The police conducted a thorough investigation and submitted a final report against the revision petitioner.

11. The learned Public Prosecutor submitted that the withdrawal application was filed at a stage when the Court



had completed the examination of all the witnesses and after examining the accused under Section 313 Cr.P.C. The learned Public Prosecutor on perusal of the records and the proceedings before the Court below submitted that the prosecution could lead credible evidence against the revision petitioner/accused.

12. The relevant statutory provision is Section 321 of Cr.P.C., which reads thus:-

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

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

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

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

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

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

(iv)was committed by a person in the service of the Central Government while acting or





purporting to act in the discharge of his official duty,

and the Prosecutor in charge of the case has not been appointed by the Central Government he shall not, unless he has been permitted by the Central Government to do so, move the Court for its consent to withdraw from the prosecution and the Court shall, before according consent, direct the Prosecutor to produce before it the permission granted by the Central Government to withdraw from the prosecution. “

13. The 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 the application for withdrawal has to get the consent of the court. The outer limit for the exercise of this power is “at any time before the judgment is pronounced”. 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. However, the consent of the court is not 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. It is necessary for the public prosecutor to satisfy himself in each case that the case is fit for withdrawal from prosecution. 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. 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. 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. {Vide : **Sheonandan Paswan v. State of Bihar [(1987) 1 SCC 288]**, **R.M.Tewari v. State (NCT of Delhi) [(1996) 2 SCC 610]**, **Abdul Karim v. State of Karnataka [(2000) 8 SCC 710]** and **Bairam Muralidhar v. State of Andhra Pradesh [(2014) 10 SCC 380]}**}.

14. In **Abdul Wahab K. v. State of Kerala and others [(2018) 18 SCC 448]**, the Supreme Court held that the Public Prosecutor or an Assistant Public Prosecutor, as the case may be, has a vital role under the statutory scheme and is expected to act as an independent person. He/she has to apply his/her mind and consider the effect of



withdrawal on society in the event such permission is granted.

15. In **State of Kerala v. K.Ajith [(2021) 17 SCC 318]**, the Supreme Court observed thus:-

“67. The test which has been laid down in the decisions of this Court commencing with Ram Naresh Pandey [State of Bihar v. Ram Naresh Pandey, 1957 SCC OnLine SC 22 : AIR 1957 SC 389] in 1957, spanning decisions over the last 65 years is consistent. The true function of the court when an application under Section 321 is filed is to ensure that the executive function of the Public Prosecutor has not been improperly exercised or that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes. The court will grant its consent if it is satisfied that it subserves the administration of justice and the purpose of seeking it is not extraneous to the vindication of the law. It is the broad ends of public justice that must guide the decision. The Public Prosecutor is duty-bound to act independently and ensure that they have applied their minds to the essential purpose which governs the exercise of the powers. Whether the Public Prosecutor has acted in good faith is not in itself dispositive of the issue as to whether consent should be given. This is clear from the judgment in *Sheonandan Paswan* [*Sheonandan Paswan v. State of Bihar*, (1987) 1 SCC 288 : 1987 SCC (Cri) 82] . In para 73 of the judgment, V. Khalid, J. has specifically observed that the court must scrutinise “whether the application is made in good faith, in the interest of public policy and justice and not to thwart or stifle the process of law”. Good faith is one and not the only consideration. The court must also scrutinise whether an application suffers from such improprieties or illegalities as to cause manifest injustice if consent is given.”

16. The learned Public Prosecutor has a solemn duty while making an application under Section 321 of Cr.P.C. A perusal of the application submitted by the learned Public



Prosecutor in the present case shows that he had not applied his mind on any of the materials. But, he simply acted as per the directions of the Government. It is evident that the learned Public Prosecutor had been totally guided by the order of the Government and there is nothing to show that he had applied his mind to the facts of the case. The submission of the learned counsel for the victim that extraneous factors influenced the Government in taking a decision to withdraw the prosecution has some force. I must say that the learned Assistant Public Prosecutor has failed in the discharge of his duties.

This is a case where the modesty of a Woman Police Sub Inspector was outraged by the accused. The Woman Police Sub Inspector reached the residence of the accused as part of her official duty. The materials placed before the Court would reveal that the withdrawal of the prosecution would not serve public interest rather it would go against the public interest. The learned Trial Judge rightly held that the withdrawal of the prosecution would not serve public



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interest. The revision lacks merits and it stands dismissed.

The Registry shall forthwith transmit the trial court records. The Court below shall proceed with the trial of the matter, as expeditiously as possible. It shall dispose of the matter within three months from the date of receipt of a certified copy of this order.

As the victim retired from the service and settled in a far away place in Kannur District, this Court directed the High Court Legal Services Committee to nominate a lawyer from its panel to appear on behalf of her. The High Court Legal Services Committee nominated Advocate Smt. Shahana Karthikeyan, to defend the matter for the victim. She has effectively defended the victim. She is entitled to get maximum remuneration as per the existing norms.

**Sd/-  
K. BABU  
JUDGE**

VPK