IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE RAMKUMAR CHOUBEY

ON THE 16th OF SEPTEMBER, 2025

CRIMINAL REVISION NO.2277/2014

SMT. VIMLA JAIN

VS.

STATE OF MADHYA PRADESH & OTHERS

Appearance:

Petitioner by Shri Sourabh Shrivastava – Advocate.
Respondent No.1/State by Shri Ashish Kurmi – Panel Lawyer.
Respondents No.2 to 5 by Shri Kailash Deo Singh – Advocate.

.....

Reserved on : 25.08.2025

Delivered on : 16.09.2025

ORDER

The matter was heard finally on 25.08.2025 and today the order is being delivered.

2. This revision petition has been filed under Section 397(1) read with 401 of the Code of Criminal Procedure, 1973 (for brevity "Cr.P.C.") by the petitioner (victim/first informant before the trial Court) assailing the order dated 27.08.2014 passed by learned XII Additional Sessions Judge,

Jabalpur in Criminal Appeal No.100/2014 whereby the learned appellate Court has affirmed the order dated 30.11.2013 passed by the Judicial Magistrate First Class, Jabalpur in Criminal Case No. 15777/2010 allowing an application under section 321 of Cr.P.C. filed by the Public Prosecutor permitting withdrawal from the prosecution of respondents No. 2 to 5 (accused before the trial Court).

3. The encapsulated facts, which would lead to a decisive conclusion, are that on 13.10.2010 the petitioner had lodged an FIR against respondents No.2 to 5 with respect to the offences punishable under sections 294, 323, 323 r/w 34, 506 of IPC at Police Station, Garha, District Jabalpur.

3.1 After due investigation, a final report was submitted to the trial Court on 13.12.2010. The learned trial Court proceeded with the trial, framed the charges against respondents No.2 to 5 on 03.08.2011 and case was fixed for recording of the prosecution evidence on 28.9.2011. However, the prosecution could not produce any witness on nine sequential dates fixed for hearing.

3.2 On 06.09.2013 examination-in-chief of the petitioner/victim Vimla Jain (PW1) and witness Usha Patel (PW2) was recorded and their cross-examination was deferred at the instance of respondent No. 2 to 5/accused. On the next date of hearing on 20.09.2013 both witnesses were present in the trial Court but cross-examination was not completed by the defence counsel and case was adjourned. On the adjourned date i.e. 17.10.2013 again both witnesses were present but respondents No. 2 to 5 had again sought an adjournment. On the next date i.e. 12.11.2013 witness Vimla Jain (PW1) appeared for her cross-examination but it could not be

completed by the counsel appearing for respondent No. 2 to 5 and the witnesses were bound over for the next date of hearing fixed for 5.12.2013.

3.3 Prior to the date of hearing i.e. 5.12.2013, on 30.11.2013 in National Lok-Adalat, the Assistant Public Prosecutor (ADPO) who was In-charge of the case, filed an application under Section 321 of Cr.P.C. submitting that vide order No. One.35-279/2004/2/C-2, Bhopal dated 04.10.2013, the State Government has directed to withdraw this case in public interest.

3.4 Learned trial Court has, at the request of the Assistant Public Prosecutor, taken the case for hearing and allowed the said application for withdrawal from prosecution and consequently, acquitted the respondents No.2 to 5 vide order dated 30.11.2013.

3.5 Thereafter, the petitioner being a victim, preferred an appeal under the proviso to section 372 of Cr.P.C. against the order dated 30.11.2013. The learned appellate Court dismissed the appeal concluding that the case was withdrawn as per the guidelines issued by the Government of Madhya Pradesh and also held that the provisions of section 321 of Cr.P.C. do not provide for prior notice to the victim or complainant and thereby giving opportunity of hearing. The learned appellate Court has affirmed the order of the trial Court. Hence this revision.

4. The learned counsel for the petitioner has submitted that the application under Section 321 of Cr.P.C. did not disclose public interest and the Public Prosecutor had not applied his mind while acting under the direction of the Government. He further submitted that an application under section 321 of Cr.P.C. cannot be referred to the Lok Adalat. Learned counsel also submitted that the petitioner was not heard on that application

and was not given an opportunity of hearing. The petitioner was severely assaulted by respondent No. 2 to 5 and she had sustained five injuries. Therefore, by withdrawing the said case, the petitioner is deprived of getting justice.

5. On the other hand, the learned counsel for respondent No.1 /State has urged that the application under section 321 of Cr.P.C. was submitted by the Assistant Public Prosecutor in-charge of the case as per the directions of his superior authority in National Lok Adalat. He further submitted that the law does not provide for hearing of the victim or private complainant on an application under section 321 of Cr.P.C. for withdrawing the prosecution.

6. The learned counsel for the respondents No. 2 to 5 submitted that the case was withdrawn at the instance of the State without the intervention of these respondents. It is also submitted that, at the most, the matter can only be remanded back to the trial Court for adjudication.

7. Heard learned counsel for tripartite and perused the record of the courts below.

8. Firstly, the order dated 30.11.2013 of the trial Court, being passed in National Lok Adalat, needs to be analyzed in view of the provisions of the Legal Services Authorities Act, 1987 (in short- "Act, 1987"). Chapter VI, sections 19 to 22 deals with Lok Adalat for cases pending with the Courts for adjudication, whereas, Chapter VIA, sections 22A to 22E deals with Permanent Lok Adalat for pre-litigation matters relating to public utility services resolve through conciliation and settlement. Sub-section (5) of section 19 of the Act, 1987 is relevant here which reproduce as under;-

> " xxx xxx xxx
> (5) A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of-
>
> (i) any case pending before; or
>
> (ii) any matter which is falling within the jurisdiction of, and is not brought before, any court for which the Lok Adalat is organised:
>
> Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law."

Further, section 20 provides for cognizance of cases by Lok Adalat referred to in sub-section (5) of section 19. Section 20 ruled that no case shall be referred to the Lok Adalat by a court except after giving a reasonable opportunity of being heard to the parties. Section 21 deals with an award made by the Lok Adalat. Every award of the Lok Adalat is a deemed decree of a Civil Court or order of a Court which shall be final and binding on all the parties to the lis. It has been made clear that no appeal shall lie to any Court against the award of Lok Adalat. The Act, 1987 mandate that every Lok Adalat is expected to act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles.

9. In **State of Punjab and others v. Phulan Rani and another, AIR 2004 SC 4105,** the Supreme Court has held that if no compromise or settlement is or could be arrived at, no order can be passed by the Lok Adalat. Similarly, in case of **State of Punjab and Ors. v. Ganpat Rai, (2006) 8 SCC 364**, it is opined that "unless there is compromise or settlement between parties, which requires bilateral involvement, the case

cannot be disposed by Lok Adalat.". The same view has been expressed in **Estate Officer v. Colonel H.V. Mankotia (Retired), AIR 2021 SC 4894** wherein it is held that "Lok Adalat has no jurisdiction at all to decide the matter once it is found that compromise or settlement could not be arrived at between the parties.". It emerges that Lok Adalat is a conciliatory forum, not adjudicatory one. A Lok Adalat can resolve dispute only by way of compromise or settlement, but not otherwise. Therefore, in Lok Adalat entering merit without conciliation or settlement would be invalid for jurisdictional excess.

10. Avowedly, prior to the date of hearing fixed for 5.12.2013, on 30.11.2013 in National Lok-Adalat, the Assistant Public Prosecutor filed an application under Section 321 of Cr.P.C. and the learned trial Court has, at the request of the Assistant Public Prosecutor took the case for hearing and allowed the said application. The application was filed unilaterally by the Public Prosecutor which has no relation with the process of conciliation or settlement. Since the matter was fixed for hearing on 05.12.2013, the requirement of preponing the case for entertaining the application under section 321 of Cr.P.C. was unwarranted for want of urgency or any justifiable reason for preponing the date of hearing.

11. The learned appellate Court, although, has held that the order dated 30.11.2013 passed by the learned trial Court is not an award passed in Lok Adalat, but it is not clear that the order was passed by the learned JMFC being a Presiding Judge of the trial Court or being a Presiding Member of the Lok Adalat. Undoubtedly, the application filed under section 321 of Cr.P.C. was not intended to decide the matter on the basis of compromise or settlement, but the caption "National Lok Adalat" written at the top of the order-sheet demonstrates that either the case was referred

to the Lok Adalat or was taken-up by the learned trial Court in Lok Adalat, thence, what the learned trial Court did, was not a regular course of trial. Any process of law that deviates from normal, legal or established procedures, involving errors or omissions, that may or may not invalidate the entire case, is said to be an irregular proceeding. Therefore, the order dated 30.11.2013 is an outcome of irregular proceedings adopted by the trial Court.

12. The pious functionary of Lok Adalat is to resolve the dispute amongst the rivals in a win-win situation. As per the statutory scheme of Lok Adalat ideate under the Act, 1987, only those cases which could be disposed in terms of conciliation, settlement or compromise between the concerned parties, can be referred to Lok Adalat and all other matters requiring adjudication or decision otherwise should not be dealt and disposed of in Lok Adalat. Therefore, any matter which does not require decision through conciliation, settlement or compromise cannot be referred to a Lok Adalat. Reference of a matter beyond the orbit of Lok Adalat, just for the glory of success of Lok Adalat or for any reason, is absolutely verboten and any such practice should be discouraged.

13. The next contention with regard to the validity of order dated 30.11.2013 is founded on the legal proposition of withdrawal from prosecution.

14. On commission of an offence, after the investigation and/or inquiry into the matter, the offender be put for trial which may conclude in conviction or acquittal. However, the law also provides for termination of trial otherwise than on merits. In Cr.P.C., like section 256: non-appearance of complainant, section 258; power to stop proceedings, section 320; compounding of offence, section 321: withdrawal from prosecution, are

rulling the conclusion of prosecution prior to full-fledged trial. The criminal law, when set in motion, must reach to its logical end, which is undoubtedly found in a decision on merits. A recourse of criminal procedure incoherence from the decision on merits is not to be adopted as a main course. Further more, if a situation so arises, the Court should strictly adhere to the relevant provisions of law to avert the apprehension of miscarriage of justice.

15. At this juncture, it is apposite to quote section 321 of Cr.P.C. which reads as under;

> **"321. Withdrawal from prosecution.**- The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and, upon such withdrawal, -
> (a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;
> (b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences :
> Provided that where such offence -
> (i) was against any law relating to a matter to which the executive power of the Union extends, or
> (ii) was investigated by the Delhi Special Police Establishment under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or
> (iii) involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or
> (iv) was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty, and the Prosecutor in charge of the case has not been appointed by the Central Government he shall not, unless he has been permitted by the Central Government to do so, move the Court for its consent to withdraw from the prosecution and the Court shall, before according consent, direct the Prosecutor

to produce before it the permission granted by the Central Government to withdraw from the prosecution."

16. The relevant paragraphs of the application under section 321 of Cr.P.C. submitted by Assistant Public Prosecutor are being reproduced here as under;

"..... यह कि सदर प्रकरण में शासन द्वारा निर्णय लिया गया है कि इस सदर प्रकरण को आगे चलाया जाना लोकहित में नहीं है।

यह कि द.प्र.सं. की धारा 321 के उपबंधों के तहत प्रकरण वापसी कार्यवाही संपादन हेतु मुझे निर्देशित किया गया है।

यह कि प्रकरण वापिस लेने हेतु अनुमति आदेश शासन नीति अनुसार जारी हो चुका है।

अतः निवेदन है कि सदर प्रकरण को आज सुनवाई हेतु लिया जाकर लोकहित में वापिस लिये जाने हेतु अनुमति प्रदान करने का कष्ट करें।

दिनांक 30/11/13

अभियोजन अधिकारी
जबलपुर"

17. Under the old Code; the Code of Criminal Procedure, 1898 section 494 deals with withdrawal of prosecution. The Privy Council has held in ***Faqir Singh* v. *Emperor,* AIR 1938 Privy Council 266** that;

> "It (Section 494) gives a general executive discretion to the Public Prosecutor to withdraw from the prosecution subject to the consent of the Court, which may be determined on many possible grounds".

The Privy Council further opined that;

> "The judicial function, therefore, 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."

18. The Apex Court in **State of Bihar v. Ram Naresh Pandey, 1957 SCC OnLine SC 22** has opined that;

> "The section is an enabling one and vests in the Public Prosecutor the discretion to apply to the Court for its consent to withdraw from the prosecution of any person. 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. In understanding and applying the section, two main features thereof have to be kept in mind. 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.".

19. The intent of the provision of withdrawal of prosecution at the instance of Public Prosecutor has remained same since its inception and the proposition is well settled in a catena of decisions of the Supreme Court with no interpretive divergence. Few are referred hereinunder.

20. In **Rajender Kumar Jain v. State, Through Special Police Establishment and others (1980) 3 SCC 435**, the Apex Court has taken a view that

> "The Public Prosecutor must independently apply his/her mind before filing a section 321 application; the court's role is supervisory, it must see whether the prosecutor acted bona fide and whether withdrawal would advance public justice. Withdrawal may be for reasons beyond mere paucity of evidence (public interest, political considerations sometimes) but must not be arbitrary."

21. In withdrawal from prosecution, Public Prosecutor cannot act on the dictates of State Government. The independence of the Public

Prosecutor in the matter of seeking to withdraw from the prosecution has been underlined in **Subhash Chander v. State Chandigarh Administration & Others, AIR 1980 SC 423** in the following terms;

> "Any authority who coerces or orders or pressures a functionary like a Public Prosecutor, in the exclusive province of his discretionary power, violates the rule of law, and any Public Prosecutor who bends before such command betrays the authority of his office."

The Supreme Court further explained that;

> "The Government or the District Magistrate will consider that a prosecution or class of prosecutions deserves to be withdrawn on grounds of policy or reasons of public interest relevant to law and justice in their larger connotation and request the Public Prosecutor to consider whether the case or cases may not be withdrawn. Thereupon, the Prosecutor will give due weight to the material placed, the policy behind the recommendation and the responsible position of government which, in the last analysis has to maintain public order and promote public justice. But the decision to withdraw must be his."

The Supreme Court also opined that;

> "The fact that broader considerations of public peace, larger considerations of public justice and even deeper considerations of promotion of long-lasting security in a locality, of order in a disorderly situation or harmony in a faction milieu, or halting a false and vexatious prosecution in a court, persuades the executive, pro bono publico, sacrifice a pending case for a wider benefit, is not ruled out although the power must be sparingly exercised and the statutory agency to be satisfied is, the Public Prosecutor, not the District Magistrate or Minister."

22. The Supreme Court in **Sheonandan Paswan v. State of Bihar and others, (1987) 1 SCC 288** has dealt with the scheme envisaged under section 321 of Cr.P.C. and restated the legal proposition as follows;

> "When the application for consent to the withdrawal from the prosecution comes for consideration, the court has to exercise its judicial discretion with reference to such material as is then available to it and in exercise of this discretion the court has to satisfy itself that the executive function of the Public Prosecutor has not been improperly exercised and that the grounds urged in support of the application for withdrawal are legitimate grounds in furtherance of public justice."

The Supreme Court further held that;

> "The discretion has not to be exercised by the court mechanically and the consent applied for has not to be granted as a matter of formality or for the mere asking. The court has to consider the material placed before it and satisfy itself that the grant of consent would serve the interest of justice."

23. The court while considering whether to grant consent or not must not accept the *ipse dixit* of the Public Prosecutor. It is expected from the court to give an informed consent for withdrawal of prosecution as held in **Abdul Karim & Others v. State of Karnataka & Others, (2000) 8 SCC 710**, which reads as thus;

> "….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.**"**

24. The duty of the Court, where the Government or superior authorities issuing directions to the Public Prosecutor for withdrawing the prosecution is described in **Rahul Agarwal v. Rakesh Jain & another,**

(2005) 2 SCC 377. The Apex Court has held that;

> "….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."

25. A similar view expressed in **Bairam Muralidhar v. State of A.P., (2014) 10 SCC 380,** wherein it has been reiterated in the following words;

> "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."

Further, it has been observed that,

> "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."

26. The Supreme Court has clearly stipulated in **Abdul Wahab K. v. State of Kerala, (2018) 18 SCC 448** that

> "...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."

27. All these decisions clarified and tightened the benchmarks of independent mind of prosecutor, informed consent of court in supervisory role and core objective of public justice. It is appropriate to distill the procedural effect of the propositions laid down by the highest Court that the Courts ought to have followed a long cherished judicial practice in the matter of withdrawal of prosecution at the instance of the Public Prosecutor.

28. In the present case, the lack of application of mind is palpably manifest and lucid in the above contents of the application. The application clearly reveals that the same was filed in pursuance to the directions issued by the Government. Nothing is to show that the Public Prosecutor in-charge of the case had applied his mind independently to ascertain that withdrawal of the case would in-fact sub-serve the public justice. More so, the learned trial Court has also accorded the consent of withdrawal without considering the criterion of independent mind of prosecutor and core objective of public justice. Hence, when the order dated 30.11.2013 is tested on the touchstone of the anvil of legal proposition as discussed herein above, the same is not found to be in consonance with the law in this regard. Thus, not sustainable.

29. The polemic issue; "whether a victim or private complainant has a right to be heard on withdrawal from prosecution under section 321

of Cr.P.C.", may be solved in the backdrop of the modern structure of courts' supervisory function to safeguard public justice. Erstwhile section 321 of Cr.P.C. did not expressly give the victim or complainant a statutory right to be heard on withdrawal from the prosecution. After the criminal procedure law has been rewritten in the form of Bharatiya Nagarik Suraksha Sanhita, 2023 (for brevity- "BNSS") the victim has been given an opportunity of being heard before any withdrawal is allowed. Proviso to section 360 of BNSS, analogues to section 321 of Cr.P.C., has been added as thus; "Provided further that no Court shall allow such withdrawal without giving an opportunity of being heard to the victim in the case."

30. Even prior to this modification, precedents allowed private persons or complainant or even third party to oppose and seek remedies against a withdrawal of prosecution under section 321 of Cr.P.C. in an appropriate case. The Supreme Court in **Sheonandan Paswan** (supra) opined that a private person can in appropriate circumstances raise objection/resist withdrawal. In **Abdul Wahab K.** (supra) the Apex Court has reiterated the view expressed in **Sheonandan Paswan** (supra) and allowed locus to the party aggrieved by a withdrawal of prosecution. The Court observed that "The High Court has unsuited the petitioners on the ground that they are third parties who are unconnected with the case. They had filed revisions and the High Court has been conferred power to entertain the revisions and rectify the errors which are apparent or totally uncalled for. This is the power of superintendence of the High Court. Thus viewed, the petitioners could not have been treated as strangers, for they had brought it to the notice of the High Court and hence, it should have applied its mind with regard to the correctness of the order."

31. A coordinate Bench of this Court in **Purshottam 'Vijay' and another v. State and others, 1983 MPLJ. 694,** while considering the question of *locus standi* with regard to the revision filed against withdrawal from prosecution, has observed that a revision petition by a stranger is maintainable provided he is not a busybody or mischievous intruder.

32. Therefore, it follows as a natural corollary that before the trial Court also a victim or complainant will have a right to be heard. On an application under erstwhile section 321 of Cr.P.C., the Court may, in an appropriate case, offer an opportunity of hearing to a victim or first informant or one whose interest is likely to be affected by withdrawal of prosecution and if any such person wishes to contest, must be allowed to do so.

33. The facts of the case in hand, as stated herein above, clearly indicate that the learned trial Court ought to have extended an opportunity to the victim to contest the application under section 321 of Cr.P.C. This could have been done if the case was taken on the date fixed for hearing i.e. examination of the victim. Had it been so, the petitioner would have an opportunity to establish the verity of withdrawal from the prosecution. Preponment of date of hearing just for considering the application under section 321 of Cr.P.C. has caused deprivation of the victim from opportunity to oppose the same.

34. Resultantly, for the reasons stated above, the order dated 30.11.2013 passed by the learned trial Court allowing withdrawal from prosecution of respondents No. 2 to 5 is not sustainable being illegal, improper and passed in an irregular proceedings, thus, liable to be set aside

and, therefore, the impugned order dated 27.08.2014 of the learned appellate Court affirming the withdrawal from prosecution also deserves to be set aside. Hence, this revision petition is allowed and the orders dated 30.11.2013 and 27.08.2014 are hereby set aside.

35. Learned trial Court is directed to restore the Criminal Case on its original number and proceed with the trial accordance with law from the stage prior to the passing of the order allowing withdrawal from the prosecution.

36. Parties are directed to remain present before the trial Court on 26.09.2025.

37. The record of the Courts below along with a copy of this order be sent back immediately.

(RAMKUMAR CHOUBEY)
JUDGE

sudesh