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SLP(Crl.)No. 1389 OF 2000

ITEM No.202

Court No. 11

SECTION II  
A/N MATTER

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No. 1389/2000

(From the judgement and order dated 09/12/1999 in CRLRC 1222/98  
of The HIGH COURT OF A.P AT HYDERABAD)

NUTHAKKI RAJENDRA PRASAD

Petitioner (s)

VERSUS

STATE OF ANDHRA PRADESH & ANR.

Respondent (s)

( With Appln(s). for stay )  
( For Final Disposal )

Date : 15/02/2002 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N. SANTOSH HEGDE  
HON'BLE MR. JUSTICE DORAISWAMY RAJU

For Petitioner (s) Mrs. K. Amareswari,Adv.  
Mrs. R. Madhavi Latha, Adv.  
Ms. Asha Gopalan Nair,Adv.

For Respondent (s) Mr. L. Nageswara Rao, Sr. Adv.  
Mr. G. Ramakrishna Prasad, Adv.  
Mr. S. Udaya Kumar Sagar,Adv.  
  
Mr. Guntur Prabhakar,Adv.

UPON hearing counsel the Court made the following

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Heard learned counsel.  
The special leave petition is dismissed.

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(Pawan Kumar)  
Court Master

(Prem Prakash)  
Court Master

(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRIMINAL) NO.1389 OF 2000@@  
CC

Nuthakki Rajendra Prased ...Petitioner

Vs.

State of Andhra Pradesh & Anr. ...Respondents

O R D E R@@  
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The petitioner in this special leave petition has questioned the correctness of the decision of Ist Additional Sessions Judge, Krishna, Machilipatnam made in Sessions Case No.202 of 1997 whereby he allowed the application filed by the learned Addl. Public Prosecutor in the said case under Section 321 Cr.P.C. and permitted the withdrawal of the prosecution against A-16 in the said case.

A challenge to the said order made to the High Court of Andhra Pradesh, having failed this petition is before us. In this petition it is very strenuously argued by Smt. K. Amareshwari, learned senior counsel, appearing on behalf of the petitioner that from the material on record it is clear that the learned Additional Public Prosecutor who filed the application has not applied his mind before filing the said

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application. Even the trial court while considering it has not borne in mind that the said application as a matter of fact was filed on the representation made by MLA of the District concerned and on the recommendation of the Government and that there is no independent application of mind by the learned Addl. Public Prosecutor. On consideration of the material on record and reconsidering the finding recorded by the learned Sessions Judge we fail to see any error in the impugned order.

Smt. Amareshwari, learned senior counsel relied upon a judgment of this Court in Abdul Karim and others vs. State@@  
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of Karnataka and others, [2000(8)SCC 710] wherein according to@@  
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her it is held that the Public Prosecutor should apply his mind to all the material before him and, the application should be made in good faith. We have seen the judgment and

the facts of the said case, it does not support the arguments advanced before us. In that case this Court observed at page 713: "No materials were placed before the learned Judge upon the basis of which he could have been satisfied that the Special Public Prosecutor had applied his mind thereto and had reached, in good faith, the conclusion that the withdrawal he sought was necessary for the reasons he

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pleaded." Based on those fact situation this Court held that the permission granted was improper. We find in the present case that there was sufficient material before the Addl. Public Prosecutor before he applied his mind and took a decision to file the application under Section 321 Cr. P.C. which is also noticed by the High Court in the impugned order.

For the reasons mentioned above, we do not find any merit in this case. The special leave petition is, accordingly, dismissed.

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.....J.  
( N. Santosh Hegde )

.....J.  
( Doraiswamy Raju )

New Delhi,  
February 15, 2002.