

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.659 OF 2011  
(Arising out of S.L.P. (CRL.) NO.6534 OF 2009)

Devesh Nautiyal

Appellant

VERSUS

State of Uttarakhand & Anr.

Respondents

O R D E R

Leave granted.

In Criminal Case No.435 of 2004, cognizance was taken by the Judicial Magistrate, First Class, Srinagar (Garhwal), under Section 420/468/471 Indian Penal Code. While the matter was pending, an application was filed on behalf of the State under Section 321 Cr.P.C., before the learned Magistrate, indicating that the Government of Uttarakhand had passed an order for withdrawal of the case vide Order No.1903/XX(3)/M.V./2004 dated 3rd October, 2005, passed by the Additional Secretary, Home, Section-3. Permission was sought by the State to withdraw the case in public interest.

The learned Magistrate rejected the said application indicating that sufficient reasons had not been indicated for withdrawal of the case. Against the said order of rejection, the State moved the learned Sessions Judge, Pauri Garhwal, in Criminal Revision No.03 of 2006, which was also dismissed on similar grounds.

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Thereafter, the accused/appellant herein moved the High Court under Section 482 Cr.P.C., for quashing the orders passed, both by the learned Judicial Magistrate as also the Sessions Judge. The High Court, however, did not find any reason to interfere with the orders passed by the learned Magistrate and the learned Sessions Judge and, accordingly, dismissed the appellant's application for quashing the order.

It is the said order, which is the subject matter of challenge in this appeal. Mr. Dinesh Kumar Garg, learned counsel appearing for the appellant, submits that the powers given to the State Government to withdraw from prosecution has been incorporated in Section 321 Cr.P.C., which 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.

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.

The said provision would indicate that the Public Prosecutor or the 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.

It may be mentioned that the Public Prosecutor acts on the direction of the Government, but at the same time he also applies his own mind while making an application for the aforesaid purpose. In fact, he is not under a compulsion to act in terms of the direction given by the State Government.

In the instant case, the Public Prosecutor has applied his own mind, though a direction has been given by the State Government to withdraw from the prosecution. It would naturally be pre-supposed that the Public Prosecutor had applied his mind before applying for withdrawal. In that view of the matter, we see no reason not to allow the



