

State of Uttar Pradesh and anr. Vs. 3rd Additional District and Sessions Judge and anr.

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Court : Allahabad

Decided On : Dec-18-1996

Reported in : 1997CriLJ3021

Judge : G.S.N. Tripathi, J.

Acts : TADA Act; Code of Criminal Procedure (CrPC) , 1974 - Sections 268, 300, 320, 320(1), 320(2), 321, 397 and 494; [Constitution of India](#) - Articles 21, 32 and 161 - Sections 21

Appeal No. : Govt. Revn. No. 561 of 1994

Appellant : State of Uttar Pradesh and anr.

Respondent : 3rd Additional District and Sessions Judge and anr.

Advocate for Def. : L.M. Singh, ;Rajendra Jaiswal and ;Ramendra Asthana, Advs.

Advocate for Pet/Ap. : A.G.A.

Disposition : Revision dismissed

Judgement :

G.S.N. Tripathi, J.

1. This is a revision Under Section 397 Cr.P.C. against the order dated 15-3-94 passed by the Illrd Addl. Distt. & Sessions Judge, Kanpur Dehat, whereby the learned Illrd Addl. Distt. & Sessions Judge has rejected the application Under Section 321 Cr. P.C. seeking withdrawal from the prosecution of the accused in more than 55 cases, including murder, dacoity etc. It was alleged that atrocities have been committed upon her and members of her family by the persons belonging to upper castes and she was also a victim of gang rape, which drove her to adopt a life of crime. This criminal past is the cause for a large number of criminal cases for offences of dacoity, murder etc, against her in the States of Uttar Pradesh, Madhya Pradesh and Rajasthan. It was further alleged that she had surrendered on certain terms and conditions offered to her by the Government of Madhya Pradesh. Those terms included inter alia, that (a) she would be released from the custody after 8 years (b) she would be tried in the courts of Madhya Pradesh only even for the crimes alleged to have been committed by her in the State of Uttar Pradesh and (c) the death penalty would not be imposed upon her in any case.

2. On this basis, she claimed that custody for 11 years undergone by her, is sufficient to satisfy this requirement and prosecutions pending against her in the courts of Uttar Pradesh, should be quashed. According to her, there are about 55 cases of Criminal nature being prosecuted against her in the courts of Uttar Pradesh for the alleged heinous crimes, like murder, dacoity etc. It is also admitted that the State of Uttar Pradesh was not a party in the alleged agreement between her and the State of Madhya Pradesh, in pursuance of which she had surrendered in Madhya Pradesh.

3. She approached the Hon'ble Supreme Court under Article 32 of the Constitution and prayed that the prosecution against her be quashed in Uttar Pradesh also and she be granted permanent bail acquittal. That was Criminal Writ Petition No. 43 of 1993. The Hon'ble Supreme Court observed in that case (reported in 1996 (8) SC 208 (1997 SCC (Cri) 1), Phoolan Devi v. State of Madhya Pradesh that she submitted that to honour this commitment made by her before the Madhya Pradesh Government she did not challenge the order dated 13-8-96 passed by the Government of Madhya Pradesh in pursuance of the exercise of powers Under

Section 268 Cr. P.C. even though that order was invalid for continuing the petitioner in detention in the Central Jail at Gwalior (M.P.) she also filed a transfer petition (Criminal) No. 36 of 1992 praying for transfer of all criminal cases against her pending in the courts of Uttar Pradesh to the Special Court at Gwalior in Madhya Pradesh. That transfer petition is still pending for hearing before the Hon'ble Supreme Court. In the aforesaid Criminal Writ Petition 43 of 1993, 1996 (8) SC (1997 SCC (Cri) 1) the Hon'ble Supreme Court observed in paragraph 5 as follows :

Para 5 page No. 210.

In our opinion, the limited scope of this writ petition is the question of the release of the petitioner from custody on the present facts ...The question of the contest and effect of the terms of surrender alleged by the petitioner has to be raised and decided in the criminal cases pending against the petitioner. The same cannot be raised on the basis of an omnibus statement in this petition under Article 32 of the Constitution....

the State of Uttar Pradesh has moved an application in each trial pending in the courts of Uttar Pradesh seeking leave to withdraw the prosecution. This aspect based on the alleged terms of the surrender may have relevance in those proceedings requiring consideration of the same in the facts of each prosecution. The question whether the blame for the entire delay in the prosecution/ trial in each of those criminal cases lies on the State alone and not on the petitioner is a question of fact to be considered in each of those cases. Merely because of the lapse of several years since the commencement of those prosecutions, it cannot be said that for that reason alone the continuance of the prosecutions would violate the petitioner's right to speedy trial. Similarly, the cumulative effect of the terms of the alleged surrender have to be examined on the same being duly proved in those prosecutions to decide the merits of the contention that the petitioner is not liable for any further punishment as claimed by her. The mere fact that the alleged terms offer immunity from death panalty and trial of all cases in Madhya Pradesh even for crimes committed in Uttar Pradesh, indicates that the question of the punishment to be imposed on the petitioner in each case depends

on the final outcome at the trial, and the imprisonment of eight years mentioned in one of these terms does not conclude the prosecutions. The petitioners contention that the violation of her right to speedy trial is proved by these facts alone to justify quashing of all the prosecutions is, therefore, untenable. The only question now is of the relief pertaining to petitioner's release from custody at this juncture...no authority has been shown to justify continuance of her custody on account of the commission of any crime in Madhya Pradesh or any judgment of any court in Madhya Pradesh...In short, no authority has been shown either by the State of Madhya Pradesh or by the State of Uttar Pradesh to justify further custody of the petitioner at this juncture. This is, however, subject to the requirement of any order made hereafter by any competent court in any of the pending prosecutions against the petitioner. The petitioner is, therefore, entitled to be released at present, unless by any order made hereafter by any competent court she is required to be taken in custody. The petitioner is entitled to the grant of relief only to this extent in this writ petition.

(Emphasis provided)

We direct that the petitioner, who is on parole by virtue of order dated February 28, 1994 made in this case, shall continue to remain free, subject to the requirement of taking her in custody by virtue of any order made by a competent courts authority in any of the prosecutions pending in the State of Uttar Pradesh or any other case. The prayer in the writ petition for quashing the prosecutions pending in the State of Uttar Pradesh is rejected.

(Emphasis provided)

This order was passed by the Hon'ble Supreme Court on 27-11 -96 in the aforesaid case. It means that the period of parole has been extended by the Hon'ble Supreme Court. But that parole shall be valid only till the date when any other competent court passes an order for taking her into custody. Meaning thereby that the parole shall be ignored by any subsequent order passed by any criminal court in India.

4. Earlier in Transfer Petition No. 36 of 1992, on 18-2-1994, the Hon'ble Supreme Court had ordered (Annexure 1 to the petition) as follows :-

Under these circumstances and in view of the fact that the petitioner is in jail since 6th February, 1983, that is for a period of 11 years by now, we consider it appropriate to direct the release of the petitioner on parole on her furnishing...pending adjudication of the application made by the State of U.P. for withdrawal of the prosecutions against the petitioner, in the courts in which those prosecutions are pending. Mr. Yogeshwar Prasad, learned Senior counsel, submitted that necessary steps have been taken by the State of U.P. for filing such applications in the concerned courts, where the trials are pending against the petitioner.

It was in this background that an application dated 15-2-94 was moved by the State of Uttar Pradesh in the court of Special Judge (Dacoity), Kanpur Dehat U.P. (Annexure 2 to the revision) by the public prosecutor? Kanpur Dehat, Under Section 321 Cr. P.C. it was been alleged that the Government of Uttar Pradesh by virtue of the order dated 6-2-94 does not want to prosecute her (Smt. Phoolan Devi). The Government order pursuant thereto, dated 6-2-94, was attached therewith. The public prosecutor prayed that those prosecutions may be withdrawn and consent for the same be given to the State of Uttar Pradesh.

5. The G.O. aforesaid (Annexure 3 to the revision), dated 6-2-94 reads as under :-

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egksn;]

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vr% Jh jkT;iky us yksd vfHk;kstddks bu QkStnkjh oknks dks okil ysus dk izkFkZuk i= IEcfU/kr U;k;ky; esa izLrqrdjus dh vuqefr lg'kZ iznku dh gS A i;k rnuqlkj dk;Zokgh lqfuf'pr djus dkd'V djsa A

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Thereafter, there is a list of 10 cases. In English, it means as below :-

I have been directed to inform you that Government of U.P. after considering the whole facts and circumstances, in the public interest, has decided to withdraw from the prosecutions of those cases. The Government of U.P. is further pleased to grant sanction to the public prosecutor to move applications for withdrawal in the aforesaid cases. Consequential action may be taken and ensured.

6. After receipt of notice, the petition was resisted by the complainant and other in the shape of public interest litigation. Sri Raja Ram Singh, who has filed objections supported by with an affidavit, is the complainant in Crime No. 26/91, S.T. No. 321/81. Few army personnel also joined hands by filing objections in the shape of public interest litigation opposing the withdrawal petition. Similarly, objections against withdrawal have also been filed by Harijans (282 Kha), the widows of Bahmai Massacre, in which about 26 persons were massacred in cold blood (284 kha), the victims of the murder etc. praying for rejection of the application Under Section 321 Cr. P.C.

7. After hearing learned counsel for the parties, the learned Anti Dacoity Judge, by virtue of his order dated 15-3-1994, found that the petition Under Section 321 Cr. P.C. moved before him, was not a public interest petition and further that there was no justification to allow the petition. Accordingly, he rejected the petition Under Section 321 Cr. P.C. moved by the public prosecutor.

8. Being aggrieved, the State of U.P. has filed this revision Under Section 397 Cr. P.C.

9. I have heard the learned counsel for the complainant' Sarvashri L.M. Singh & V.N.S. Sengar and Sri Ramendra Asthana, learned counsel for the State of U.P. at stretch and gone through the record. I find that there is no force in this revision and it deserved to be dismissed.

10. Section 321 Cr. P.C. is contained in Chapter XXIV with a heading General Provisions as to the Enquiries and Trials beginning from Section 300 Cr. P.C. In

the preceding Section, there is Section 320 Cr. P.C. Section 320(1) Cr. P.C. provides as under:-

(1) The offences punishable under the Sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the table next following may be compounded by the persons mentioned in the third column of that Table.

It means that in the first paragraph of Section 320, the cases may be compounded by the parties to the case, including the aggrieved/injured persons. These are the cases of minor nature. Then there is Section 320(2), which contains a list of Sections of Indian Penal Code, which may, with the permission of the Court before which any prosecution for such offences is pending, be compounded by the persons mentioned in the third column of that Table. The list contains the offences, which are of serious nature. But not very heinous in nature like murder, dacoity etc. It means that these graver offences enumerated therein may be compounded with the permission of the court and not otherwise, However, the offence of heinous nature, cannot be compounded at all. The Legislature is quite clear that the offences of minor nature may be compounded by the parties (aggrieved and accused) without any intervention of the Court. But the offences of slightly graver nature contained in the Table Section 320(2), can be compounded only with the consent or permission of the Court and the last category of heinous crime cannot be compounded at all. The court has been assigned a very responsible job to grant or not to grant sanction for compounding the offences.

11. In this background, Section 321 Cr. P.C. has to be construed, which runs as follows :-

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.

(Emphasis provided)

12. It further provides that 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:

13. Here, we have to note two things. (1) The Prosecutor may withdraw from the prosecution of any person and (2) with the consent of the Court. It means that the decision to withdraw shall be taken by the Public Prosecutor and the consent shall be given by the Court. It further means that the Prosecutor has to take an independent decision as to whether he should withdraw from the prosecution or not. That is, he cannot be dictated by any other authority, including the State, to move an application for withdrawal. It further means that whether withdrawal should be made or not, has to be considered first by prosecutor himself whether in a particular case the accused deserves such treatment or not. After concluding in affirmative, he moves an application before the court. Then the onerous job of the court starts as to whether it will be in the public interest and in the interest of administration of justice that consent should be granted or not. Then a judicial discretion has to be exercised by the court, which should not be arbitrary; because arbitrariness is an anathema in a civilized and democratic society. The meaning is quite clear that the decision cannot be taken by the Prosecutor casually. Similarly, the court cannot grant consent in a routine and clumsy manner and the court cannot act like a post office. Therefore, two responsible authorities are involved, the prosecutor and the Court and they have to act according to their judicial discretions in accordance with law and for serving a larger interest of society, which is called 'public interest'; Section 321 Cr. P.C. and its predecessor Section 494 (Cr. P.C. of 1908) have been considered by numerous courts, including Apex Court in several decisions. Some of them may be analysed keeping in mind one thing that the decision to withdraw in this case, was taken by the State of U.P. and not by the Public Prosecutor. Similarly, after carefully considering the matter, the learned trial court has refused to grant sanction for withdrawal.

14. The leading case in *Sheo Nandan Paswan v. State of Bihar*, AIR 1987 SC 877. In paragraphs 70, 71 and 72, of the aforesaid judgment, the Hon'ble Supreme

Court observed as follows :-

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. When an application under Section 321 is made, it is not necessary for the Court to assess the evidence to discover whether the case would end in conviction or acquittal. The Court's function is to give consent. This Section does not obligate the Court to record reasons before consent is given. However, it does not mean 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. All that is necessary to satisfy the section is to see that the Public Prosecutor acts in good faith and that the Magistrate is satisfied that the exercise of discretion by the Public Prosecutor is proper.

(Emphasis provided)

15. In paragraph 69, at page 915, it has been observed by the Hon'ble Supreme Court as follows:-.It would, therefore, be just and reasonable to hold that while conferring powers upon the sub-ordinate courts under Section 494 to give consent to a public Prosecutor withdrawing the prosecution, the legislature had only intended that the courts should perform supervisory function and not an adjudicatory function in the legal sense of the term.

16. In paragraph 71, it has been observed as follows:-.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...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.

(Emphasis provided)

It means that he has to prima facie see if there was any material before the Public Prosecutor to move an application Under Section 321 Cr. P.C. whether that material was sufficient or not for satisfaction of the Public Prosecutor, is not the job of the Court to determine Under Section 321. But the existence of the material whatsoever, it may be, has to be ensured.

17. In paragraph 72, it has been observed as follows :-All that is necessary for the Court to see is to ensure that the application for withdrawal has been properly made, after independent consideration, by the Public Prosecutor and in furtherance of public interest.

(Emphasis provided)

18. In paragraph 75, it has been observed as follows:-Suffice it to say that in the judgments rendered by various High Courts, public policy, interest of the administration, inexpediency to proceed with the prosecution for reasons of State and paucity of evidence were considered good ground for withdrawal in certain other cases depending upon the peculiar facts and circumstances of the cases in those decisions.

(Emphasis provided)

In the same paragraph, it has been observed as follows:-

His discretion in such matters has necessarily to be exercised with reference to such material as is by then available and it is not a prima facie judicial determination of any specific issue. The Magistrate's functions in these matters are not only supplementary, at a higher level, to those of the executive but are intended to prevent abuse...This is not to say that a consent is to be lightly given on the application of the public prosecutor, without a careful and proper scrutiny of

the grounds on which the application for consent is made.'...it (Court) must nonetheless satisfy itself that the executive function of the Public Prosecutor has not been improperly exercised and that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes....

(Emphasis provided).This Court upheld the consent and held that meagre evidence was a legitimate ground for withdrawal.

(Emphasis provided)

19. In paragraph 76, the Hon'ble Supreme Court observed as follows :- This Court observed that paucity of evidence is not the only ground on which the Public Prosecutor may withdraw from the prosecution, though that is a traditional ground for withdrawal. Political purposes and political vendetta afford sufficient ground for withdrawal.

20. Thus it appears that while granting consent, the Court may have a cursory look at the material available with the Public Prosecutor and if the Court thinks proper, it may grant permission and not otherwise, of course, the Court does not sit as an appellate Court over the discretion of the Public Prosecutor.

21. The most recent case is of R.M. Tewari v. State, (1996) 2 SCC 610: (AIR 1996 SC 2047). In paragraph 7, it has been observed as follows :- 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 discharge of his statutory function under Section 321 Cr.P.C. 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 prosecution before he seeks the consent of the court for that purpose ... The Public Prosecutor did not fully appreciate the requirements of Section 321 Cr.P.C. 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 Cr.P.C ... If the recommendation of the Review Committee, based on the material present, is, that resort to provisions of the TADA Act is unwarranted for any reason which permits withdrawal from prosecution for these offences, a suitable application made under Section 321 Cr.P.C. on that ground has to be considered and decided by the Designated Court giving due weight to the opinion formed by the public prosecutor on the basis of the recommendation of the High Power Committee.

(Emphasis provided)

22. In another case *Bansi Lal v. Chandan Lal*, AIR 1976 SC 370, in paragraph 4, the Hon'ble Supreme Court has observed as follows :- where the public prosecutor would be apparently justified in seeking such permission, as in a case where the prosecution 'will not be able to produce sufficient evidence to sustain the charge or that subsequent information before prosecuting agency would falsify the prosecution evidence or any other similar circumstances.' It is added that the request to grant permission under Section 494 (old Cr.P.C.) should not be accepted 'as a necessary formality', 'for the mere asking', but the court must be satisfied on the materials placed before it that the grant of permission would serve the administration of justice and that 'permission was not being sought covertly with an ulterior purpose unconnected with the vindication of the law which the executive organs are in duty bound to further and maintain.

(Emphasis supplied)

23. In paragraph 5, it was observed as follows :

If the prosecuting agency brings before the Court sufficient material to indicate that the prosecution was based on false evidence, the Court would be justified in consenting to the withdrawal of the prosecution, but on the record of the case, as it is, we do not find any such justification. In our opinion, the High Court was in error in dismissing in limine the revisional application made against the order of the Addl. Sessions Judge.

(Emphasis provided)

In this ruling also, it was emphasised that there should be some material first with the prosecutor and next with the court, upon which a reasonable opinion has to be formed by both the agencies- the prosecutor as well as the Court and then only the sanction should be granted.

24. In Criminal Revision No. 700 of 1972, decided on 18-1 -74, the Hon'ble Supreme Court observed that:

Before granting consent to withdraw, paramount consideration is interest of administration of justice where the withdrawal was sought on the ground that the evidence with the prosecution was inadequate and the court granted consent.

It was upheld vide AIR 1977 SC 908.

25. Thus after determining the parameters of jurisdiction Under Section 321 Cr.P.C. both of the public prosecutor as well as the court, we have to see how far these essential things have been considered.

26. There is an affidavit by Sri Radbey Shyam, Under Secretary, Confidential Deptt. Govt. of U.P. Lucknow indicating as to how and under what circumstance, the State Government took the decision to withdraw from prosecution. .Admittedly, a large number of as many as 54 or 55 cases of heinous criminal cases were pending against Smt. Phoolan Devi, which have been enlisted in the affidavit. In paragraph 15 of the affidavit, it has been observed that the decision to withdraw the prosecution against Smt. Phoolan Devi was taken at the highest level of the Govt. keeping in mind the following circumstances :-

(a) She was in jail of Madhya Pradesh since 12-2-83 when she surrendered along with her arms. Of that date, 54 cases were pending against her in Uttar Pradesh.

(b) Smt. Phoolan Devi was an illiterate woman of sub-ordinate caste. Her fiance had been murdered by the members of Savarna caste. She was gang raped. On account of these atrocities upon her, she was compelled to take arms.

(c) Repeated efforts were made to transfer Smt. Phoolan Devi from Madhya Pradesh to Uttar Pradesh. But it was not acceded to, as the Govt. of Madhya Pradesh by its order dt. 13-8-86, had placed an embargo upon her movement from M.P. Thereafter, she fell ill and was transferred by the Hon'ble Supreme Court to Delhi Jail for treatment in All India Institute of Medical Sci-ences.

27. These are the undisputed facts. The question is whether it will serve public purpose if the prosecution against her is withdrawn under the circumstances which weighed before the Govt. of U.P. She has been compelled to take law in her own hands, was one of the considerations that she had been a victim of atrocities, loot, etc. By way of retribution and revenge, Smt. Phoolan Devi took arms and committed crimes alleged against her. What is the public purpose going to be served by withdrawing from the prosecution? Perhaps none. Rather, it will encourage criminals to take law in their own hands revengefully and commit atrocities on their tormentors. That will encourage caste war in the State. That will give encouragement to commit crimes and decide himself whether right of self-defence was available to the criminals and whether the State Govt. could pamper such criminals by withdrawing from the prosecution? If the criminal is allowed to decide as to who was aggressor and punish such people, the rule of law shall lose its value altogether.

28. It is not proved on the record as yet that she was a victim of crimes committed by the members of other castes or that she was raped. It was a mere allegation in the shape of speculation. The State Govt., exercising executive powers, took in its head to decide the matter judicially as well and it acted on the premise that she was a victim of rape and other atrocities. I am sorry to say that this is the job of the court to decide as to whether she was victimised or raped and not of the State Government. Even admitting for the sake of argument that such offences were committed against her, the courts of justice are meant to adjudicate upon them. The State Government has no jurisdiction over judicial matters in the courts. Can a person or she be allowed to commit more heinous crimes against the persons who committed such crimes against this lady (Smt. Phoolan Devi)? If the State Government acts on this premise, it will serve the public purpose in a very bad manner. Rather, it would be a denial of public purpose. The State cannot

encourage revengeful activities as it shall be the first negation of law and legal procedure. Therefore, I think that the premise upon which the State Government acted in taking a decision from withdrawing from prosecution, was non-existent and no public purpose was sought to be served. Rather, it was a gross and one colossal interference in the administration of justice for political and other extraneous considerations. A criminal is a criminal, whether he belongs to low caste or high caste.

29. Another ground was that some sort of agreement was entered into by the State of Madhya Pradesh with Smt. Phoolan Devi. Admittedly, the State of Uttar Pradesh was not a party to that agreement. So it binds neither morally nor legally to the State of Uttar Pradesh.

30. As regards nonconclusion of trial in criminal cases in Uttar Pradesh, it is admitted by Sri Radhey Shyam, in his affidavit that U.P. Govt. has always been requesting the State of M.P. to transfer Smt. Phoolan Devi from Gwalior Jail to Uttar Pradesh to face trial and the State of Madhya Pradesh has repeatedly rejected the request of the State of Uttar Pradesh obviously at the behest of Smt. Phoolan Devi. There is no evidence on the record to show that Smt. Phoolan Devi ever herself volunteered to the transfer in Uttar Pradesh Jail for facing trial. Rather, she was banking upon the aforesaid agreement with the State of M.P. that even the cases pending in the courts of Uttar Pradesh, should be transferred to Madhya Pradesh for trial. Hence, it cannot be said that the State of Uttar Pradesh is responsible in any manner whatsoever for non-conclusion of trials in the courts of Uttar Pradesh.

31. Thus this is not a valid consideration nor a valid ground to serve public interest. Rather, it was going to spoil the public interest, when a hardened criminal is allowed to go scot free simply because, in its whims, the State Govt. thinks that she should not be prosecuted.

32. Another consideration that weighed with the State Govt. was that Smt. Phoolan Devi was an illiterate woman belonging to a lower caste. The [Constitution of India](#) is based on the premise that all the citizens belonging to any caste, creed or race or gender, are equal and the law should operate against all equally. The

standard should remain even and not available to one at the cost of other castes or community. Withdrawing from prosecution on caste considerations, will be an act, which is constitutionally bad and will serve no public purpose. Rather, it will give birth to caste wards in the State, which should not be done much less encouraged by the State. On this score also, there was no public purpose going to be served by withdrawal from prosecution.

33. Admittedly, charge sheets had been filed against Smt. Phoolan Devi in numerous cases and trials could not proceed simply because she was not available for trial. It means that the Investigating Agency found sufficient evidence to proceed against her and that is why it submitted charge sheets. Neither, there is a mention in the affidavit of Sri Radhey Shyam, nor the Public Prosecutor could show any statement in the case diary, which could exonerate Smt. Phoolan Devi. It is not at all proved that before taking the decision to withdraw, either the State Govt. took into consideration the evidence in the case diary or it found that there was no available evidence to convict her even subsequently available to the authority. So prima facie, this Court has to proceed on a premise that there was sufficient evidence to proceed against Smt. Phoolan Devi. Even in this Court, neither with the help of the case diary nor with the help of any other material, it was proved that the prosecution of Smt. Phoolan Devi would be a futile exercise, as no legal evidence was available against her. Therefore, this is not a case which is going to suffer on account of lack of positive evidence. Rather, it was a case which had overwhelming evidence to prosecute her and also to convict her.

What I want to decide is that neither the State Govt. nor the Public Prosecutor examined the evidence in the case diary available to them to show that there was no evidence or rather a weak evidence against her. Thus this material aspect was not taken into consideration at all what to talk of applying mind. Under these circumstances, it was a mechanical exercise at the hands of the Public Prosecutor to file an application Under Section 321 Cr.P.C. Similarly, at the most, it could be said that there was a political exigency alone and not paucity of evidence, which governed the decision of the State Govt. to withdraw from the prosecution. That is why, no such material was brought before the lower court or even in this Court to substantiate that the evidence against Smt. Phoolan Devi was quite weak and she

could not be prosecuted fruitfully. Rather, the other side of the coin there was an overwhelming evidence prima facie to proceed against her. Under these circumstances, when we judge the order of the State Govt., we find that it has not been passed in good faith. Rather, its action was totally mala fide in withdrawing from the prosecution against such a hardened criminal as she is. Thus the State Govt. abdicated its function by not applying its mind over the entire evidence and circumstances available to it. Similarly, the Public Prosecutor acted as a Govt. Servant and not as a legal authority and drafted an application without applying his mind and basing his total conclusions upon the Govt. Order attached with that application Under Section 321 Cr.P.C. Thus the Public Prosecutor has not done his job expected of him Under Section 321 Cr.P.C. He has taken no decision at all. He has simply followed the commands of his political bosses. That cannot be sustained.

34. The Hon'ble Supreme Court has rightly emphasised that power given to the Court under Section 321 Cr.P.C. is to check the interference by the executive in the domain of judicial function by the courts. Therefore, the public interest should be uppermost in the minds of the courts as well as of the Public Prosecutor, much more the State in this case. I have seen that no such public purpose was going to be served by withdrawing from prosecution of a person, who has numerous cases at her credit pending trial.

35. Right of speedy justice is a part of Article 21 of the Constitution. But simply because some time has passed automatically, it will not confer any right upon the accused to bolt away from the Jail, specially in the circumstances of this case, which go to show that the State of Uttar Pradesh was helpless in procuring the attendance of Smt. Phoolan Devi in the Courts of Uttar Pradesh on account of resistance by the State of Madhya Pradesh. In this set of circumstances, it cannot be said that right Under Section 21 of the [Constitution of India](#) has been violated.

36. The Hon'ble Supreme Court has held in the case of Smt. Phoolandevi v. State of Madhya Pradesh (AIR 1995 (8) SC 208) supra at page 211 : (1997 SCC (Cri) 1, Para 6) as follows:-

The question whether the blame for the entire delay in the prosecution trial in each of those criminal cases lies on the State alone and not on the petitioner, is a question of fact to be considered in each of those cases. Merely because of the lapse of several years since the commencement of those prosecutions, it cannot be said that for that reason alone the continuance of the prosecutions would violate the petitioner's right to speedy trial...The mere fact that the alleged terms offer immunity from death penalty and trial of cases in Madhya Pradesh even for crimes committed in Uttar Pradesh, indicates that the question of the punishment to be imposed on the petitioner in each case depends on the final outcome at the trial, and the imprisonment of eight years mentioned in one of these terms does not conclude the prosecutions. The petitioner's contention that the violation of her right to speedy trial is proved by these facts alone to justify quashing of all the prosecutions is, therefore untenable.

(Emphasis provided)

37. Thus the State Govt. misinterpreted this fact that her trial has been delayed for no fault of the State of U.P. or Courts in U.P. At the most, it can blame the State of Madhya Pradesh for its stubbornness in rejecting the valid request of U.P. Govt. to transfer her from Madhya Pradesh Jail. Hence, any decision arrived at by the State of Uttar Pradesh taking a blarard (blurred) view of speedy trial as a fundamental right under Article 32 of the Constitution, is bad in law. The decision could not have been based upon it. It further shows that it was not a legal exercise at the hands of the State of U.P. Rather, it was a mechanical exercise having ulterior political motives before a decision to withdraw was taken.

38. It was urged by the learned counsel for the State of U.P. Sri Ramendra Asthana that the power to withdraw has its source in Article 161 of the Constitution and is in an exercise of sovereign jurisdiction. It cannot be acted by a Court of law. I do not agree.

39. That Court may not go behind the motive operating at the mind of the State Government. But from the material on the record, it appears that the public interest has been misinterpreted by the State Govt: and it cannot be taken as a valid exercise of jurisdiction to serve public interest, in whose name, the G.O. has been

passed, rather, it is a mechanical and political exercise bereft of any legal consideration of law and circumstances available. Hence, I agree with the learned lower Court that help cannot be derived from Article 161 of the Constitution. Rather, the Court has to confine its stand to the provisions of Section 321, Cr. P.C. and see whether the State Govt. acted properly. I find that the answer to this question is only an emphatic no and thus it is a bad interpretation of law and totally vitiated.

40. Thus I agree with the learned lower Court that withdrawal from the prosecution was not in public interest. Rather, it was a step in a wrong direction to torpedo the rules of law and administration of justice in accordance with law. Hence, it cannot be said that the State Govt. has come with clean hands. Similarly, it cannot be said that the Public Prosecutor has exercised the jurisdiction vested in him in accordance with law. Resultantly, the application Under Section 321, Cr. P.C. moved by the Public Prosecutor, has been rightly dismissed. I totally agree with the conclusions arrived at by the learned lower Court.

41. The revision fails and is dismissed.

42. Again deriving inspiration from the observations of the Hon'ble Supreme Court in the case of Smt. Phoolan Devi v. State of M. P., (1996 (8) SC 208) : (1992 SCC (Cri) 1) supra, I want to clarify that the application Under Section 321, Cr. P.C. has been rightly rejected and now Smt. Phoolan Devi should be arrested because parole in the words of Hon'ble Supreme Court 'is subject to the requirement of taking her in custody by virtue of any order made by a competent Court/authority in any of the prosecutions pending in the State of Uttar Pradesh or any other Court.' That protection from arrest has expired w.e.f. today. The criminal Courts before whom the cases are pending against her, shall be entitled to get her arrested and proceed in accordance with law. It is emphasised that since many old cases are pending against her, the learned lower Court is requested to kindly expedite the trial by fixing day-to-day hearing of the cases.