

**Aslam Vs. State of U.P.**

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**SooperKanoon Citation :** [sooperkanoon.com/487951](http://sooperkanoon.com/487951)

**Court :** Allahabad

**Decided On :** Sep-15-2003

**Reported in :** 2004CriLJ979

**Judge :** K.N. Sinha, J.

**Acts :** Code of Criminal Procedure (CrPC) , 1974 - Sections 321

**Appeal No. :** C.M.A No. 2609 of 2003

**Appellant :** Aslam

**Respondent :** State of U.P.

**Advocate for Def. :** A.G.A.

**Advocate for Pet/Ap. :** Dharmendra Singhal, Adv.

**Disposition :** Application allowed

**Judgement :**

ORDER

**K.N. Sinha, J.**

1. By means of the present application under Section 482 of the Code of Criminal Procedure the applicant has sought for quashing of proceedings of Criminal Case No. 25 of 1998 -- State of U.P. v. Aslam under Section 3/7, Essential Commodities

Act of police outpost Chharra of police station, Barla, District Aligarh.

2. The brief facts, giving rise to the present application, are that an F.I.R. was lodged at police out post Chharra of police station, Barla, District Aligarh under Section 3/7, Essential Commodities Act, which was registered as case crime No. 209/1997, by which the applicant accused Aslam was found selling the fertilizer and when raid was conducted many bags of D.A.P. fertilizer and few other articles -- red powder ashes of coal was found. The applicant by means of red powder and coal ashes manufactured duplicate D.A.P. fertilizers, causing loss to farmers.

3. The case was investigated and charge-sheet was submitted against the accused applicant. The Special Judge (E.C. Act) called for the evidence in the matter and proceeded with the case. While the case was proceeding, the Government issued a Government Order dated 30-10-2001, withdrawing all the prosecutions in respect of Section 3/7 of the Essential Commodities Act.

4. The Public Prosecutor moved an application for withdrawal of the prosecution but the same was rejected by the Court. Hence this application.

5. I have heard the learned counsel for the applicant and the learned A.G.A. and perused the Government Order No. 6655/92-7-2000 N-11/94 dated 19-12-2000. The Government order shows that Government of U.P. decided to withdraw all the cases pending in various Courts under the Essential Commodities Act, at whatever stage, they were proceeding.

6. The learned counsel for the applicant has submitted that Section 321 of the Code of Criminal Procedure lays down that Public Prosecutor, with the consent of the Court, at any time, before the judgment is pronounced, may withdraw from the prosecution of any person, either generally or in respect of any one or more of the offences, of which he is tried. This provision also lays down that if the charges are framed, the accused shall be acquitted and if charge has not been framed, the accused shall be discharged.

7. Learned counsel for the applicant has also relied upon the decision of this Court in Girish Chand Gupta alias Ram Babu v. State of U.P. (2002 (2) JIC 887 (All)).

8. In the above judgment, the same question regarding the withdrawal from the prosecution, under the above Government Order, was involved. This Court held that nature of the offence shall not be said to be valid ground for rejecting the application for the withdrawal of the prosecution. It was further held that it was the duty of the Court to have appreciated the grounds, which prompted the Public Prosecutor to request for the withdrawal from the prosecution and should not have rejected the application merely looking the nature of the offence without caring to see its gravity.

9. The Government order itself shows that the Government of U.P. has taken this decision in public interest and no distinction for any class was made. The Court was, therefore, absolutely unjustified in refusing the permission to withdraw the case.

10. The application is hereby allowed and proceeding of Criminal Case No. 25 of 1998 -- State of U.P. v. Aslam under Section 3/7 Essential Commodities Act of police outpost Chharra at police station, Barla, district Aligarh is quashed.