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Prosecutor's Discretion in Withdrawing a Criminal Case: Myth or Reality

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ABSTRACT

The criminal justice system bestows on the public prosecutor the power to withdraw a criminal case so that weak cases are weeded out or cases, where continuation of the proceeding results in suffering, is put to an end. Though the mandate of the section is noble, the question regarding the legality, propriety and bonafide for withdrawing a criminal proceeding has been questioned. The controversy is regarding the interference of the executive in the filing of an application, non-application of mind by the Public Prosecutor and mentioning of trivial or vexatious grounds for withdrawal. The Supreme Court through a plethora of judgments has laid down guidelines for the manner in which the power should be exercised and the factors which should weigh in the mind of the Public Prosecutor before filing a withdrawal application. The author of this article shall delve into the question of whether the guidelines laid by Courts have been followed in practice. In order to achieve this objective, the author shall analyze the cases where withdrawal applications were filed. The parameters will be to (i) see the grounds cited by the Public Prosecutor for withdrawal; (ii) probe whether an independent opinion is formed by the Public Prosecutor before filing a withdrawal application; and (iii) scrutinize whether there is any executive interference in filing withdrawal application. The author shall then analyse the data to check whether the principles laid by Courts for filing withdrawal applications are being followed or not.

Keywords: Discretion, Public Prosecutor, Withdrawal.

I. INTRODUCTION

Crime is a wrong against society and in the existing system of criminal justice, the state is responsible for prosecuting the criminal. For discharging this function of carrying out prosecution, the State appoints Public Prosecutors. The office of Public Prosecutors enjoys a statutory status under the Criminal Procedure Code.² The Public Prosecutors hold a public office and provide assistance to the State in administering justice. Public Prosecutors are the gatekeeper of the criminal justice process and one of the powers that are bestowed on them is to decide when to halt the criminal proceeding by initiating the proceeding for withdrawal of a

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² The Code of Criminal Procedure, 1973, § 321, No. 2, Acts of Parliament, 1974 (India).

criminal case. They are the officers of court³ and owe an obligation to be fair, just and impartial. Withdrawal of a criminal case puts an end to the criminal litigation and the accused is discharged/acquitted of the criminal charges. For effective administration of criminal justice, the Public Prosecutors exercise this discretionary power. The rationale for giving this power to him is to weed out the weak cases where the continuation of a criminal proceeding would result in suffering and will not serve any useful cause.

In order to exercise such wide discretionary powers, there must be some guidelines. The section has in-built safeguards to ensure that the provision is not misused. However, it does not lay down any grounds or cite any circumstances which may warrant a situation for withdrawing the case. Thus, a huge onus is put on the head of the Public Prosecutor to ensure that this discretionary power of withdrawal is not used to stifle prosecution but is exercised on the grounds of sound public policy.

Though the mandate of the section is noble, the question regarding the legality, propriety and bonafide for withdrawing a criminal proceeding has been questioned. The controversy is regarding the interference of the executive in the filing of application,⁴ non-application of mind by the Public Prosecutor and mentioning of trivial or vexatious grounds for withdrawal. The Supreme Court through a plethora of judgments has laid down guidelines for the manner in which the power should be exercised and the factors which should weigh in the mind of the Public Prosecutor before filing a withdrawal application.

The author in the first part of the article will analyse the scope of withdrawal of powers and the legislative safeguards incorporated in the section. The second part of the article deals with the judicial attitude of the Courts and the principles laid by them to ensure the workability of the section in its true spirit. The third part of the article explores the question to see whether the guidelines laid by Courts have been followed in practice. In order to answer this question, the author shall probe into the Supreme Court cases in which withdrawal application was filed. The objective is to: (i) analyse the grounds cited by the Public Prosecutor for withdrawal; (ii) probe whether an independent opinion is formed by the Public Prosecutor before filing withdrawal application; and (iii) scrutinise whether there is any executive interference in filing withdrawal application. While doing so the author will also identify the offences in which the withdrawal application is filed and comprehend the acceptability/rejection rate of the application filed by the Public Prosecutor. The author shall also study the time elapsed between the launch of

³ Centre for Public Interest Litigation v. UOI, (2012) 3 SCC 117.

⁴ Vidhi Centre for Legal Policy, "The Quest for Prosecutorial Independence, 2022" (Jan. 26, 2024, 4 PM), <https://vidhilegalpolicy.in/research/the-quest-for-prosecutorial-independence/>.

prosecution and the date by which the withdrawal application was decided. The fourth part of the paper will be the concluding part in which the author will scrutinise whether the principles laid by Courts are being followed or not.

II. DOCTRINE OF WITHDRAWAL OF CRIMINAL CASE - THE CONCEPT

Before delving into the issues raised above, it is necessary to study the scope of section 321 of the Code of Criminal Procedure which grants withdrawing power to the Public Prosecutor. Section 321 provides that “the Public Prosecutor or Assistant Public Prosecutor in charge of a case may with the consent of the Court, 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.”⁵ The conditions that must be satisfied before withdrawal of prosecution are: (i) the Public Prosecutor or Assistant Public Prosecutor who files application for withdrawal must be in charge of the case and (ii) consent for withdrawal is to be granted by court. Thus, wide discretion is given to the Public Prosecutor.

Consent of Court - In order to ensure that the withdrawal procedure is not misused to withhold the prosecution of a case, the Legislature in its wisdom has injected a safety valve in section 321. The power of withdrawal conferred on the Public Prosecutor is not absolute. Consent of the Court is required before withdrawing a case. Wide discretion is vested in the Court to withhold or grant consent.⁶ The Courts are free to assess whether a prima face case is made or not.⁷ The court, if satisfied, can also reject the prayer of withdrawal. The discretion must be exercised judicially on sound legal principles.⁸ For example, the prosecution may be permitted to withdraw the case if the case is likely to end in acquittal and the accused would be severely harassed by the continuation of the case or if the burying of the dispute would bring between the parties and is in the interest of justice. However, these are just illustrations and there can be neither any exhaustive list nor any hard and fast rules to define the situation where consent could be given/withheld. The interest of administering justice must always be the overriding factor, and that standard must be used to decide the issue.

Stage for filing application - Public Prosecutor can ask for permission to withdraw at any stage of inquiry or trial, before the pronouncement of the judgement.⁹ However, in cases where the charge has been framed in a warrant case instituted on a police report or in a Session Trial, some

⁵ M.N. Sankarayarayanan Nair v. P. V. Balakrishnan, (1972) 1 SCC 318.

⁶ State of Bihar v. Ram Naresh Pandey, AIR 1957 SC 389.

⁷ S.N. Shukla v. State of U.P., AIR 2006 SC 413.

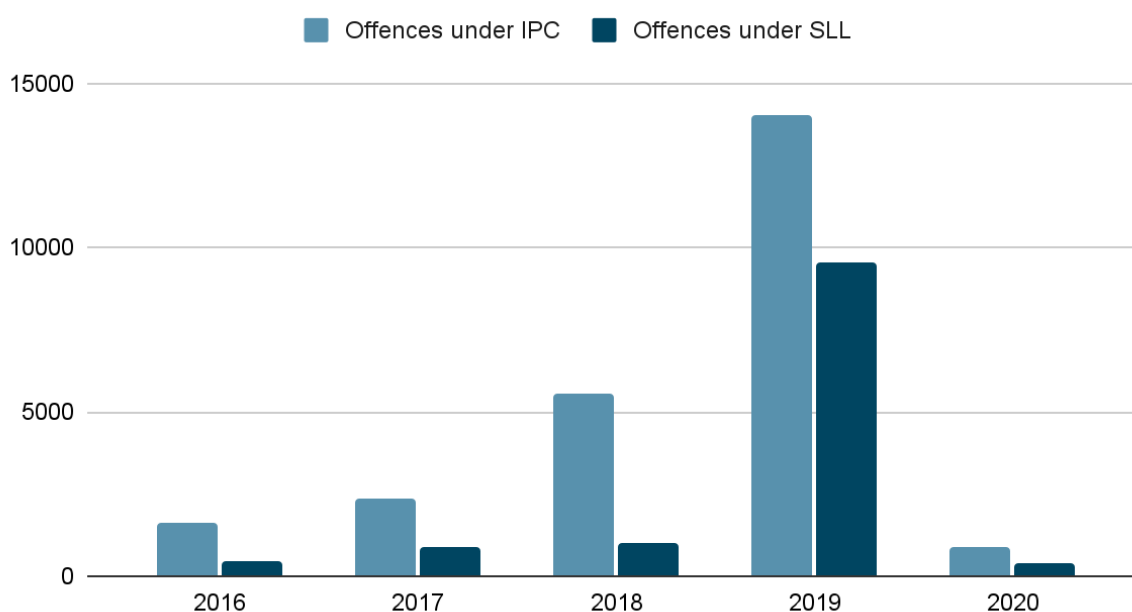
⁸ State of Bihar v. Ram Naresh Pandey, AIR 1957 SC 389.

⁹ M.N. Sankarayarayanan Nair v. P. V. Balakrishnan, AIR 1972 SC 496.

new material is required before filing a withdrawal application. In such cases, the Court frames a charge after taking into account the entire material placed before it. Therefore, the same material on which reliance was placed for framing of charge cannot be made the basis to say that the evidence is not sufficient to sustain a prosecution. This would shake the confidence of people in the criminal justice system and make the entire process a mockery.¹⁰

Effect of withdrawal- Once the application is filed and consented by the Court, the accused is discharged if the charges were not framed and acquitted if the charges had already been framed.¹¹

Number of withdrawal applications filed - The following table shows the number of cases over the past five years (2016-2020) in which withdrawal application was filed by Public Prosecutor to different Courts for withdrawing a criminal case instituted under the Indian Penal Code and under special legislations.



The table shows that from 2016-2019 there was a constant increase in the number of withdrawal applications filed in the Criminal Courts throughout India. This increase was gradual from 2016-2018 and there was a steep rise in the number of applications in 2019. However, in 2020 there was a drastic decrease. Though the reason for the decrease in filing the number of applications is not clear, one of the probable reasons may be the outbreak of corona and the closure of courts amid lockdown in the country. Even when the Courts started functioning

¹⁰ Sheonandan Paswan v. State of Bihar, AIR 1987 SC 877

¹¹ The Code of Criminal Procedure, 1973, § 321, No. 2, Acts of Parliament, 1974 (India).

through video conferencing, only urgent matters like bail etc. were listed before the Courts.¹²

A further analysis shows that the approach for filing applications under section 321 is very random. There are some states in India where there is a trend for filing applications for withdrawal whereas there are states in which no application under section 321 has been filed in the past five years.

Year wise states where maximum no. of withdrawal applications were filed under IPC

2016		2017		2018		2019		2020	
Maharashtra	562	Gujarat	4768	Tamil Nadu	1474	Maharashtra	868	Gujarat	871
Odisha	92	Maharashtra	3825	M.P.	1322	Tamil Nadu	400	Tamil Nadu	210
Kerala	55	Tamil Nadu	3442	Maharashtra	666	H.P.	262	Maharashtra	150

The following table shows states in which no withdrawal application or very few applications have been filed in the recent five years.

States in India where no/few application for withdrawal was filed in last five years

Name of the State	2020	2019	2018	2017	2016
3 Arunachal Pradesh	0	0	0	0	0
Assam	7	0	584	0	0

¹² Bar and Bench, <https://www.barandbench.com/news/breaking-covid-supreme-court-restricts-hearing-to-urgent-matters-fresh-cases-bail-detention-cases-fixed-date-matters-from-jan-10> (last visited Nov. 24, 2023)

Bihar	0	0	0	0	0
Haryana	0	0	0	0	0
Manipur	0	0	0	0	0
Meghalaya	6	0	1	0	0
Mizoram	0	0	0	0	0
Nagaland	0	0	0	0	0
Odisha	0	0	0	0	92
Punjab ⁷	0	0	0	0	0
Sikkim	0	0	0	1	0
Telangana	0	0	0	391	0
Uttarakhand	0	0	0	0	2
West Bengal	0	0	0	0	0

The above tables show that in states like Maharashtra, Tamil Nadu and Gujarat the number of applications filed for withdrawal is very large whereas in north eastern states or states like Punjab, Uttarakhand and West Bengal no applications or a negligible number of applications were filed. There is no plausible reason for this approach. Another peculiar feature is that in states like Telangana and Assam where no applications were filed for years, in a particular year a large number of applications were filed. It is pertinent to note that these were election years in states as in Assam were held in 2017 and there was sudden increase in withdrawal applications filed in 2018 and in Telangana elections were held in 2018 whereas large withdrawal applications were filed before that in 2017.

III. INTERFERENCE BY THE EXECUTIVE

The Code of Criminal Procedure is silent on the role to be played by the executive vis-a-vis the Public Prosecutor for filing an application. It does not prescribe any consultation of the Public Prosecutor with the executive. However, at the same time it does not put any bar on the same.

It is pertinent to note that various States have incorporated clauses to curtail the discretion of the Public Prosecutor. In Uttar Pradesh, section 321 has been amended through a state amendment. Here, the application for withdrawal can be filed by the Public Prosecutor only after obtaining the written permission of the state government.¹³

In addition to Uttar Pradesh, various other states like Himachal Pradesh,¹⁴ Maharashtra¹⁵ and Madhya Pradesh have also incorporated similar provisions in their Law Manuals. The Madhya Pradesh Law and Legislative Affairs Department Manual provides that before initiating withdrawal proceedings in a case, the Public Prosecutor or Additional Public Prosecutor should refer the case through the District Magistrate to the Principal Legal Remembrancer for orders.¹⁶

IV. ROLE OF PUBLIC PROSECUTOR

In *Balwant Singh v. State of Bihar*,¹⁷ the Court states that it is “the statutory responsibility for deciding upon withdrawal squarely vests on the Public Prosecutor. It is non-negotiable and cannot be bartered away in favour of those who may be above him on the administrative side. He has to weigh in his mind whether public justice will be advanced or retarded by the withdrawal of the prosecution.”

In *Abdul Wahab K. v. State of Kerala*,¹⁸ the Court held that “the Public Prosecutor is expected to act as an independent person. It is his duty to assist the Court and has to apply his mind before withdrawal so as to ensure that social justice is achieved.”

V. PUBLIC PROSECUTOR VIS-A-VIS EXECUTIVE

In *M.N. Sankarayarayanan Nair v. P. V. Balakrishnan*,¹⁹ it was held that before exercising discretion the District Magistrate or any other authority may be consulted by the Public

¹³ The Code of Criminal Procedure (Uttar Pradesh Amendment) Act 1991.

¹⁴ Directorate of Prosecution Himachal Pradesh, “Prosecution Manual (Government of Himachal Pradesh, January 2008)” (last visited Dec. 2, 2023).

¹⁵ Office of the District Government Pleader and Public Prosecutor, Yavatmal, “Information published under Section 4 of the Right of Information Act, 2005” (last visited Sept. 5, 2023).

¹⁶ Madhya Pradesh Law and Legislative Affairs Department Manual, s. 24 <https://www.law.mp.gov.in/sites/default/files/documents/law-dept-manual-english-copy.pdf>

¹⁷ AIR 1977 SC 2265.

¹⁸ (2018) 18 SCC 448.

¹⁹ (1972) 1 SCC 318.

Prosecutor.”

In *Sheo Nandan Paswan v. State of Bihar*,²⁰ the Court held that the “primary responsibility of prosecuting the offender is of the state and therefore the Government shall take the decision and inform the same to the Public Prosecutor. He would then consider the grounds on which the decision is made and may file an application for withdrawal if the grounds are legitimate to his satisfaction. If the grounds do not satisfy him then he may inform the government and request them for relieving him from the case. He may tender his resignation if the request for relieving from the case is not honoured. The other option available to him if he is not satisfied from the grounds is to file the withdrawal application before the Court and communicate to the Court that the application is not sustainable on the grounds mentioned and thereafter leave it to the Court to decide.”

In *State of Bihar v. Ram Naresh Pandey*,²¹ the Court held that “the Public Prosecutor must exercise his power in the light of his own judgement and not at the dictation of some other authority, however high.” In *S.N. Shukla v. State of U.P.*,²² the Court held that the “Public Prosecutor cannot act like a postbox or act on the dictates of the State Government.”

VI. REASONS FOR WITHDRAWAL

In *M.N. Sankarayarayanan Nair v. P. V. Balakrishnan*,²³ the Court held that “grounds on which the Court may grant permission for withdrawal are not enumerated in the section. It is implicit that the application would be filed on the ground that enough evidence to sustain charge is not available or that prosecution evidence would be falsified by subsequent information or any other similar circumstance which is in the interest of administration of justice.” The same instances were also highlighted in the case of *Bansi Lal v. Chandan Lal*.²⁴

In *Rahul Agarwal v. Rakesh Jain*,²⁵ the Court held that the withdrawal application can only be permitted if the interest of justice demands so and the law is very clear on this point. The Court may allow the application if the accused is severely harassed by the continuation of the case and the case is likely to end in his acquittal or if it shall bring harmony between the parties by putting an end to their dispute and is in the interest of justice. The Court held that all the relevant facts must be carefully scrutinised before exercising discretion so that the tool is not used to

²⁰ AIR 1987 SC 877.

²¹ AIR 1957 SC 389.

²² AIR 2006 SC 413.

²³ AIR 1972 SC 496.

²⁴ (1976) 1 SCC 421.

²⁵ (2005) 2 SCC 377.

stifle the prosecution”

In *State of Orissa v. Chandrika Mohapatra*,²⁶ the Court held that “for allowing or rejecting the withdrawal application no hard-and-fast rule can be laid down nor can any categories of cases be defined as the discretion should be exercised for attainment of justice which is the ultimate goal of the criminal justice process and would in each case depend on the facts and circumstances of that case.”

VII. WITHDRAWAL OF CASES FILED AGAINST POLITICIANS

At times, the executive uses this provision to withdraw cases against the sitting or former Legislative members. It is pertinent to note that in the recent case of *State of Kerala v. K. Ajith*,²⁷ the apex court has snubbed the Kerala Government for filing applications to withdraw cases against the six sitting and former MLA’s who had created ruckus and damage to public property. The Court also laid down the guidelines that shall be followed while exercising discretion under section 321. The Supreme Court has lately ordered that no criminal cases against sitting or former MP’s or MLA’s would be allowed to be withdrawn without the agreement of the concerned state’s High Court.²⁸ The amicus curiae in this case cited several instances where cases have been withdrawn against politicians. For example, the Karnataka Government withdrew 62 criminal cases filed against political leaders calling it a routine affair.²⁹ The West Bengal Government took a decision to withdraw 70 criminal cases filed against a politician in the Gorkhaland movement.³⁰ The UP Government withdrew 77 cases relating to Muzaffarnagar riots without citing any reason.³¹ Seeing the blatant nature in which discretion under section 321 was exercised the Apex court ordered that cases could be withdrawn not only with the consent of the trial court concerned but would also need consent from the High Court.

To sum up the Principles which emerge are:

- The public prosecutor must apply his mind before filing an application.
- The grounds where withdrawal may be permitted are ‘where there is paucity of evidence’ or ‘there is no likelihood of conviction and continuation of

²⁶ (1976) 4 SCC 250.

²⁷ 2021 SCC Online SC 510.

²⁸ Legal Correspondent, “Criminal Cases against MPs, MLAs can be withdrawn only after HC consent: SC” *The Hindu*, August 10, 2021.

²⁹ Wire Staff, “Karnataka Withdraws 62 criminal cases against BJP Leaders, Calls it a ‘Routine Affair’” *The Wire*, September 4, 2020 thewire.in/politics/karnataka-bjp-leaders-criminal-cases-withdrawn

³⁰ Deep Gazmer, “Bengal to withdraw 70 criminal cases against Bimal Gurung” *The Times of India*, February 21, 2021.

³¹ Krishandas Rajagopal, “UP Government withdrew 77 Muzaffarnagar riot cases without providing reasons: Reports inform SC” *The Hindu*, August 24, 2021.

proceedings would cause hardship’ or ‘is in public interest’ or any other ‘ground which is justified in the circumstances of the case’.

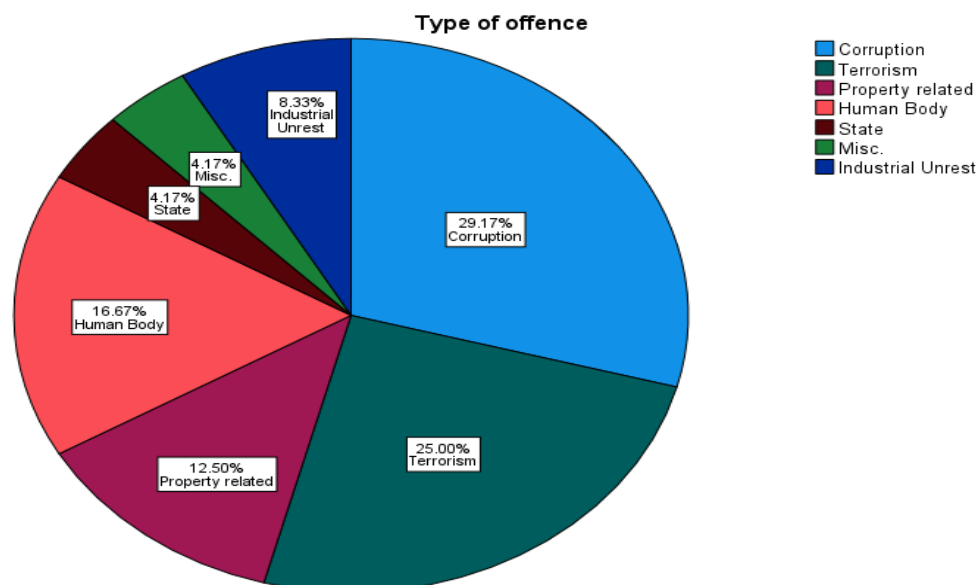
- The Public Prosecutor cannot act on the orders of the executive and has to formulate his independent opinion before filing an application for withdrawal.
- In cases where large and sensitive issues are involved, advice may be sought from the government.
- The Court will not reject the application just because of the fact that the Government has asked the Public Prosecutor to initiate a withdrawal but will consider whether the PP has applied his mind independently or not.
- The Court has the discretion to accept/reject an application.³²

VIII. ANALYSIS OF SUPREME COURT CASES IN WHICH WITHDRAWAL APPLICATION WAS FILED

(A) Research Methodology

In order to verify whether there is compliance with the principles engrafted by the Courts for the functioning of section 321, 25 Supreme Court cases in which application for withdrawal was filed have been analysed. The diagram below shows the offences under which withdrawal application was filed.

Nature of offences in which withdrawal application is filed

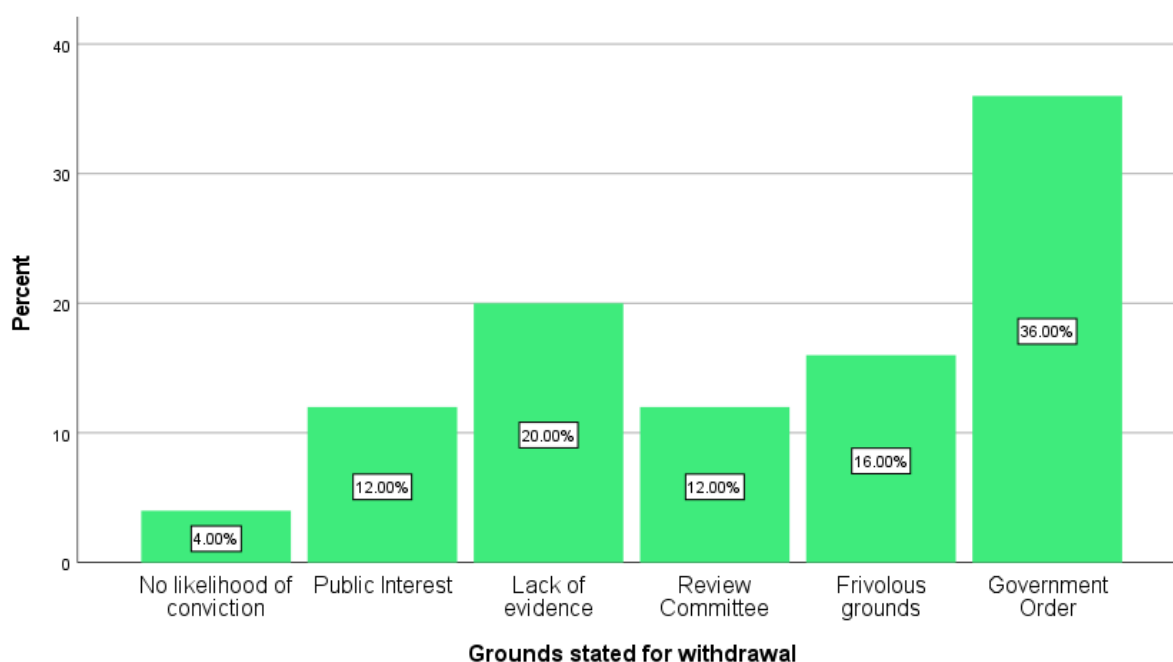


³² State of Kerala v. K. Ajith, 2021 SCC Online SC 510.

Section 321 does not put any embargo and permits withdrawal in all criminal cases irrespective of the nature or gravity of the offence involved. The entire onus is on the Public Prosecutor to ensure that the public interest would be better served by concluding a particular case. The above figure shows that corruption offences amounted to 29% of cases where the application for withdrawal was filed where as 25% of the application was filed in terrorism offences. In 12.5% cases applications were filed in property related offences whereas in 16.7% cases the disputes were related to the human body. In 8.3% cases the offences were related to public dispute whereas 4.1 % cases were of state offences. 4.1% cases were related to miscellaneous offences.

(B) Grounds Cited For Withdrawing And Independent Application Of Mind By Public Prosecutor

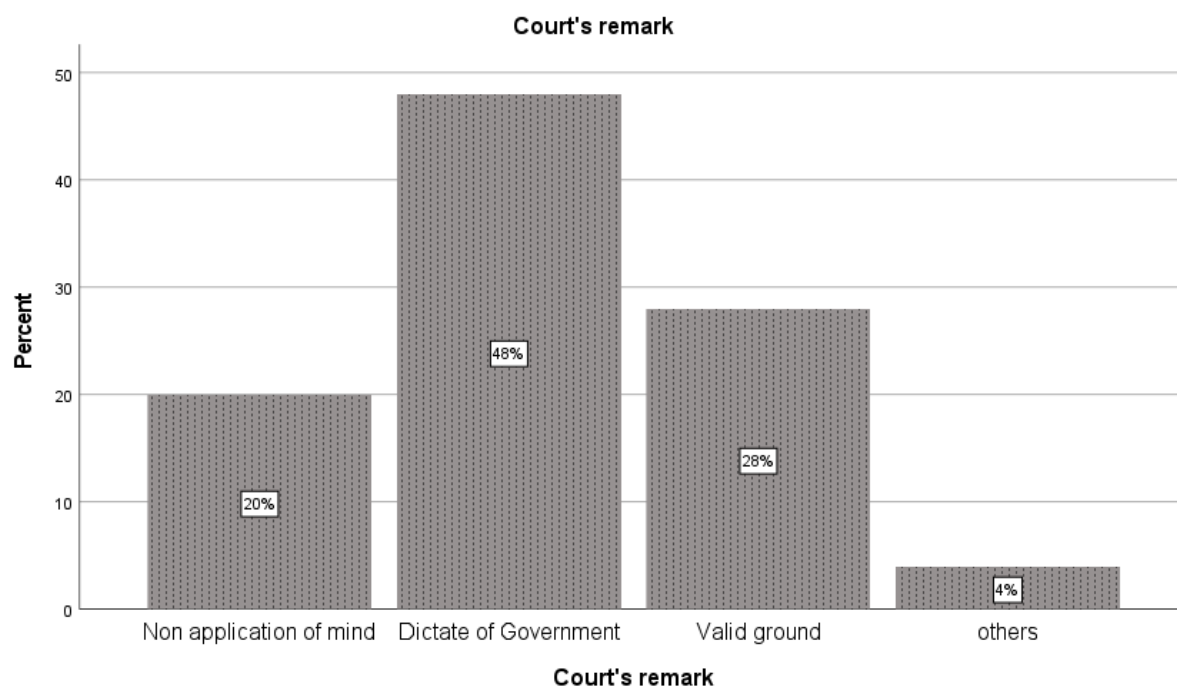
The question is what grounds are cited by the Public Prosecutor for withdrawal and whether there is an independent application of mind by the Public Prosecutor before filing of application?



The touchstone to allow application for withdrawal is that it is in the public interest. In addition to the grounds discussed earlier, one of the grounds mentioned in this diagram is that the Review Committee instructed to do so. It is important to note that this ground comes into existence in terrorism offences because in such offences once the proceedings are instituted the matter is

sent to the Review Committee for its opinion.³³

The analysis of Supreme Court judgments points out that only in 12% of the applications filed by the Public Prosecutor, safeguard of public interest was stated as a ground. In 20% of applications lack of evidence was cited as a ground whereas in 4% of cases no likelihood of conviction was stated as a ground. In 36% of cases, the Public Prosecutor cited that the ground for filing an application for withdrawal from the prosecution is that he has received an order from the Government to do so. In 12% cases, the PP cited that the Review Committee which is formed for review under terrorism laws³⁴ has instructed him that the case should be withdrawn from prosecution. In 16% of cases frivolous grounds like the accused is not a habitual offender or that the prosecution does not want to proceed evidence and does not want to proceed with the prosecution of the case³⁵ were stated by the Public Prosecutor.



Independent Application of mind- The Apex Court has time and again stated that the discretion under the section is vested in the Public Prosecutor and he must apply his mind before filing application for withdrawal irrespective of the extraneous reasons. The above analysis shows that in one-fifth, that is, 20% of the cases the Court has categorically said that the PP has failed to apply his mind. In 28% cases as the grounds are valid, it shows that the Public Prosecutor

³³ *Kechar Singh v. State (Delhi Administration)*, AIR 1988 SC 1883.

³⁴ *Kechar Singh v. State (Delhi Administration)*, AIR 1988 SC 1883.

³⁵ *Sheonandan Paswan v. State of Bihar*, AIR 1987 SC 877.

has applied his mind. The analysis of the judgments shows that in 48% of cases, the Court remarked that the application was filed on the dictate of the government. It is important to note that it is not necessary that merely because the Government asked the Public Prosecutor to file an application shows non-application of mind. However, when delved further it was found that when the Court remarked that it is on the dictates of the Government, then in 77% of the cases the application was rejected whereas in 11% cases the matter was accepted and in 11% the matter was remitted. This analysis clearly shows that in more than 50% of the cases, the Court found that there is non-application of mind by the Public Prosecutor while filing application.

(C) Executive interference in filing withdrawal application

The point for consideration is whether there is any interference by the Executive or not. It is important to note that in those cases where the Court remarked that the application has been filed on the dictates of the Government, the Court elucidated further to see whether the matter was fit for withdrawal or not. Out of 12 matters where the Court found interference, in 8 cases the application was rejected which points out that there was interference. In 2 cases the matter was remitted,³⁶ whereas in 2 cases, one where the review committee had suggested³⁷ and second where the Court saw that there was no likelihood of conviction,³⁸ the applications were allowed. This shows that there was interference by the executive in filing withdrawal applications.

(D) Acceptability/Rejection Rate Of The Application Filed By The Public Prosecutor

Consent of the Court is required before withdrawing the case. Once the withdrawal application is filed before the Court, the Court has wide discretion to accept/refuse the application.

Decision of Supreme Court when application is filed for withdrawal of criminal case		
	Frequency	Percent
Accepted	11	44
Rejected	10	40
Remitted	4	16

³⁶ Name Dasrath v. State of A.P., (2014) 10 SCC 395; Abdul Wahab v. State of Kerala, (2018) 18 SCC 448.

³⁷ Vijay Kumar Baldev Mishra v. State of Maharashtra, (2007) 12 SCC 687.

³⁸ Subash Chandra v. State (Chandigarh Administration), (1980) 2 SCC 155.

The above table shows that in 44% cases the withdrawal application was accepted by the Court whereas in 40% of the cases the application was rejected. In 16% of cases the Supreme Court remitted the matter to trial court.

(E) Time between initiation of prosecution and decision of supreme court

One of the hallmarks of the criminal justice system is speedy disposal of the case. The following table shows that in certain cases only 3 months time elapsed between the date of initiation of prosecution to the date on which the application was rejected/accepted by the Court.³⁹ However, in some cases, the application for withdrawal came up after as long as 19 years from the date the prosecution was launched.⁴⁰ This long lapse of time is a serious question mark on the efficacy of the criminal justice system.

	N	Minimum	Maximum	Mean	Std. Deviation	Variance
Time from initiation of case to the date when the SC accepted/rejected the application (in months)	19	3	238	95.42	67.919	4613.035
Valid N (listwise)	19					

IX. ANALYSIS AND CONCLUSION

The above study shows that though the Court has time and again stressed upon that the Public Prosecutor has the statutory responsibility to decide whether to file an application or not, the overall picture is that the Court's mandate is not followed in a majority of cases. There is executive interference and non-application of mind by the Public Prosecutor. It is heartening to see that in very few cases the Public Prosecutor cites grounds that the Court thinks as valid. Many a time the PP plainly states that the Government has instructed him to do so and the Court when elicits the reasons for withdrawal to see that the application is not made with an ulterior motive of vindicating the law unrelated to the public interest, it orders rejection of application. Rejection/remittal of withdrawal application in more than 50% of cases again stresses that the Public Prosecutor is not exercising his discretion properly because the consent of the Court under section 321 is more supervisory in nature⁴¹ and while exercising supervisory powers, there should be meagre cases in which the Court should have got the chance to reject the

³⁹ Abdul Karim v. State of Karnataka, (2000) 8 SCC 710. In this case a famous actor, Rajkumar was kidnapped by Veerappan, a forest brigand and the Government in a panic situation decided to withdraw all cases filed against Veerappan and his associates under TADA and other penal statutes in return for the release of the actor. The SC in this case disallowed the application.

⁴⁰ Ghanshyam v. State of M.P., (2006) 10 SCC 473.

⁴¹ State of Kerala v. K. Ajith, 2021 SCC Online SC 510.

application. Moreover, the withdrawal application cannot be opposed by the victim in the current scenario. Thus, the procedural safeguard of obtaining the consent of the Court before proceedings are withdrawn is sacrosanct for this section.

To conclude, public prosecutors are the officers of the Court and heavy responsibility is put on their shoulders to ensure that the criminal justice system is working smoothly and efficiently. Performance of the responsibility vested in them for withdrawing a criminal case talks about the quantum of faith reposed in them. The Public Prosecutor must act independently and not on the dictates of the Government so that only those cases which deserve to be shown the gate are withdrawn. Failure of the public prosecutor to apply his mind before filing a withdrawal application is a serious failure of the system which must be cured. There is no prohibition on consulting the Government and if in fact if the case is magnificus, he should consult the Government as the ultimate responsibility of prosecuting the criminal is of the Government. However, what is expected is that in cases where the Government is directing the Public Prosecutor to file a withdrawal application, he must apply his mind independently and not act like a postbox. And if according to him the grounds cited are not valid the Public Prosecutor shall apply to the Government for relieving him from the case. Another alternative is that when the application is being considered by the Court, he should offer his view that the application is not sustainable as the grounds are frivolous and then the Court has the discretion to reject it. It is the ultimate responsibility of the Public Prosecutor to ensure that only those withdrawal applications are accepted which advance public interest.
