

Disposal of the criminal proceeding without complete trial under section 321 of Cr.P.C

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1. Introduction

Criminal proceeding known as a procedure adopted in criminal case before a Criminal Court whereby a Magistrate adjudicate the criminal case. In short criminal procedure is the adjudication process of the criminal law. The need arises to make the procedure of criminal law is to look after the way of working of administration and enforcement of Criminal Law. As we all know that Criminal Law would be almost worthless in the absence of Criminal Proceedings. The Cr.P.C in which criminal Proceeding is mentioned, controls or regulates the principal rule set up for investigation and trial of offence. The code itself plays a vital role in making the investigation and adjudicatory process more strong, effective and efficient in nature. In another term it also restricted the abuse power of Police Officers or Judicial Officers.

In the commencement of criminal proceeding, it may not necessarily that all the trial of a criminal case before a Magistrate resulting into the acquittal or conviction of the accused person. In other instance in criminal proceeding where by the code itself permit the prosecutor to withdrawal the case or dropped the proceedings that neither resulted into acquittal nor conviction of accused person with the consent of Court. These power can entertain under the code by the different person under different circumstances; like compounding of case, withdrawal from charge or complaint or prosecution. Section 321 Cr.P.C described the procedure and power of Court to grant the consent for withdrawal from the criminal proceeding without completion of trial.

2. Legal Provision Relating To Withdrawal From Prosecution Under The Criminal Procedure

Section 321 Cr.P.C deals with the withdrawal from the prosecution. According to the section 321Cr.P.C:-

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 discharge in respect of such offence or offenses;
- 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,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.

3. Role of consent of Court in withdrawal from proceedings

Under this section of this Code enables the Public Prosecutor, in charge of the case to withdraw from the prosecution of any person at any time before the judgment is pronounced, but this application for withdrawal has been accepted with the consent of the Court and if the Court gives consent for such withdrawal the accused will be discharged if no charge has been framed or acquitted if charge has been farmed or where no such charge is required to be farmed. It clothes the Public Prosecutor to withdraw from the prosecution of any person, accused of an offence both when no evidence is taking and even if entire evidence has been taken. The extension for the exercise of this power at any time before the judgment is pronounced is when the Public Prosecutor after taking into consideration all the materials before him produce the application for withdrawal, the Court exercises its judicial discretion by considering the materials produced before him and on such consideration, either gives consent or denied consent.

4. Circumstances under which a Court grant permission of withdrawal from the prosecution

The Power of the Court u/s 321 Cr.P.C is supervisory but it does not mean that while exercising that power, the consent has to be granted on mere asking. The Court has to examine that all relevant aspects have been take into consideration by the Public Prosecutor. No hard and fast rule can be laid down in which consent should be granted or refused. It must define on the facts and circumstances of each case in the light of what is necessary in order to promote the ends of justice. According to Code, Section 321Cr.P.C provide for the withdrawal from the

prosecution instead of the withdrawal of the prosecution, as withdrawal from a prosecution stands for retiring of stepping back or retracting from the prosecution.

Dasrat V. Sate of Andhra Pradesh 2014. In this case Court said that the section 321 Cr.P.C also does not specify the consideration on which the Court is to grant its consent. In these circumstances, the only implication which arises is that the Court has to satisfy itself that the executive function of the public prosecution has not been improperly exercised or that it is not an attempt to in the normal course of justice. In the case of **Sheonandan Paswan V. State Of Bihar And Others 1987** that in deciding the application under the section 321 Cr.Pc the Court has to see whether the application is made in good faith, in the interest of public and justice and not to thwart or stifle the process of law. After considering the facts of this case, The Court will have to decide whether the application having such improprieties of illegalities to which it cause manifest injustice if consent has given. The section not going to bound the Court to give a detailed reasoned order when it gives consent.

Fazi-Ul-Rahman Vs. Sate Of U.P & Others (2016). In this case that after submission of the charge-sheet, the state government on appraisal of entire material on record decided to invoke the power under section 321 Cr.P.C relations to withdrawal from the prosecution. Assistant prosecutor move an application under section 321Cr.P.C withdrawal from the prosecution. Learned Magistrate after hearing the parties passed an order rejection the application moved under section 321 Cr.P.C. Aggrieved by the order of learned Magistrate passed on application moved under section 321 Cr.P.C the petitioner have filed the petition under section 482 Cr.P.C. Learned counsel has pointed out that the learned Magistrate while rejecting the application under section 321 Cr.P.C observed that there should be fulfillment of four conditions for withdrawal from the prosecution:-

- i. In the interest of justice
- ii. Public interest
- iii. That there should be every change of acquittal if the trial proceeds the accused shall be put to great inconvenience and
- iv. Some of the accused have not appeared.

The High Court considered opinion that the impugned order suffers from illegality and infirmity and deserves to be quashed. Accordingly, the petition is allowed and the order passed by Magistrate quashed.

Permission for withdrawal from prosecution cannot be granted mechanically. If withdrawal made by prosecution is for proper administration of justice only that is in Public Interest. The finding raised by the Supreme Court in the case of **Abdul Karim and others v/s State of Karnataka (2000) 8 SCC 710**, that an application U/s 321 Cr.P.C. could not be allowed merely on the pretext that the State Government had taken a decision for withdrawing the prosecution and such an order could only be passed after examining the facts and circumstances of the case. What the Court has to decide is whether the application is made in good faith, in the interest of public policy or justice and not to thwart or stifle the process of law. After considering the facts of this case, The Court will have to decide whether the application having such improprieties of illegalities to which it cause manifest injustice if consent has given.

5. Condition precedent for withdrawal from proceeding:-

If a Public Prosecutor wants to withdrawal from the prosecution than the consent of the Court is must. If any offence is fall within the proviso of the section 321 Cr.P.C, and the Public Prosecutor has not been appointed by the Central Government, in such situation Public Prosecutor can not apply for withdrawal and obtaining the consent from the Court for withdrawal, unless he has been permitted by the Central govt. in such case the Court direct the Public Prosecutor to obtaining permission from the Central Government regarding withdrawal of the case. If in the case a Public Prosecutor who is already appointed by the Central Government, needs not to take permission from Central Government if he moves the application for withdrawal of the case with the consent of the Court.

6. Who May Apply

Public Prosecutor or assistant Public Prosecutor has power to withdrawal from prosecution of any person under section 321Cr.P.C. A victim or informant or accused has not been authorized for withdrawal from prosecution of any person under the section 321 of Cr.P.C.

Before the Court, the Public Prosecutor after taking into consideration all the materials before him for makes the application for withdrawal, the Court exercise its judicial direction by considering such materials and on such consideration, either giver consent or denied for the same.

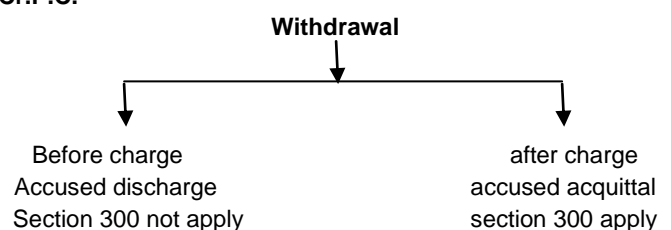
7. Stage of withdrawal from prosecution

A prosecution can be sought for withdrawal "at any time before the judgment is pronounced" by the Court while trial of the case.¹Therefore a Public Prosecutor cannot move for the withdrawal at the appellate stage. Public Prosecutor has no right to present any application for withdrawal under section 321 Cr.P.C at appellate stage².

8. Which Offence Can Be Withdrawal

Any offence can be withdrawal under section 321 Cr.P.C. Any person can be prosecuted with different charge and he can be trial with other offences in a same trial. Therefore Public Prosecutor can withdrawal from prosecution in respect of any person and one or more offence in respect of same person or persons try with whom.

9. Effect Of Withdrawal And Applicability Of Section 300 Of Cr.P.C.



According to sub (1) section of section 300 Cr.P.C when:-
 (1) A Person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to tried

¹ T.C Thiagarajan

² Public Prosecutor V. Mandangi Varjuno,1976 Crl Lj 46,47(AP)

again for the same offence, nor on the same facts for any offence for which a different charge from the one made against him might have been made under sub section 1 of section 221 Cr.P.C, or for which he might have been convicted under sub section 2.

section 321 Cr.P.C can be prosecuted for same offence.

- When Public Prosecutor withdrawal from the prosecution against any person after charge has been framed, such person is said to be acquitted and section 300 is applicable on conviction and acquittal of the accused so double jeopardy apply on acquittal of the person. Thus the person acquitted under section 321 Cr.P.C cannot be prosecuted for same offence.

10. Situations arises after reading section 300 and 321 of Cr.P.C

- When Public Prosecutor withdrawal from the prosecution against any person before charge has been framed, such person is said to be discharge. But section 300 is applicable on conviction and acquittal of the accused so double jeopardy not applies on discharge person. Thus the person discharge under

11. Remedy against The Order Passed U/S 321:-

In this regard, no appeal can be filed against the order passed under section 321. The only remedy is to invoke the revision to High Court or Court of Session under section 397 Cr.P.C.

Difference Between Withdrawal From Prosecution And Compounding of Offence Under Section 320 Cr.P.C

Sr. No.	Withdrawal from prosecution	Compounding of offence
1	it is a unilateral act	it is a bilateral act
2	Application can be made by the Public Prosecutor or assistant Public Prosecutor.	application can be made by complaint or Public Prosecutor or accused or, complaint or Public Prosecutor and accused
3	any case can be withdrawal with the consent of the Court	If offence is in under sub section 1 of section 320 the case can be compound without the consent of the Court. if offence is in under sub section 2 of section 320 the case can be compound with the consent of the Court
4	withdrawal can be against any offence	but compounding of offence can be specified offence mention under section 320 not other offence

12. Conclusion

There is some situation under the code when full trial cannot be concluded, section 321 of Cr.P.C withdrawal from prosecution is one of that. Under section 321 when Public Prosecutor seemed that the accused is innocent and no material recorded is available against the accused, in that

situation in the interest of justice proceeding can be withdrawal. For the purpose for a fair trial in the interest of justice this section plays an important role. It also helps to avoid unnecessary work burden with false litigation on our Judiciary system also makes a trustworthy bonding between the Administration and Judicial Power.

References

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- Abdul Karim Vs. State Of Karnataka And Others (2000).
- State Of Orisa V. C. Mohapatra, Air 1977 SCC 903.