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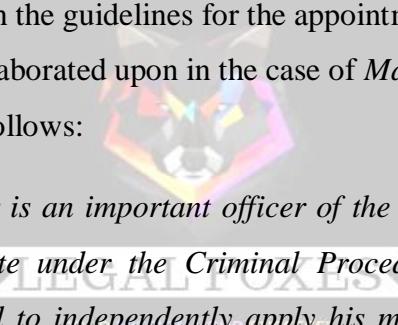
WITHDRAWAL FROM PROSECUTION- IN LIGHT OF POLITICAL INFLUENCE

By Khushi Kerur and Kush Khandelwal

CHAPTER- 1

INTRODUCTION

The Criminal Justice System in India is an extremely vast system and there are various parties involved in the adjudication of a case. §24 of the “Code of Criminal Procedure”, 1973¹ defines a public prosecutor and lays down the guidelines for the appointment of the same. The status and role of public prosecutor was elaborated upon in the case of *Manu Sharma v. State (NCT of Delhi)*², the court observed as follows:


“A Public Prosecutor is an important officer of the State Government and is appointed by the State under the Criminal Procedure Code.³ The public prosecutor is expected to independently apply his mind to the request of the investigating agency before submitting a report to the court for extension of time with a view to enable the investigating agency to complete the investigation.⁴ Therefore, a Public Prosecutor has wider set of duties than to merely ensure that the accused is punished, the duties of ensuring fair play in the proceedings, all relevant facts are brought before the court in order for the determination of truth and justice for all the parties including the victims.”

§321 of CrPC, 1973 provides for the “Withdrawal from Prosecution” wherein the Public Prosecutor or Assistant Public Prosecutor may relieve themselves from the prosecution of a particular person or claim a reduction in any charges against the accused. The main requisite for

¹ The Code of Criminal Procedure, (Act No. 2 of 1974)

² *Manu Sharma v. State (NCT of Delhi)*, (2010) 6 SCC 1

³ *Hitendra Vishnu Thakur v. State of Maharashtra*, (1999) 7 SCC 467

⁴ *Shiv Kumar v. Hukum Chand*, (1994) 4 SCC 602

such withdrawal is the obtaining of the consent of the court.⁵ It is always in light of the general public interest that the withdrawal of or from prosecution may be allowed. The various other conditions which warrant the withdrawal from prosecution shall be established in the coming chapters.

Due note shall be made with regards to the point of distinction between *withdrawal of prosecution* and *withdrawal from prosecution*. While the former hints at the ending of the trial or discharging the accused from certain offences, the latter is more specifically related to the Public Prosecutor relieving himself from the instant proceedings. The rationale behind this shall be duly explained in the forthcoming chapters.

Various courts have time and time again observed that the withdrawal has to be clearly based upon grounds that are made in good faith, aim at the public interest and contribute to preserving the public policy while completely ensuring that no action is taken in order to hamper the process of law.⁶ The court has to pay specific attention to whether the sanctioning of the application in any way shall manifest injustice in the process of criminal justice.⁷ "It has been specifically ruled by the court that it should be seen whether application for withdrawal is made in good faith, in the interests of public policy and justice and not to thwart or to stifle the process of law."⁸ These are certain general principles evolved, while an exhaustive list of principles and conditions will be enumerated in the furthering study.

When the provisions of law have existed for long and the discrepancies have been clarified by the courts by way of judicial precedents, how does the political influx influence or sway the discretion of the public prosecutors shall be looked into. In years as early as the 1980's, the Supreme Court decided on the aspects of, "*whether the Government could advise the Prosecutor to withdraw from the case*". The courts observed that the Prosecutor is an indispensable part of the legal system and they should not be tied down by the administrative actions.⁹ The Prosecutor has independent discretion of his own to decide whether or not to apply for such special grant,

⁵ Subhash Chander v. State (Chandigarh Administration & Ors.), AIR 1980 SC 423

⁶ Mohd. Mumtaz v. Nandini Satpathy, . 1987 Cri LJ 778 (SC)

⁷ Rahul Agarwal v. Rakesh Jain, (2005) 2 SCC 377

⁸ K.N. Chandrasekharan Pillai, Public Prosecution in India, Journal of the Indian Law Institute, Vol. 50, 2008, Pg. 629-639

⁹ Balwant Singh v. State of Bihar, (1979) 4 SCC 466

and cases have created the jurisprudence that governs the exercise of such discretion during the process of adjudication.¹⁰

While this effectively lays down the laws to be followed and the application of every law has been determined through the judicial ruling in this matter. It is a well-known fact that law and politics have never stayed far apart from each other. In the present day of divisive politics being played across the country, the political intervention to hamper the proceedings against political idols and their allies has become a news that is seen frequently.

The Political influences are extremely strong and in a democratic country like India, it definitely acts as a bane that hampers the growth of the society by providing a system through which offenders can claim exception by use of unlawful means or exerting political pressure on the state appointed prosecutors.

Therefore, this necessitates the present study to ensure the sanctity of the Democratic nation, maintenance of the freedom of powers between the organs of the government is essential. The application of §321 in light of recent happenings where political intervention has been observed shall be analysed. The misuse of this section by political authorities to obtain a clean chit and get away with offences committed by them and the damage caused to the administration system in India is another matter of grave concern that shall be addressed during the course of this paper. The author's opinion on the requirement of stringent laws to curb the unnecessary intervention of the political authorities and people owning powers in the system shall be systematically established and explained.

CHAPTER 2

DEFINITION

In India, since the system of justice is adversarial in nature, the pre-conceived notion is that the entire burden of adjudication is on the Judges, but the nature and role of Public Prosecutor and the Defence Counsel is under-estimated. But since the Public Prosecutor represents the public, and carried out duties that are mainly of public and are bonafide in nature, Prosecutor as an entity plays an extremely important role. Public Prosecutor has been defined under §2(u), anyone who

¹⁰ Ganesan v. State of Tamil Nadu, 1995 Cri LJ 3849 (Mad)

is appointed under §24, CrPC, this definition includes any person who is acting as an agent or is delegated the duty by the Public Prosecutor.

"a Public Prosecutor is not expected to show a thirst to reach the case in the conviction of the accused somehow or the other irrespective of the true facts involved in the case"¹¹

§24, and the various sub-sections provide for the appointment of Public Prosecutor in every district court and H.C, it also provides for the alternative in case where there are no suitable candidates for such appointment. And §25 provides for the appointment of Asst. prosecutor, the powers of which are bestowed upon the District Magistrate.

ROLE AND DUTIES OF THE PROSECUTOR

The roles and duties with respect to the Advocates Act, 1961¹² and Bar Council Rules. The courts have been faced with the question of deciding who is a Public prosecutor, their role and functions in a Trial. In the case of *Babu v. State of Kerala*¹³ the court clearly distinguished between the Public Prosecutor and a Private Counsel, by stating that the main aim and job is to ensure that justice is served to the parties. Regardless of who the party is, their job is restricted to assisting the court in serving a fair trial and justice, conviction or acquittal is not their concern.¹⁴

a. Agent of Justice:

Every prosecutor, being an officer of the court, is responsible for the administration of justice. In an adversarial system, it is the duty of the Prosecutors to ensure that the truth with respect to the case in hand is unearthed, the proper evidence is put on record, and that the required standard of care is exercised in order to meet the ends of justice.¹⁵

b. Role in Sentencing:

The Prosecutor is considered liable for ensuring that the right charges are levied, and that the sentencing is in accordance with the offences actually committed by the accused.

Since the prosecutor has the powers to withdraw the case, or charges either partially or completely, the role of prosecutor is crucial in this regard.

¹¹Shiv Kumar v. Hukam Chand, (1999) 7 SCC 467.

¹² Advocates Act, 1961, Act No. 25 of 1961

¹³Babu v. State of Kerala, Kerala, (1984) Cri L 499 (Ker)

¹⁴*Id.*, Pg. 502.

¹⁵R.K. Jain v. State, (1980) 3 SCC 435

c. Duty to Represent State:

The Prosecutor is an organ of the State, who is expected to represent the public and the State, with the main motive of administering justice. Therefore, no external pressure or influence should sway the thinking and working of the Prosecutor in any case, it should be solely based on the facts, law and the evidence adduced.¹⁶

d. Duty to present all the facts and evidence before the court of law:

The Courts at various instances have time and time again reiterated the duty of Public Prosecutor to be fair and to present all the facts, material¹⁷ and immaterial, along with the collected evidence, in order to ensure a fair trial.¹⁸

e. Duty to act independently, and free from executive decisions:

Every prosecutor has been given utmost independence with respect to finding of facts, adducing and presentation of evidence before court. Even in cases relating to withdrawal, the complete and free application of the Prosecutor's mind is expected, without any interference or coercion from executive or administrative bodies.¹⁹

f. Duty to follow all the professional standards of conduct:

Every Prosecutor is expected to follow all the professional standards, the ethical standards and the code of conduct as specified by the laws in force at that time. The prosecutor is also expected to investigate in good faith and restrict their actions to being the lawyer for the state, and not be highly inclined towards the accused.²⁰

In addition to all of these, the Public Prosecutor has been bestowed with the power and right to investigate and file charges pertaining to any case, along with which, they have the powers to withdraw the prosecution, either in regards to a single charge or the case in whole. Therefore, the Public Prosecutor plays a major role in the entire criminal justice process, for this reason, they should be diligent in exercising their authority in light of making justifiable decisions.

¹⁶Sheonandan Paswan v. State of Bihar, (1983) 1 SCC 438

¹⁷Ghirro & Ors. v. Emperor, Cri LJ 34 (Oudh H.C.) 1933

¹⁸Kunja Subidhi & Anr. v Emperor, Cri LJ 30 (Patna H. C.) 1929

¹⁹Supra Note 9.

²⁰Zahira Habibulla H. Sheikh v. State of Gujarat, [(2006) 3 SCC 374]

INDEPENDENCE OF PROSECUTOR

"Independence of the Public Prosecutor from any governmental control is the hallmark of this high office"²¹

The case of **Babu**²² was referred to in the **154th Law Commission Report**, that dealt with the Code of Criminal Procedure, whereby the dual-role of prosecutor was elaborated upon, and the related issues were highlighted. The prosecutor has been given complete independence in the field while working on a case assigned to him, every prosecutor performs a dual role. He assists the police during investigation, and continues to be associated with the case during the court proceedings as the pleader on behalf of the State. There can be no manner of doubt that the Parliament intended that Public Prosecutors should be free from the control of the Police Department.²³

This compromises the independence of the prosecutor, for the influence of the investigating agency clouds the judgement of the prosecutor. But these lines of distinction are unclear, which has resulted in various stands as described by the Judiciary.

"A public prosecutor is an important officer of the state government and is appointed by the state under the Cr.P.C. He is not a part of the investigating agency. He is an independent statutory authority."²⁴

While this is one side of the coin representing the independence, the tasks of the parties get intertwined unintentionally, whereby it jeopardizes the role, duty and freedom of the prosecutor. The nature of office of the Public Prosecutor is public, which requires the actions of the Prosecutor to be in best interest of the Public and within the contours of Article 21 of the Constitution.²⁵

The concept of independence of the Prosecutor plays a crucial role with respect to withdrawal of cases, since the power to do so has been vested with the Public Prosecutor under §321 of CrPC.

²¹Centre for PIL v. Union of India, (2012) 3 SCC 117, ¶ 21

²² Supra Note. 14

²³Jai Pal Singh Naresh and ors. vs. State of U.P., (1976 CrLJ 32)

²⁴Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602

²⁵Supra Note 22.

As observed in the case of *State of Punjab v. Union of India*²⁶ the court opined that the withdrawal as an option should be independently exercised without the influence of any administrative or executive opinions.

The independence and separation of prosecuting and investigating agencies is extremely important and necessary in order to secure the ends of justice.²⁷

CONCERNS REGARDING APPOINTMENT OF PROSECUTOR

The appointment when made with reference of political affiliations or any nexus to prominent divisive groups, has been a matter of concern, which has been raised time and time again by various authorities. §24 and 25 of CrPC, provide for the appointment of Public Prosecutors and Asst. Public Prosecutors. The sections establish proper procedure for the appointment, yet they have an exemption in cases where there are no suitable candidates, which creates the levy for appointment based on political affiliations. This poses a serious threat to the Justice system, since it *prima facie* violates the principles of independence of organs, of fair trial and the core values of the Justice.²⁸

The same concerns were raised in the **197th Law Commission Report**, that categorically clarified the position and the issues regarding the appointment of the Public Prosecutors in India, which included the vast influx of political influence. The report of the PMO pointed out that there exist loopholes in the system, that are compromising the accountability of the officers, due to the appointment being done by the state, this process should be streamlined to ensure the appointment of credible and genuine candidates.

The further concerns of involvement of political parties and its effect on the justice system, and the conducting of trial shall be elaborated in Chapter 4.

CHAPTER-3

§321 AND SCOPE OF APPLICATION

§321 of CrPC provides for the withdrawal from prosecution by the prosecutor in-charge, it also provides for the cases that sanction the withdrawal by the Asst. Public Prosecutor. The

²⁶ State of Punjab v. Union of India, 1987 Cri LJ 151 (SC)

²⁷ NHRC v. State of Gujarat, (2009) 6 SCC 299

²⁸ Srilakha Vidyarthi v, State of U.P, (1991) 1 SCC 212

conditions for such withdrawal are the right time of approaching the court for withdrawal, with justifiable reasons for the same, followed by obtaining the court's consent for such withdrawal. The main requirement of the instant section is the application of the Public Prosecutor being in public interest and for the benefit of the public in general.²⁹

In the case of **R.K. Jain Case**³⁰ the following guidelines were laid down, which dealt with the discretion of the Public Prosecutor regarding withdrawal:

- a. The Public Prosecutor is entrusted with the functions of ensuring the genuine and free prosecution of the offender, in accordance with the scheme and rules laid down by CrPC, and withdrawal is one of the executive functions that has been solely granted to the Prosecutor.
- b. This function is concretely based on the discretion of the Prosecutor, and such decision cannot be delegated to any other party involved in the adjudication process. The decision to withdraw should be arrived at by the prosecutor, with free will and based on the evidence available on record.
- c. The Government has the liberty to suggest such withdrawal, but it cannot be forced upon the prosecutor for the same. Since the Prosecutor is an officer of the court, he is accountable and responsible for the outcome of the case and decision-making in interest of the public.
- d. In all such cases, the role of the Court is limited to being a supervisory body, whose duty is to merely apply its mind to analyse whether or not, the Prosecutor is acting "as a free agent, uninfluenced by irrelevant and extraneous considerations".

As mentioned above, this function of the Prosecutor has been categorised as executive in nature, nevertheless, in the case of **Subhash Chander v. State**³¹, the court observed that this function is an extension of the adjudication process, and not otherwise. The international standards on the Prosecutorial conduct and discretion provide that irrespective of the nature of function i.e. either

²⁹Denzong Nang-Ten Sung-Kyob Tsogpa v. State of Himachal Pradesh, 2015 SCC OnLine HP 1585

³⁰Supra Note 16.

³¹Supra Note 5

executive or judicial, the main requirement for this job is to ensure fairness, complete application of a free mind and impartiality in conduct of the Prosecutor.³²

§321 is applicable in majority of cases pertaining to general law, but cannot be applied in cases of special enactments, especially dealing with serious offence like terrorism, as under Prevention of Terrorism Act, 2002. Nevertheless, such cases are open to judicial review, but the withdrawal cannot be sought.³³

WHO MAY WITHDRAW?

§321 specifies that the withdrawal is shall be done at the discretion of the Public Prosecutor or the Asst. Public Prosecutor. This also includes any other person who is in-charge of conducting the proceedings of the case in hand.³⁴

In case, the initiation of the case was by virtue of a private complaint, then in such cases the public prosecutor does not have the right to exercise discretion to withdraw the case.³⁵ Regardless of who is authorized to make the application, it is essential that such discretion is exercised with utmost good faith and due consideration of the facts on hand.³⁶

CONDITIONS FOR SANCTIONING WITHDRAWAL

The courts as a part of jurisprudence have evolved certain conditions which have to be mandatorily satisfied in order to grant the permission to withdraw. The withdrawal by the Prosecution in broad category has two different grounds i.e. the independent consideration of the facts by the Prosecutor and the subsequent approval of the same by the court of appropriate jurisdiction. For withdrawal the main essentials are:

- a. The application should be filed by the Public Prosecutor or the Asst. Prosecutor, who has the competence to make such an application.
- b. Such prosecutor should be officially in charge and appointed as the lead on the instant case.

³²Guidelines 10-16, United Nations, “Guidelines on the Role of Prosecutors”, Adopted September 1990.

³³Mahmadhusen Abdulrahim Kalota v. UOI, (2009) 2 SCC 1

³⁴State of Punjab v. Surjit Singh, 1967 Cr.L.J 1084

³⁵V. S. Achuthanandan v. R. Balakrishna Pillai, (1994) 2 SCC 299

³⁶In Re: Withdrawal of Criminal Cases by State Government, 2017 (2) JIC 249 (All)

- c. Once the application is filed, the court through the judge has to appreciate the reasons, and check if such withdrawal is sanctioned by the conditions, post which, the withdrawal maybe granted or rejected.³⁷

The various grounds laid as condition precedent by the courts are as follows:

- a. Public Policy and Interest: The Prosecutor has the power to withdraw in cases where, such withdrawal if deemed to be necessary in light of securing public order and justice. This may also include various other factors to be achieved including social, political and economic justice.³⁸Cases involving communal feuds, and the requirement of settling them, in light of public interest is permitted under the scope of laws.³⁹
- b. Paucity of Evidence: When the prosecutor, based on his independent application of mind to the facts in hand feels the requirement of withdrawal, due to lack of evidence, or lack of charges to proceed with the trial, the case may be withdrawn.⁴⁰
- c. Malafide initiation of proceedings in light of personal or political vendetta: The Best Bakery case⁴¹, and various other cases have pointed out that when there exists intense political nexus or malafide initiation for tarnishing the image of people, then such proceedings may be withdrawn with the permission of the court.
- d. Cause of harassment to parties: Where it is considered by the courts or the prosecutor that the continuance of the trial is likely to cause serious harassment to the parties, and the case is likely to end up in an acquittal, then withdrawal maybe sanctioned in such cases.⁴²

DIFFERENCE BETWEEN WITHDRAWAL OF PROSECUTION AND WITHDRAWAL FROM PROSECUTION

The grammatical connotation of the phrases in itself is clear, yet there exists confusion regarding the understanding of the terms. While withdrawal from prosecution specifically discharges or acquits the accused of the charges and brings an end to the proceedings in totality⁴³, withdrawal of prosecution is restricted to relieving the officer in charge of the case.

³⁷ M. N. Sankaranarayanan v. Balakrishnan, (1972) 1 SCC 318

³⁸State of Orissa v. Chandrika Mohapatra, (1979) 4 SCC 466

³⁹Supra Note 9

⁴⁰Supra Note 16

⁴¹ Supra Note 21

⁴²Supra Note 7

⁴³Public Prosecutor v. State of A.P, 1975 SCC OnLine AP 81

PERMISSIBLE STAGE FOR WITHDRAWAL

The application of §321 is restricted to the trial stage and cannot be exercised in the appellate stage. The Public Prosecutor is not entitled to withdraw the proceedings at an appellate stage or after the pronouncement of the judgement.⁴⁴ The scheme of the section is crystal clear in its wording, wherein the withdrawal is strictly limited to the stage before the judgement is pronounced by the court. This shifts the timeline for withdrawal to be from the cognizance of the case is taken, till the time the actual judgement is pronounced by the competent court.⁴⁵

Pronouncement of judgement refers to the “judicial determinations of the outcome of the case by the competent court” and any withdrawal maybe sought for before such stage.⁴⁶ Since the term court here refers and has a restricted meaning to the Trial Courts, such discretion of the Public Prosecutor cannot be exercised at an appellate stage, even if the judgement has not been pronounced at the appellate stage.

OPPOSITION FOR WITHDRAWAL

The courts through the evolving jurisprudence have held that such withdrawal may be contested by any third party who is public-spirited, or genuinely believes in the existence of merit in the case being heard. Any citizen may file against the withdrawal, especially if the charges pertain to public administration, funds, corruption, breach of trust, etc. The only requirement is the public spirit, bonafide intentions and interest in creating a well-established and clean administration.⁴⁷

CHAPTER 4

WHAT IS POLITICAL INFLUENCE

The application of force or coercion to ensure that the case being tried is withdrawn by the prosecutor can be termed the use of political influence. This provision of CrPC is being exploited due to the Public Prosecutor being the representative of the State, which makes the influencing of the party easier, thereby securing personal and political vendetta through this section. This may also be done in pursuance to committing any “political offence” that may be committed as a part

⁴⁴Ananta Lal Singh v. Jahiruddin, A.I.R. 1927 Calcutta, 818

⁴⁵Supra Note 16

⁴⁶State of Bihar v. Ram Naresh Pandey, AIR 1957 SC 389

⁴⁷ Supra Note 17

of the changing government or through inducing the change of policies in any state.⁴⁸ Various other unlawful acts maybe applied in order to cover up the tracks of the people in power.

“The States are under a duty to ensure that Prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.”⁴⁹ Therefore, in light of this, the various cases pertaining to Political influence and vendetta guiding the withdrawal of prosecution shall be discussed.

§321 AND POLITICAL INFLUENCE

In recent times, the cases reporting the use of political influence to seek the withdrawal of cases have been on a rise. During the communal riots in **Muzzaffarnagar**, the various ministers and political leaders started exercising influence in order to seek the dropping of cases against a particular religious sect.⁵⁰

A similar instance has occurred in **Chandigarh** as well, wherein the withdrawal of a huge number of cases filed against the 869 Jatt Protestors after they threatened the disruption of public peace, in an upcoming rally. In light of the exerted force, the Haryana Govt. sanctioned the withdrawal of 85 cases, all pertaining to criminal charges in light of various protests.⁵¹

Another instance of political power interfering with the justice dispensing system has been notified in **Karnataka**, where the Minister from a political party has promised to withdraw cases filed against a minority group if they approach the govt. with requests.⁵² Such withdrawal is sanctioned in certain cases where there are fake cases registered, but when legitimate cases are sought to be withdrawn, such are the cases where the issues in this regard are raised.

The **Best Bakery case**⁵³ is another example where the political influence of the ruling party was exercised in order to intimidate the witnesses, to ensure that there was no evidence incriminating the party in the case of riots and disruption of public peace. This is a clear violation of law, since

⁴⁸ Supra Note 17

⁴⁹ Article 4, United Nations, “Guidelines on the Role of Prosecutors”, Adopted September 1990.

⁵⁰ Maulshree Seth, “*Muzaffarnagar riots: Drop cases against Hindus, BJP MP Sanjiv Balyan, khaps tell CM Yogi Adityanath*”, THE INDIAN EXPRESS, February 6, 2018 4:24 AM.

⁵¹ Sushil Manav, “*Haryana placates Jats, to withdraw 85 cases*”, THE TRIBUNE, Feb 07, 2018 02:07 AM.

⁵² Correspondent, “*Karnataka minister in Assembly: ‘May drop small cases if Hindu outfits approach’*”, February 7, 2018 4:05:12 AM.

⁵³ Supra Note 21.

the basic principles of justice aim at the uninterrupted serving of justice to the parties, for, everyone is treated equally in the eyes of law.

Another case in this regard is the *Nalini Satpathy case*,⁵⁴ where the Chief Minister was accused of undue and unregistered financial transactions, that were termed as misappropriation of party funds. In light of this, the Law dept. had put forth the advice to withdraw the cases under §321. The court in this case held that, due to the paucity of evidence, the charges were eligible to be quashed, and that withdrawal was not the right course of action.

The case of *Sheonandan Paswan*⁵⁵ the court observed that even if there exists political nexus in the case, but the withdrawal should be solely based on the constructive aspects of the section, which need to be interpreted with a free mind. The reason of Govt. being unwilling to adduce evidence on record, cannot be permitted as a ground for withdrawal of the case.

As expressed earlier, the govt. is empowered to make a suggestion for the withdrawal of cases, but this should be duly evaluated by the court. When cases pertain to anything done in pursuance to achieving any political objective, it cannot be strictly held that such cases are not subject to withdrawal. When it is justified that such withdrawal is required in light of public order and tranquility, it may be withdrawn at the discretion of the court.⁵⁶

As the facts and circumstances in the case of *Sunil Kumar Pal v. Phota Sheikh*⁵⁷ clearly indicate the means and manner in which the legal provisions and justice system is bent for the benefit of the political purposes. The entire prosecution was tightly packed in order to favour the defence, which caused undue injustice to the citizens, since the politically powerful manipulated the entire process of justice.

Where the State has categorically confessed and admitted to having initiated the legal proceedings in pursuance to political vendetta, such cases are sanctioned and are eligible for the withdrawal of the cases filed. The administrative and executive influence and extraneous zeal of

⁵⁴ Mohd. Mumtaz v. Nalini Satpathy & Ors., (1987) 1 SCC 269

⁵⁵ Supra Note 17

⁵⁶ Supra Note 5

⁵⁷ Sunil Kumar Pal v. Phota Sheikh, (1984) 4 SCC 533

pursuing the withdrawal of original case that caused the prosecution of the said person was held to be greatly influenced by political reasons.⁵⁸

The inference of political influence may also be gathered from the previous actions. As in the case of *Ganesan*⁵⁹ the withdrawal of case and the re-initiation of case on the change of government, specifically indicated the political reasons for such case initiation. Therefore, the case was dismissed in light of malafide intentions.

In light of the above discussion, it is hereby perceived by the author that the involvement of administrative and executive parties in the judicial process, which derails the integrity and fairness of the system, should be duly rectified by enacting relevant provisions.

CHAPTER- 5

CONCLUSION

The entire course of this study has revolved around the role and duty of Public Prosecutors who have the discretionary power to apply for the withdrawal of cases, which has various intricacies in the application of the section. Since the Prosecutors have discretionary powers, the abuse of powers has been observed, especially with respect to the political vendetta and the power play of the various influential people. In conclusion, the observation of the author has been that the enforcement system in India has various weak links that are exploited by people with the connections or power. Such exploitation causes grave injustice to the general public, who are at the receiving end of unsuccessful prosecutions.

The judiciary has played a pivotal role in ensuring that the misuse of power is not extensive, by keeping checks and balance on the procedural history of the case, the background of the parties involved in the case and the other technicalities of the cases. While the judiciary has played its parts, various pieces of news reporting in the last decade show that the withdrawal is also applied for without any collection/presentation of evidence or even as a part of mutual settlements at the FIR stage itself. This requires major revamping of the system, to curb the misuse of the system. In light of this the following suggestions are presented by the author.

⁵⁸Supra Note 36

⁵⁹ Supra Note 10

SUGGESTIONS

1. The process of appointment of Public Prosecutors and Asst. Public Prosecutors should be streamlined, in order to ensure that the political nexus does not effect the process of appointment.
2. For the culling of the suitable candidates for such positions, various factors like experience, history and record of cases, competency, fitness, and close relations with any influential parties should be considered.
3. Before any delegation of powers or subordination of cases is undertaken, the nature and history of statements made in the court of law should be considered, to ensure no related or interested party may manipulate the court proceedings.
4. In order to preserve the integrity of the judicial system, there should be strict procedures in place to incorporate administrative and disciplinary control.

