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**THE HIGH COURT OF SIKKIM : SIKKIM**

**WRIT PETITION (C) NO.28 OF 2003**

In the matter of a petition under Articles 226/227 of the Constitution of India.

Gupta Kumar Sundas  
S/o late Sar Bahadur Sundas  
R/o Singtam  
P.O. and P.S. Singtam,  
East Sikkim. **... Petitioner**

**Versus**

State of Sikkim  
Through the Chief Secretary,  
Government of Sikkim,  
Gangtok. **... Respondent**

For petitioner : Shri N. Rai, Advocate.

For respondent : Shri S.P. Wangdi, Advocate General.

**PRESENT: THE HON'BLE SHRI JUSTICE R.K. PATRA, CHIEF JUSTICE  
THE HON'BLE SHRI JUSTICE N. SURJAMANI SINGH, JUDGE.**

**Date of judgment : 25th March, 2004.**

**J U D G M E N T**

**R.K. PATRA, C.J.**

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The Assistant Public Prosecutor (Vigilance) filed an application under section 321 Cr.P.C. in the Court of the Judicial Magistrate (East) at Gangtok for withdrawal of criminal case no. 1 of 2003 pending against the petitioner which was rejected by order dated 25.7.2003. Against the said order of rejection, the petitioner filed Criminal Revision

no. 4 of 2003 in the court of the Sessions Judge (E & N) Sikkim at Gangtok. The learned Sessions Judge by order dated 25.8.2003 rejected the revision. Hence this writ petition.

**2.** The petitioner is the accused who is facing trial in the court of the Judicial Magistrate (vide criminal case no. 1 of 2003) under sections 181/379/403/468/471/420/511 IPC. The allegations against the petitioner are as follows:

He is a Christian by faith. In 1986-87 he married one Florence Tamang. In January, 2000 one said Bishnu Maya Tamang wife of Lopsang Tamang who had been under treatment for cardiac ailments at STNM Hospital, Gangtok was referred to AIIMS, New Delhi for treatment. On hearing this, the petitioner who was serving as the Head Master of Diphudara Primary School, Lower Khamdong contacted her and promised her to obtain financial aid from the state government. He thereafter claiming himself to be the husband of the patient applied to the state government for grant of medical advance and got sanctioned a sum of Rs.1,35,000/- for her medical treatment at New Delhi. He also received a sum of Rs.10,000/- as advance from the government. The petitioner in support of his claim that he is the husband of the patient Bishnu Maya Tamang induced the Pastor of Christian Revival Church, Gangtok to issue a false and back-dated married certificate and obtained one

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indicating therein that he was married to her on 20.12.1999. He also swore an affidavit before the oath commissioner stating that the said patient is his wife and marriage between them was solemnized on 20.12.1999. In the above premises the petitioner is alleged to have committed the offences of forgery for the purpose of cheating, using as genuine a forged document, making false statement on oath and criminal misappropriation.

**3.** On the basis of charge-sheet submitted by the police, the learned Magistrate vide order dated 27.4.2001 took cognizance of offences punishable under sections 181/379/403/468/471/420/ 511 IPC. Later the learned Magistrate upon hearing the prosecution and the defence, framed charge against the petitioner under the above provisions on 4.6.2001. In course of trial the prosecution examined as many as 31 witnesses in support of its case. At this juncture, two successive applications under section 321 Cr.P.C for withdrawal of prosecution were filed but they were rejected by the learned Magistrate on the grounds stated in the orders dated 16.12.2002 and 15.5.2003. Undaunted by such rejection, the state government asked the Assistant Public Prosecutor to move the court afresh for withdrawal of the case. The learned Assistant Public Prosecutor examined the matter and filed an application on 15.7.2003 seeking permission to withdraw the case on the following grounds.

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- (i) The sum of Rs.10,000/- which was taken as advance had been paid back to the government and therefore the government does not have anything to recover from the petitioner.
- (ii) The amount of Rs.1,35,000/- which was sanctioned would have been issued by cheque/demand draft in the name of the concerned referral hospital.
- (iii) The petitioner was working as a Head Master and at the moment due to his absence the education of the students has suffered a lot and the general public made a representation to the state government in the Education Department to solve the impasse.
- (iv) The trial of the petitioner is not in public interest.

**4.** The learned Magistrate rejected the above application by the impugned order holding that the grounds furnished by the prosecution for withdrawal are vague and permission for withdrawal can be granted only when the prosecution comes with a case that it was based on false evidence. The learned Sessions Judge rejected the petitioner's revision observing that the grounds put forth for withdrawal are not valid.

**5.** We have heard Shri Rai for the petitioner and learned State Counsel for the state. In support of the petition, Shri Rai placed reliance on the judgments of the

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Supreme Court in State of Orissa v. Chandrika Mohapatra AIR 1977 SC 903, Rajendra Kumar Jain v. State AIR 1980 SC 1510 and Sheo Nandan Paswan v. State of Bihar, 1987 SC 877.

6. On consideration of the decisions cited by the learned counsel, we are of the opinion that no specific categories of grounds can be catalogued where withdrawal from prosecution can be permitted. It has been emphasized in all the cases that while considering the question of withdrawal from prosecution the paramount consideration should be the interest of administration of justice. On perusal of the grounds stated in the present application, we are inclined to hold that in the interest of administration of justice consent should be granted to withdraw the prosecution. Admittedly, the amount of advance taken as loan has already been refunded to the state government and the state government itself in its instruction to the Assistant Public Prosecutor has indicated that it does not have anything to recover from the petitioner. The loan amount which was sanctioned would not have been given to the petitioner but the cheque /demand draft would have been issued in the name of the concerned referral hospital. We are satisfied that the prayer for withdrawal of the prosecution is not based on any extraneous consideration and in the circumstances no useful purpose would be served

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in continuing the prosecution. The Assistant Public Prosecutor after due examination rightly applied for withdrawal of the case.


7. For the reasons mentioned above, the orders dated 25.7.03 and 25.8.03 passed respectively by the learned Magistrate and the Sessions Judge are herewith quashed. As a consequence the application dated 15.7.2003 filed by the Assistant Public Prosecutor before the learned Judicial Magistrate in Criminal Case No. 1 of 2003 stands allowed. The petitioner stands discharged in respect of the charge framed against him. The Criminal Case No. 1 of 2003 is accordingly closed as withdrawn.

8. The writ petition is allowed. No costs.

  
**( R. K. Patra )**  
**Chief Justice**  
 25.03.2004

I agree.

  
**( N. Surjamani Singh )**  
**Judge**  
 25.03.2004

Dictation taken  
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 typed by me  
  
 Tshering Dolkar