

Government of India  
Ministry of Law and Justice  
Legislative Department  
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75/05/09

New Delhi dated the 6<sup>th</sup> May, 2009

OFFICE MEMORANDUM

Subject:- Proposal for permission of the Central Government under section 321 of Cr. P.C. 1973 for withdrawal from prosecution of case registered in Bhandara Police Station (District Bhandara, State of Maharashtra) FIR Nos. 172/04 and 178/04 against Shri Nana Panchbudde for violation of provisions of the Maharashtra Prevention of Defacement of Property Act, 1955 and the Representation of the People Act, 1951 - regarding.

The undersigned is directed to refer to the Ministry of Home Affairs O.M. No.F-4/2/2009-JUDL.CELL dated the 23<sup>rd</sup> March, 2009 on the subject cited above.

2. The Election Commission of India is of the view that the cases relating to electoral offences should not be withdrawn and those should be perused to their logical end. The Commission has further stated that considering the nature of the offence in the case in hand, this case may also be prosecuted to its logical conclusion for appropriate orders of the Court.

3. The Department of Legal Affairs has opined that "the power to withdraw from prosecution should be exercised in the light of Public Prosecutor's own judgment and not at the dictation of some other authority, however high. This power is not an absolute power; it can be exercised only with the consent of the Court. The curb thus placed on the power is to ensure that it is not abused, that is to say, not exercised for improper reasons or to save improper acts. The Court gives its consent in the exercise of its judicial discretion and before granting consent, it must be satisfied that the grounds stated for the withdrawal are proper grounds, grounds which if true, would make the withdrawal in furtherance of rather than hindrance to the object of the law. The ultimate guiding consideration must be the interest of the administration of justice."

4. In view of the above, this Department cannot accede with the proposal for withdrawal from prosecution.

5. This issues with the approval of Hon'ble MLJ.

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Ministry of Home Affairs  
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